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|---------------|
| Meeting Date |
| July 25, 2017 |



| AGENDA | |
|----------|---------|
| Section | CONSENT |
| Item No. | II.A.2 |

AGENDA REPORT
BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS

| | |
|--------------|---|
| SUBJECT: | Binding Development Plan, Re: Dana Hipple (D1) 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 May 25, 2017, the Board of County Commissioners approved a change of classification from GU to AU(L), on property located on the south side of Rayburn Rd., approx. 480 ft. west of Britt Rd. (4725 Rayburn Rd., Cocoa), subject to a Binding Development Plan as follows:

- Developer/Owner shall not construct or maintain any improvements on the Property that are not in compliance with the AU(L) zoning classification, subject to existing variances granted on the Property as reflected in Resolution No. 17PZ00030 of the Brevard County Board of Adjustment (Exhibit "B").
- Developer/Owner shall limit the uses of the Property to three (3) horses, a detached single-family residence, an existing pole barn, and no other AU(L) uses.

Staff Contact: Jennifer Jones

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"/> |
|--|-----|-------------------------------------|----|--------------------------|-----------------------------|

| | | |
|--|--|---|
| County Manager, Interim Frank Abbate <i>FBA</i> | Assistant County Manager Venetta Valdengo | Department Director / Extension Tad Calkins Planning & Development Dept. Ext. 56363 |
| | Interim Assistant County Manager John Denninghoff <i>JD</i> | <i>HC</i> |



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

July 26, 2017

MEMORANDUM

TO: Jennifer Jones, Zoning

RE: Item II.A.2, Binding Development Plan Agreement with Dana Hipple

The Board of County Commissioners, in regular session on July 25, 2017, executed Binding Development Plan with Dana Hipple, for property located on the south side of Rayburn Road, approximately 480 feet west of Britt Road. 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

file

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

WHEREAS, DANA HIPPLE has requested a change of zoning classification from GU (General Use), to AU(L) (Agricultural – Low Intensity) on property described as Tax Parcel 259, as recorded in ORB 7111, Pages 16 – 20, of the Public Records of Brevard County, Florida. (2.46 acres) Located on the south side of Rayburn Rd., approx. 480 ft. west of Britt Rd. (4725 Rayburn Rd., Cocoa)

Section 23,

Township 24 S,

Range 35 E, and,

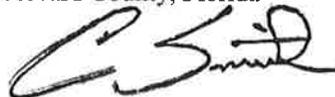
WHEREAS, a public hearing of the Brevard County Planning & Zoning Board was advertised and held, as required by law, and after hearing all interested parties and considering the adjacent areas, the Brevard County Planning & Zoning Board recommended that the application be approved with a BDP (Binding Development Plan) with the following limitations: 1.) Developer/Owner shall not construct or maintain any improvements on the Property that are not in compliance with the AU(L) zoning classification, subject to existing variances granted on the Property as reflected in Resolution No. 17PZ00030 of the Brevard County Board of Adjustment; and, 2.) Developer/Owner shall limit the use of the Property to three (3) horses, a detached single-family residence, an existing pole barn, and no other AU(L) uses; and

WHEREAS, the Board, after considering said application and the Brevard County Planning & 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 change of zoning classification from from GU (General Use), to AU(L) (Agricultural – Low Intensity), be APPROVED with a BDP, recorded in ORB 7946, Pages 514 – 518, dated July 26, 2017, with the following limitations: 1.) Developer/Owner shall not construct or maintain any improvements on the Property that are not in compliance with the AU(L) zoning classification, subject to existing variances granted on the Property as reflected in Resolution No. 17PZ00030 of the Brevard County Board of Adjustment ; and, 2.) Developer/Owner shall limit the use of the Property to three (3) horses, a detached single-family residence, an existing pole barn, and no other AU(L) uses. The zoning classification relating to the above described property shall be changed to AU(L), and the Planning & 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 July 26, 2017.

BOARD OF COUNTY COMMISSIONERS
Brevard County, Florida



by Curt Smith, Chairman
Brevard County Commission

As approved by Brevard County Commission on July 25, 2017.

ATTEST:



SCOTT ELLIS, CLERK
(SEAL)

(P&Z Hearing – May 8, 2017)

(BCC Zoning Hearing – May 25, 2017)

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 (1) year of approval or if construction does not commence within two years of approval. A PUD 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.

Binding Development Plan

THIS AGREEMENT, entered into this 25 day of July, 2017 between the BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, a political subdivision of the State of Florida (hereafter referred to as the "County"), and DANA L. HIPPLE, an individual resident of Brevard County, Florida (hereinafter referred to as the "Developer/Owner").

RECITALS

WHEREAS, Developer/Owner owns property located at 4725 Rayburn Road, Cocoa, Brevard County, Florida (hereinafter the "Property") as more fully described on Exhibit "A" attached hereto and incorporated herein by this reference; and

WHEREAS, Developer/Owner has requested the AU(L) zoning classification on the Property to conform the existing use and structures on the Property to the proper zoning classification, including already approved variances on the Property as reflected in Resolution No. 17PZ00030 of the Board of Adjustment of Brevard County, Florida dated April 20, 2017, and pursuant to Brevard County Code, Section 62-1157; and

WHEREAS, as part of the plan for the development of the Property, Developer/Owner wishes to mitigate negative impact on abutting land Developer/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 any improvements on the Property. It is the intent of the parties that the Developer/Owner, her grantees, successors or

assigns in interest shall be solely responsible for the construction and maintenance of any improvements.

2. The Developer/Owner shall not hereafter construct or maintain any improvements on the Property that are not in compliance with the zoning classification AU(L), subject to existing variances granted on the Property as reflected in Resolution No. 17PZ00030 of the Board of Adjustment of Brevard County, Florida dated April 20, 2017 attached as Exhibit "B"; provided, however, that the parties agree that the Permitted Uses on the Property shall be limited to three (3) horses, a detached single-family residence, an existing pole barn and no other AU(L) Permitted Uses.

3. Developer/Owner shall comply with all regulations and ordinances of Brevard County, Florida. This Agreement constitutes Developer/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 the Property.

4. Developer/Owner upon execution of this Agreement shall pay to the County the cost of recording this Agreement in the Public Records of Brevard County, Florida.

5. This Agreement shall be binding and shall inure to the benefit of the successors and 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 May 25, 2017. In the event that 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 hereafter 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.

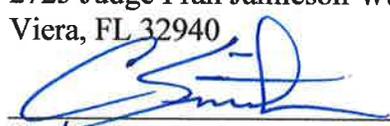
IN WITNESS WHEREOF, the parties have caused these presents to be signed all as of the date and year first above written.

ATTEST:



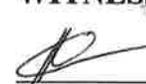
Scott Ellis, Clerk
[SEAL]

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



Curt Smith, Chairman
As approved by the Board on 7/25/17

WITNESSES:



Name: MARY WATKINS

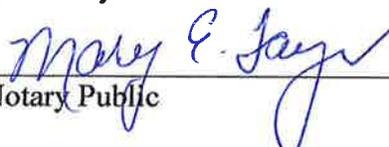
DEVELOPER/OWNER



Dana L. Hipple

STATE OF FLORIDA)
COUNTY OF BREVARD)

The foregoing instrument was acknowledged before me this 30 day of June, 2017, who is personally known to me or who produced FOL as identification..



Notary Public



EXHIBIT "A"

The East Half (E 1/2) of the East Quarter (E1/4) of the West Half (W1/2) of the Northeast Quarter (NE 1/4) of the Northwest Quarter (NW 1/4) Section Twenty-Three (23), Township Twenty-Four (24), South, Range Thirty-Five (35) East, Brevard County, Florida, less and except road right of way

EXHIBIT "B"

Resolution No. 17PZ00030

RESOLUTION

WHEREAS, the Brevard County Board of Adjustment met in session the 19th day of April, 2017; and

WHEREAS, **DANA L. HIPPLE** has applied to the Brevard County Board of Adjustment for variances on the following described property: Tax Parcel 259, as recorded in ORB 7111, Pages 16 – 20, of the Public Records of Brevard County, Florida. **Section 23, Township 24, Range 35.** (2.46 acres) Located on the south side of Rayburn Rd., approx. 480 ft. west of Britt Rd. (4725 Rayburn Rd., Cocoa); and

WHEREAS, this Board, having heard the following variance requests on the subject property: 1.) Section 62-1334(4), to permit a variance of 67.44 ft. from the minimum 150-ft. lot width as required by the AU(L) (Agricultural Residential – Low Intensity) zoning classification; 2.) Section 62-1334(5)(c)(2), to permit a variance of 22.3 ft. from the required 50-ft. side (west) setback for a barn; 3.) Section 62-1334(5)(c)(2), to permit a variance of 11.5 ft. from the required 50-ft. side (east) setback for a barn; 4.) Section 62-1334(4), to permit a variance of 0.04 acres from the required 2.5-acre lot size for AU zoning; 5.) Section 62-1334(6), to permit a variance of 30 sq. ft. from the 750 sq. ft. minimum living area for a principal structure as required by the AU(L) zoning classification. The property is located in a GU (General Use) zoning classification; and

WHEREAS, this Board after hearing all testimony and facts presented in this matter; and

WHEREAS, this Board, after considering the criteria established by Section 62-253 of Chapter 62, Article II of the Brevard County Code; and

NOW THEREFORE, BE IT RESOLVED, that the Brevard County Board of Adjustment does hereby find that the facts as set forth at the meeting held on April 19, 2017, are sufficient to meet the criteria of Section 62-253, Chapter 62, Article II, Brevard County Code, and the above described Variances are APPROVED as depicted on the survey provided by the applicant; and

BE IT FURTHER RESOLVED, that the Planning & Development Department Director, or designee, is hereby directed to make a notation on the official zoning maps of Brevard County, Florida, indicating this action.

DONE, ORDERED AND ADOPTED, in Regular Session, the 19th day of April, A.D., 2017.

Attest:

Date: 4/20/17

By: [Signature]
Tad Calkins, Director, Planning & Development Department

BOARD OF ADJUSTMENT OF BREVARD COUNTY, FLORIDA

Date: 4/20/17

By: [Signature]
Britta Hawkins, Chair

THE GRANTING OF THIS VARIANCE 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. PURSUANT TO THE FLORIDA RULES OF APPELLATE PROCEDURE, ANY PERSON OR PERSONS JOINTLY OR SEVERALLY AGGRIEVED BY ANY DECISION OF THE BOARD OF ADJUSTMENT MAY, WITHIN THIRTY (30) DAYS AFTER THE DATE THE ORDER IS SIGNED, APPLY TO A COURT OF COMPETENT JURISDICTION FOR APPROPRIATE RELIEF.

BrevardClerk. US

Scott Ellis, Clerk of Court

700 South Park Avenue, Bldg. B

P.O. Box 2767

Titusville, FL 32781-2767

(321) 637-2006

DBLIVE Transaction

#: 1943985

Receipt #: 61907124

Cashier Date: 7/26/2017

3:19:57 PM



Print Date:

7/26/2017 3:19:58 PM

| Customer Information | Transaction Information | Payment Summary |
|--|---|--|
| () DANA HIPPLE 4915 RAYBURN RD COCOA, FL 32926 | DateReceived: 07/26/2017 Source Code: Titusville - Six Story Q Code: Titusville - Six Story Return Code: Hand Carried Trans Type: Recording Agent Ref Num: | Total Fees \$44.00 Total Payments \$44.00 |

1 Payments

| | |
|------------|---------|
| CHECK 3546 | \$44.00 |
|------------|---------|

1 Recorded Items

| | | |
|--|---|---------|
| (AG) AGREEMENT | BK/PG: 7946/514 CFN:2017156338 Date: 7/26/2017 3:19:56 PM From: To: | |
| Recording @ 1st=\$10 Add'l=\$8.50 ea. | 5 | \$44.00 |
| Indexing @ 1st 4 Names Free, Add'l=\$1 ea. | 2 | \$0.00 |

0 Search Items

1 Miscellaneous Items

| |
|--------------------------|
| (AGTR) AGENT TRANSMITTAL |
|--------------------------|

STATE OF FLORIDA
COUNTY OF BREVARD

Dana L. Hipple, after being duly sworn, deposes and says:

The undersigned is the owner of the real property located at 4725 Rayburn Road, Cocoa, FL 32926 described as follows:

The East Half (E 1/2) of the East Quarter (e1/4) of the West Half (W1/2) of the Northeast Quarter (NE 1/4) of the Northwest Quarter (NW 1/4) Section Twenty-Three (23), Township Twenty- Four (24), South, Range Thirty-Five (35) East, k Brevard County, Florida, less and except road right of way

There are no mortgages on the above described property

Dated this 30th day of June, 2017.



Signature

STATE OF FLORIDA
COUNTY OF BREVARD

The foregoing instrument was sworn to before me this 27th day of June, 2017 by

Dana L. Hipple, who is personally known to me, or who has produced F.D.L.

as identification and who did take an oath.

Notary Public:



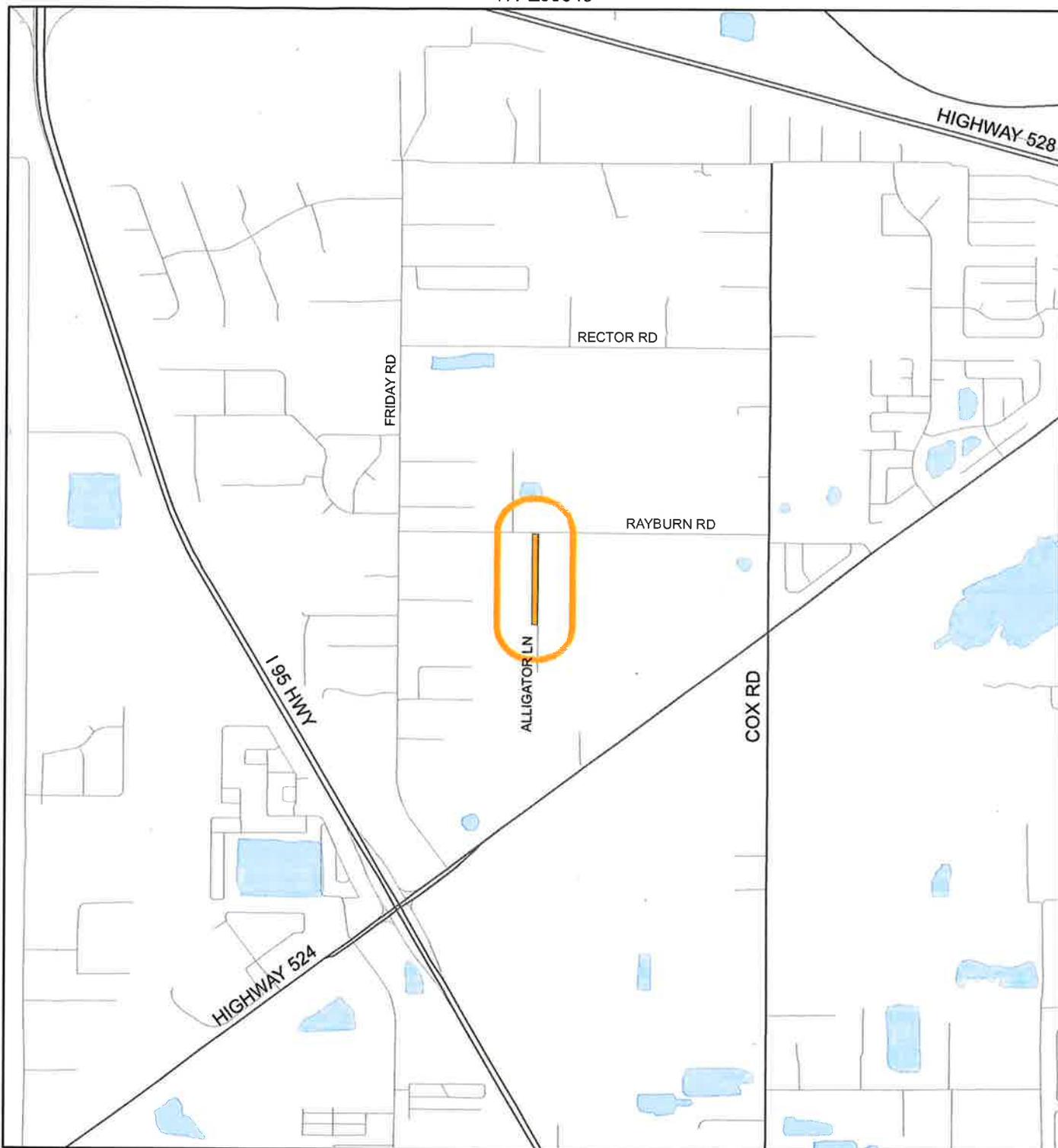
State of Florida at Large
My Commission Expires:



(SEAL)

LOCATION MAP

HIPPLE, DANA L.
17PZ00046



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

Buffer Distance: 500 feet

 Buffer
 Subject Property

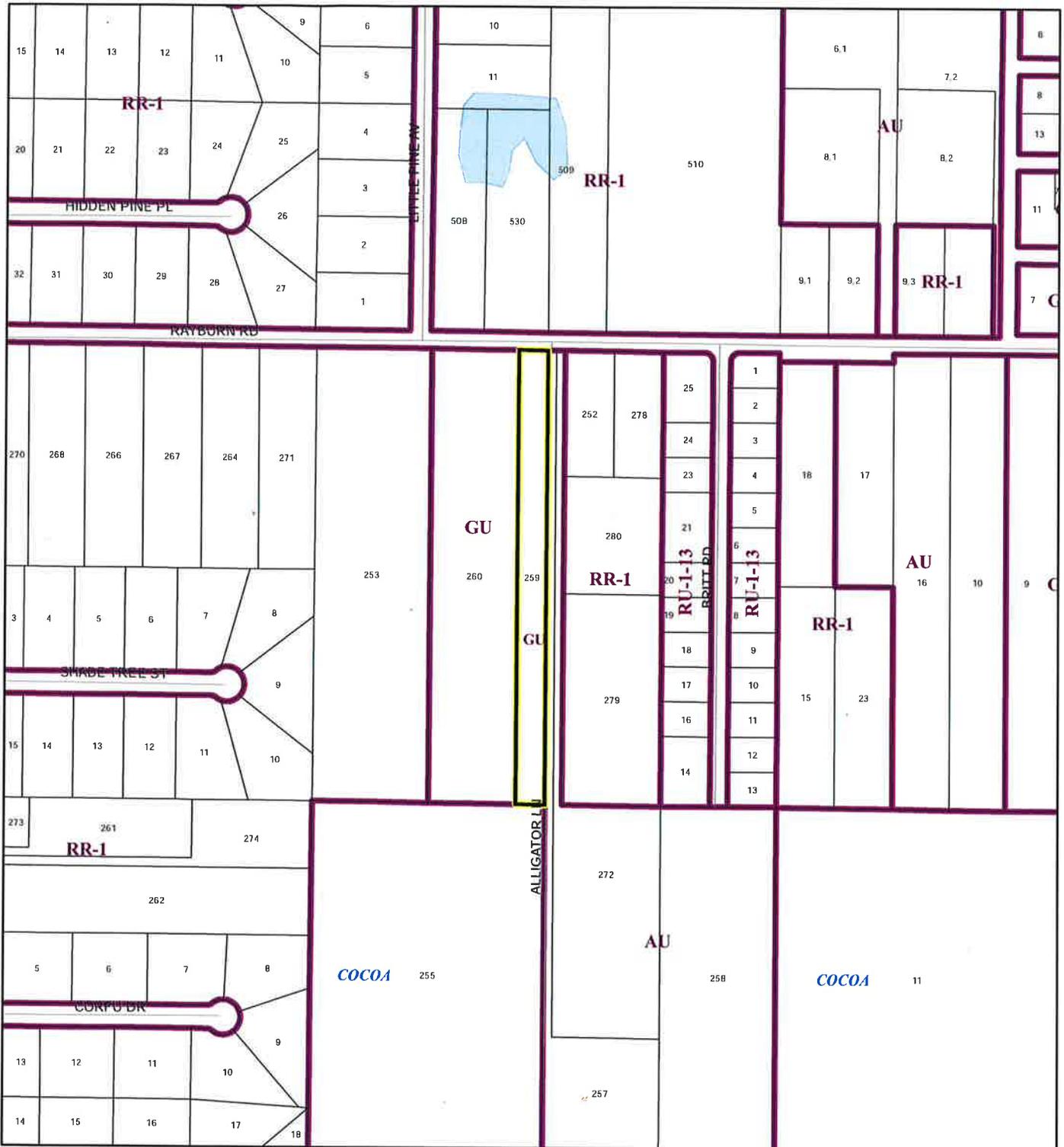
This map was compiled from recorded documents and does not reflect an actual survey. The Brevard County Board of County Commissioners does not assume responsibility for errors or omissions hereon.

Produced by the Brevard County Planning and Zoning Office - GIS Section Date: 3/15/2017

ZONING MAP

HIPPLE, DANA L.

17PZ00046



1:4,800 or 1 inch = 400 feet

-  Subject Property
-  Parcels
-  Zoning

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 herein.

Produced by the Brevard County Planning and Zoning Office - GIS Section Date: 3/15/2017

IV. PUBLIC HEARINGS

B. PLANNING & ZONING BOARD AGENDA MONDAY, May 8, 2017 – 3:00 P.M.

&

BOARD OF COUNTY COMMISSIONERS THURSDAY, May 25, 2017 – 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.1. (17PZ00038) – SUSIE L. MOMENT – (Douglas Engle) – requests a Small Scale Plan Amendment (17S.02), to change the Future Land Use Designation from PLNIP to Residential 4; and a change of classification from PIP to RU-1-7 with a BDP limited to four (4) units per acre, on 1.02 acres, located on the east side of Railroad Ave., approx. 0.5 mile south of Canaveral Groves Blvd. (3865 E. Railroad Ave., Cocoa)

LPA Recommendation: Cannon/McLellan – Approved. Vote was unanimous.

P&Z Recommendation: McLellan/Cannon – Approved with a BDP limited to four (4) units per acre. Vote was unanimous.

BCC ACTION: Pritchett/Barfield – APPROVED as recommended, and adopted Ordinance No. 17-14, Small Scale Plan Amendment 17S.02. Vote was unanimous. BDP TO BE SCHEDULED AS A CONSENT ITEM ON A SUBSEQUENT BCC AGENDA, PER POLICY BCC-52. RESOLUTION NUMBER TO BE ASSIGNED UPON RECEIPT OF RECORDED BDP.

IV.B.2. (17PZ00043) – BRIAN D. & TAMMY M. BOSSARD – request a change of classification from RU-1-13 to RU-2-4, and an amendment to an existing BDP, limited to two (2) units, on 0.85 acres, located on the west side of Indian River Drive, approx. 0.20 mile north of Brookhill Dr. (3745 N. Indian River Dr., Cocoa)

P&Z Recommendation: Moia/LaMarr – Approved with a BDP limited to two (2) units. Vote was unanimous.

BCC ACTION: Tobia/Isnardi – APPROVED as recommended. Vote was 4:1, with Pritchett voting nay. BDP TO BE SCHEDULED AS A CONSENT ITEM ON A SUBSEQUENT BCC AGENDA, PER POLICY BCC-52. RESOLUTION NUMBER TO BE ASSIGNED UPON RECEIPT OF RECORDED BDP.

IV.B.3. (17PZ00046) – DANA HIPPLE – (Robert Hipple) – requests a change of classification from GU to AU(L), on 2.46 acres, located on the south side of Rayburn Rd., approx. 480 ft. west of Britt Rd. (4725 Rayburn Rd., Cocoa)

P&Z Recommendation: Lawandales/McLellan – Approved with BDP limited to three (3) horses, and no other AU(L) uses. Vote was unanimous.

BCC ACTION: Pritchett/Isnardi – APPROVED as recommended. Vote was unanimous. BDP TO BE SCHEDULED AS A CONSENT ITEM ON A SUBSEQUENT BCC AGENDA, PER POLICY BCC-52. RESOLUTION NUMBER TO BE ASSIGNED UPON RECEIPT OF RECORDED BDP.

IV.B.4. (NMI ITEM)

PLANNING AND ZONING BOARD RECOMMENDATIONS OF MAY 8, 2017; AND NORTH MERRITT ISLAND BOARD RECOMMENDATION OF MAY 11, 2017

- Item IV.B.1. Susie L. Moment. Pritchett/Barfield, approved with a BDP limited to (4) four units per acre, and adopted Ordinance No. 17-14 (17S.02).
- Item IV.B.2. Brian D. and Tammy M. Bossard. Tobia/Isnardi, approved with a BDP limited to two (2) units. Commissioner Pritchett voting nay.
- Item IV.B.3. Dana Hipple. Pritchett/Isnardi, approved with a BDP limited to three (3) horses, and no other AU(L) uses.
- Item IV.B.4. Eric and Amanda Obloy. Automatically tabled to August 3, 2017, Zoning meeting.
- Item IV.B.5. Gerard and Naresa Cancro. Isnardi/Barfield, approved with BDP retaining all BU-1 uses; and limiting the BU-2 use to dog boarding, grooming, training, and retail sales of related products.
- Item IV.B.6. St. George's by the Lake. Isnardi/Barfield, approved with BDP to include no residential overnight stay, limited to a school with 42 students, no new construction, and to stay within its original footprint. Commissioner Tobia voting nay.
- Item IV.B.7. LTM of Florida Holding, LLC. Isnardi/Barfield, tabled to August 3, 2017, Zoning meeting.
- Item IV.B.8. SRK Viera Village Associates, L.P. Isnardi/Barfield, approved as recommended.