



# Agenda Report

2725 Judge Fran Jamieson  
Way  
Viera, FL 32940

## Consent

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F.2.

3/23/2021

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### **Subject:**

Acceptance, Re: Binding Development Plan with Ag Ventures, LLC (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 Chairman 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 February 4, 2021, the Board approved a request for a BDP with the following conditions.

- Limiting density to 4 units per acre to be consistent with the Future Land Use.
- Preserving wetlands on the northeast corner of the Property.
- Connection to County water and sewer.
- Providing a minimum of 10 acres of area which may include wetlands, buffer tract and stormwater tracts which will include the adjacent BU-1 portion of the proposed subdivision. The stormwater tracts can be wet or dry, or a combination of wet and dry.

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

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

**Resolution 20PZ00101**

On motion by Commissioner Lober, seconded by Commissioner Zonka, the following resolution was adopted by a unanimous vote:

**WHEREAS, Ag Ventures, LLC** has requested a BDP (Binding Development Plan) limiting density to 4 units per acre for consistency with the RES 4 (Residential 4) Future Land Use designation, in an RU-1-7 (Single-Family Residential) zoning classification, on property described as Tax Parcel 501, as recorded in ORB 5623, Page 0807, and ORB 5391, Page 4604, Public Records, Brevard County, Florida, excepting the right-of-way for public roads and all lands described above lying west of Old Dixie Hwy; Tax Parcel 569, as recorded in ORB 5424, Page 5046, Public Records, Brevard County, Florida; Tax Parcel 503, as recorded in ORB 5477, Page 0301, Public Records, Brevard County, Florida. **Section 8, Township 21, Range 35.** (110 acres +/-) Located on the north side of Wiley Ave., and the east side of Old Dixie Hwy., approx. 0.047 mile east of U.S. Hwy 1 (No assigned address. In the Mims area.); 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 denied; and

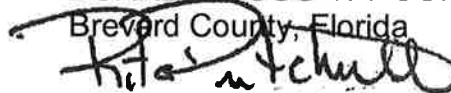
**WHEREAS,** the Board, after considering said application and Brevard County Planning and Zoning Board's recommendation, and hearing all interested parties, and after due and proper consideration having been given to the matter, find that the application should be approved with a BDP limiting density to 4 units per acre, preservation of wetlands on the northeast corner of the property, connection to Brevard County water and sewer, and a minimum of 10 acres of buffer and stormwater tracts to include the adjacent BU-1 portion of the proposed subdivision; now therefore,

**BE IT RESOLVED** by the Board of County Commissioners of Brevard County, Florida, that the requested BDP limiting density to 4 units per acre for consistency with the RES 4 Future Land Use designation, in an RU-1-7 zoning classification be approved with a BDP, recorded on March 25, 2021, in ORB 9064, Pages 496 - 500, limiting density to 4 units per acre, preservation of wetlands on the northeast corner of the property, connection to Brevard County water and sewer, and a minimum of 10 acres of buffer and stormwater tracts to include the adjacent BU-1 portion of the proposed subdivision. 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 March 25, 2021.

BOARD OF COUNTY COMMISSIONERS

Brevard County, Florida



Rita Pritchett, Chair

Brevard County Commission

As approved by the Board on March 25, 2021.

ATTEST:



RACHEL M. SADOFF, CLERK

(SEAL)

Planning and Zoning Board Hearing – January 11, 2021  
County Commission Zoning Hearing - February 4, 2021

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.**

Prepared by: Charles B. Genoni  
AG Ventures, LLC  
4760 N. US1 #201  
Melbourne FL 32935

## BINDING DEVELOPMENT PLAN

THIS AGREEMENT, entered into this 23 day of March, 2021 between the BOARD OF COMMISSIONERS OF BREVARD COUNTY, FLORIDA, a political subdivision of the State of Florida (hereinafter referred to as "County") and AG Ventures, LLC (hereinafter referred to as 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 RU 1-7 zoning classification (Resolution No. 14PZ-00091) to develop the Property as a Single-Family Subdivision, and has submitted this binding development plan 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. The Developer/Owner shall:

- Limit density to 4 Units per acre to be consistent with the Future Land Use designation of RES 4.

- Preserve Wetlands on the NE corner of the property.
- Connect to County water.
- Connect to County sewer.
- Provide a minimum of 10 acres which may include wetlands, buffer tract and stormwater tracts which will include the adjacent BU-1 portion of the proposed Subdivision. The stormwater tracts can be wet or dry or a combination of wet and dry.

4. 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.

5. 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.

6. 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 shall 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 February 4, 2021. In the event the subject Property is annexed into a municipality and rezoned, this agreement shall be null and void.

7. 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.

8. 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 7 above.

9. Severability clause. If any provision of this Agreement 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  
(SEAL)

Rita Pritchett  
Rita Pritchett, Chair  
As approved by the Board on 3/23/2021

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

WITNESSES:

Tanya Ludzieski  
Tanya Ludzieski  
(Witness Name typed or printed)

AG Ventures LLC

Charles Genoni  
Charles Genoni, As Manager Member  
4760 N US Hwy 1 #201  
Melbourne, FL 32935

Louise Boivin  
Louise Boivin  
(Witness Name typed or printed)

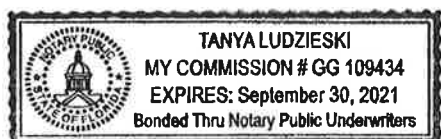
STATE OF Florida §

COUNTY OF Brevard §

The foregoing instrument was acknowledged before me, by means of X physical presence or  
\_\_\_\_\_ online notarization, this 26 day of February, 2021, by  
Charles Genoni, mgr mbr President of AG Ventures, LLC who is  
personally known to me or who has produced \_\_\_\_\_ as identification.

My commission expires 9-30-21  
SEAL  
Commission No.: GG 109434

Tanya Ludzieski  
Notary Public  
(Name typed, printed or stamped)



**Exhibit "A"**

**1. W 1/2 OF SW 1/4 EX DB 357 PG 121, E 140 FT OF S 756 OF SW 1/4 OF SW 1/4 & RD R/W PAR 502 (EXCEPT PARTS THEREFROM DEEDED TO HOUSING AUTHORITY OF BREVARD COUNTY. FLORIDA, AS DESCRIBED IN DEED BOOK 356, PAGE 121; ALSO EXCEPT SOUTH 620 FEET OF THE EAST 100 FEET OF SOUTHWEST ONE-QUARTER OF SOUTHWEST ONE-QUARTER OF SAID SECTION 8).**

**Tax ID 2102924 (68 acres)**

**EXCEPTING RIGHT-OF-WAY FOR PUBLIC ROADS AND ALL LANDS DESCRIBED ABOVE LYING WEST OF OLD DIXE HWY.**

**2. TOGETHER WITH:**

**PART OF E 1/2 OF SW 1/4 AS DESC IN ORB 5424 PG 5046**

**Tax ID 2112294 (40 acres)**

**3. TOGETHER WITH:**

**PART OF NW 1/4 OF SW 1/4 AS DES IN DB 357 PG 121**

**Tax ID 2102925 (2 acres)**



## AFFIDAVIT OF NO MORTGAGE

CHARLES B. GENONI, Manager Member of AG VENTURES, LLC, a Florida limited liability company, after being duly sworn, deposes and says:

1. I am the owner of the real property as more particularly described in Exhibit "A" attached hereto
2. There are no mortgages on the Property.

AG VENTURES, LLC

By: \_\_\_\_\_

CHARLES B. GENONI, Manager Member

STATE OF FLORIDA

COUNTY OF BREVARD

The foregoing instrument was acknowledged before me, by means of ☐ **physical presence** or ☐ **online notarization** this 8 day of February, 2021, by Charles B. Genoni, as Manager Member of AG VENTURES, LLC, who is personally known to me, or who has produced \_\_\_\_\_ as identification and who did (did not) take an oath.

My commission expires

9/30/21

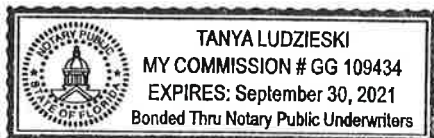
SEAL

Commission No.: GG 109434

\_\_\_\_\_  
Notary Public

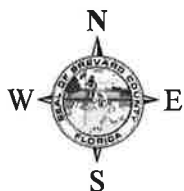
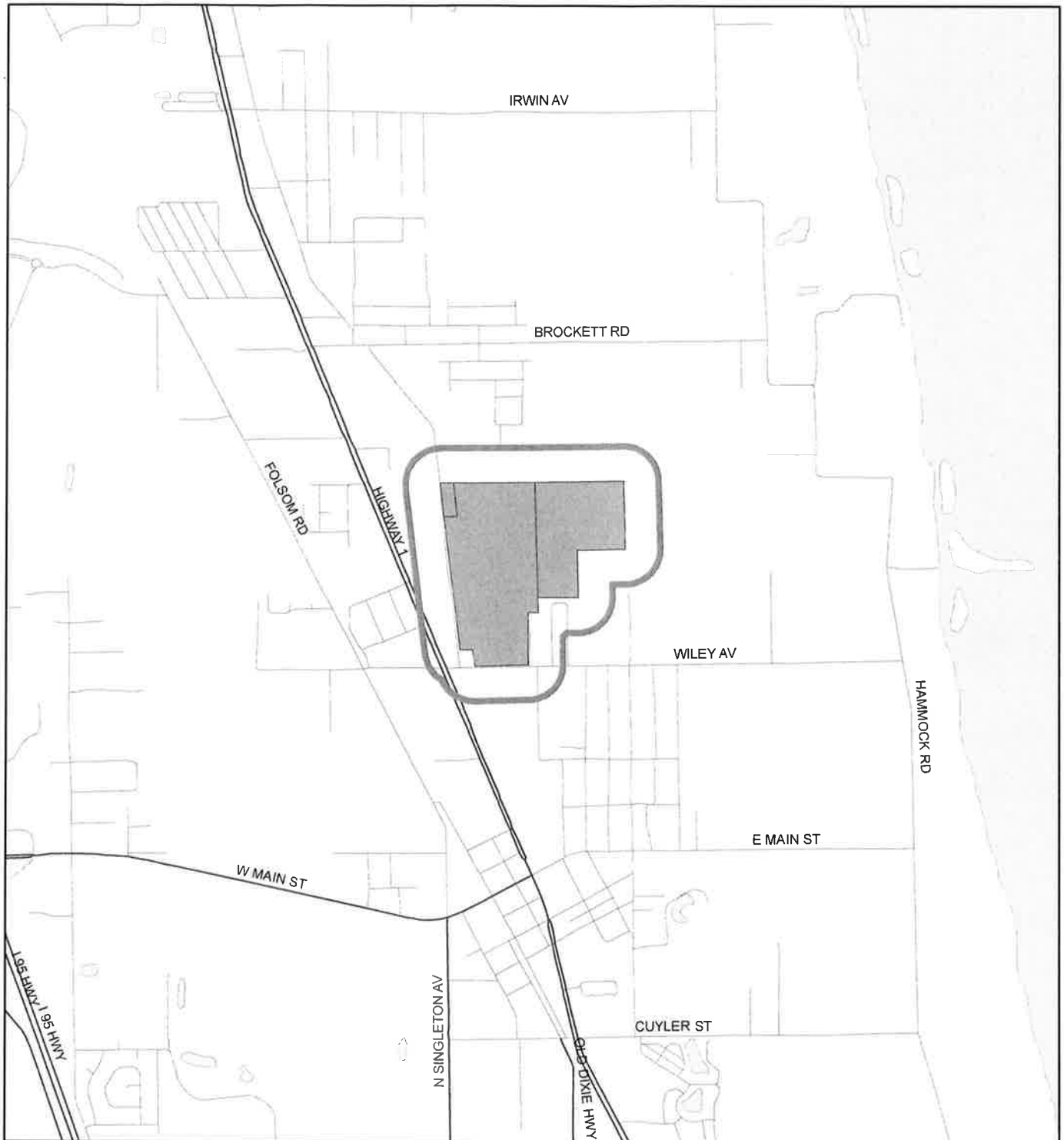
Tanya Ludzieski

(Name typed, printed or stamped)



# LOCATION MAP

AG VENTURES, LLC  
20PZ00101



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

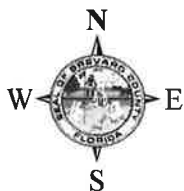
Buffer Distance: 500 feet

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: 10/28/2020

Buffer  
Subject Property

AG VENTURES, LLC  
20PZ00101



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.

 Subject Property  
 Parcels  
 Zoning

3. **Ag Ventures** (Chad Genoni) requests a BDP (Binding Development Plan) limiting density to 4 units per acre for consistency with the RES 4 (Residential 4) Future Land Use designation, in an RU-1-7 (Single-Family Residential) zoning classification. The property is 110 acres +/-, located on the north side of Wiley Ave., and the east side of Old Dixie Hwy., approx. 0.047 mile east of U.S. Hwy 1 (No assigned address. In the Mims area.) (20PZ00101) (Tax Accounts 2102924, 2102925, and 2112294) (District 1)

**Planning and Zoning Board Recommendation:** Glover/Bartcher – Denied. The vote was 4:2, with Hodgers and Buchanan voting nay.

**Board of County Commissioners Action:** Lober/Smith – Approved with a BDP limiting density to 4 units per acre, preservation of wetlands on the northeast corner of the Property, connection to Brevard County water and sewer, and a minimum of 10 acres of buffer and stormwater tracts to include the adjacent BU-1 portion of the proposed subdivision. 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.

4. **Marker 24 Marina, LLC** (Peter Black) requests a CUP (Conditional Use Permit) for Alcoholic Beverages (full liquor) for On-Premises Consumption in conjunction with a private club, in a BU-2 (Retail, Warehousing, and Wholesale Commercial) zoning classification. The property is 1.04 acres +/-, located on the east side of S. Banana River Dr., approx. 160 ft. north of West Virginia Ave. (1360 S. Banana River Dr., Merritt Island) (20Z00010) (Tax Account 3018251) (District 2)

**Planning and Zoning Board Recommendation:** Hodgers/Buchanan – Approved. The vote was unanimous.

**Board of County Commissioners Action:** Lober/Smith – Approved as recommended, and with the condition of no exterior speakers or other devices designed primarily to produce audible sounds of more than 55 decibels at the property line. The vote was unanimous.

5. **Tammy McCoy** requests change of zoning classification from AU (Agricultural Residential) to EU-1 (Estate Use Residential). The property is .50 acres, located on the south side of E. Main St., approx. 795 ft. east of Harry T. Moore Ave. (No assigned address. In the Mims area.) (20Z00035) (Tax Account 2103412) (District 1)

**Planning and Zoning Board Recommendation:** Bartcher/Buchanan – Approved. The vote was unanimous.

**Board of County Commissioners Action:** Lober/Smith – Approved as recommended. The vote was unanimous.

## **PLANNING AND ZONING BOARD RECOMMENDATIONS**

- Item H.1. Lazy River Investments. Tobia/Lober. Denied with Finding of Facts.
- Item H.2. Brevard Tower Communications, Inc. Zonka/Smith. Adopted Ordinance No. 21-02, approving the 2020-2.1 Large Scale Comprehensive Plan Amendment changing the Future Land Use from RES 2 and NC to CC as recommended.
- Item H.3. Brevard Tower Communications, Inc. Zonka/Lober. Approved changing zoning classification from GU to BU-2 as recommended; and approved including a Binding Development Plan to provide 50-foot buffer of abutting residential property and maintaining the existing vegetative buffer, limiting the number of spaces and defining the access to boat and RV storage and ancillary services, committed to not having a dump station unless sewer is obtained, limiting the height of any lighting, providing a traffic study to ensure no adverse effect on the roadway, restricting for no overnight stays, and complying with applicable Florida Department of Environmental Protection requirements for building on a landfill.
- Item H.4. Ag Ventures. Lober/Smith. Approved with a Binding Development Plan limiting the density to four units per acre, preserving the wetlands in the northeast corner, connecting to water and sewer, and having a minimum of 10-acre area including wetland, buffer tracts, and stormwater tracts for consistency with the Res 4 Future Land Use designation in an RU-1-7 zoning classification.
- Item H.5. Marker 24 Marina, LLC. Lober/Smith. Approved a CUP for alcoholic beverages (full liquor) for on-premises consumption in conjunction with a private club, in a BU-2 zoning classification, with condition of there being no speakers or other devices designed primarily to produce audible sounds with more than 55 decibels at the subject property line.
- Item H.6. Tammy McCoy. Lober/Smith. Approved changing zoning classification from AU to EU-1 as recommended.
- Item H.7. Thomas R. and Rachel Darnell. Zonka/Smith. Approved changing zoning classification from SEU to AU, with a Binding Development Plan limiting no agritourism uses and the processing of meat.
- Item H.8. Harold Kurz. Request withdrawn by applicant letter received on January 11, 2021.
- Item H.9. Harold Kurz. Request withdrawn by applicant letter received on January 11, 2021.
- Item H.10. 5971 Cedar Lake Drive Revocable Land Trust and U.S. Highway No. 1 Commercial Land Trust. Lober/Zonka. Tabled to March 4, 2021.