



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Consent

F.2.

8/1/2024

Subject:

Acceptance, Re: Binding Development Plan with West Malabar Properties, LLC (24Z00004) (District 5)

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 execute, the Binding Development Plan for zoning application 24Z00004.

Summary Explanation and Background:

A Binding Development Plan (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 the Board's approval of the zoning request. The Board's approval of the zoning action is not effective until the BDP is recorded. 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 4, 2024, the Board approved a change of zoning classification from RP and AU to all BU-2 with a BDP with the following conditions:

- Limiting the site to all BU-1 uses and only the BU-2 uses for indoor climate controlled mini storage.

The attached BDP contains these conditions.

Clerk to the Board Instructions:

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



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

August 2, 2024

MEMORANDUM

TO: Tad Calkins, Planning and Zoning Director

RE: Item F.2., Acceptance of Binding Development Plan (BDP) with West Malabar Properties, LLC (24Z00004)

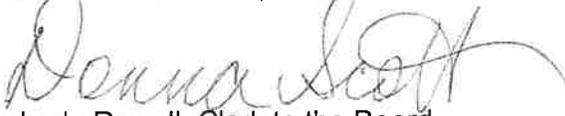
The Board of County Commissioners, in regular session on August 1, 2024, executed and accepted the BDP with West Malabar Properties, LLC, for limiting the site to all BU-1 uses and only the BU-2 uses for indoor climate controlled mini storage, as Recorded in ORB 10128, Pages 1544 – 1549, of the Public Records of Brevard County. Enclosed is two certified copies of the recorded BDP.

Please record the Agreement in the Public Records and return the recorded instrument to this office.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
RACHEL M. SADOFF, CLERK

for: 
Kimberly Powell, Clerk to the Board

/ds

Encls. (2)



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August 2, 2024

M E M O R A N D U M

TO: Recording

RE: Item F.2., Binding Development Plan (BDP) with West Malabar Properties, LLC
(24Z00004)

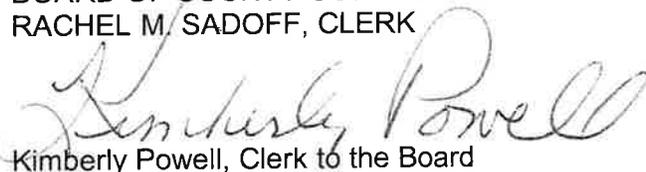
The Board of County Commissioners, in regular session on August 1, 2024, executed and accepted the BDP with West Malabar Properties, LLC, for limiting the site to all BU-1 uses and only the BU-2 uses for indoor climate controlled mini storage. Enclosed are original Binding Development Plan Agreement and Check No. 6201 for \$52.50.

Please record the Agreement in the Public Records and return the recorded instrument to this office.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
RACHEL M. SADOFF, CLERK



Kimberly Powell, Clerk to the Board

/ds

Encls. (2)

Prepared by: EKS, Inc.

Address: 516 Delannoy Ave, Cocoa, Florida 32922

BINDING DEVELOPMENT PLAN

THIS AGREEMENT, entered into this 4th day of June, 2024 between the **BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA**, a political subdivision of the State of Florida (hereinafter referred to as "County") and **West Malabar Properties, LLC**, a Florida limited liability company (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, pursuant to the Brevard County Code, Section 62-1157, a rezoning of the property to a BU-2 zoning classifications with a binding development agreement, desiring to develop a portion of the Property as multi-story climate controlled mini-storage as more particularly described herein, and;

WHEREAS, the County is authorized to regulate development of the Property.

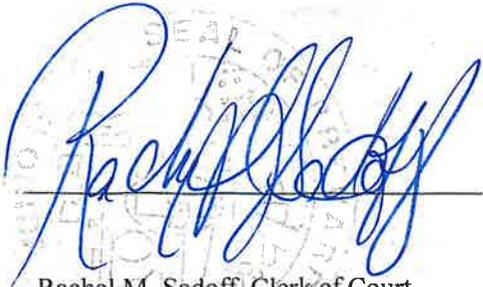
NOW, THEREFORE, the Parties agree as follows:

1. 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, 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 uses to indoor climate-controlled mini-storage as allowed in BU-2 zoning district and other uses as allowed in the BU-1 zoning district.

4. Developer/Owner shall comply with all regulations and ordinances of Brevard County, Florida. This Agreement provides no vested rights against changes to the Brevard County Comprehensive Plan or land development regulations as they may apply to this Property.
5. 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 April 4, 2024. In the event the subject Property is annexed into a municipality and rezoned, this Agreement shall be null and void.
6. 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.
7. 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 6 above.
8. Severability clause. If any provision of this BDP is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provision shall continue in full force and effect without being impaired or invalidated in any way.

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

ATTEST:

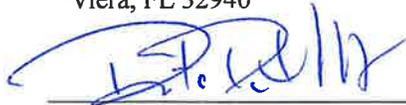


A large, stylized handwritten signature in blue ink, appearing to read 'Rachel M. Sadoff', is written over a faint circular seal. The seal contains the text 'CLERK OF COURT' and 'BREVARD COUNTY FLORIDA'.

Rachel M. Sadoff, Clerk of Court

(SEAL)

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



A handwritten signature in blue ink, appearing to read 'Jason Steele', is written over a horizontal line.

For

Jason Steele, Chair

AUG 01 2024

As approved by the Board on _____

Devon Kernan
Witness 1 Signature

Devon Kernan
Witness 1 Printed Name

Brian Gordon
Witness 2 Signature

Brian Gordon
Witness 2 Printed Name

West Malabar Properties, LLC

By: JCO
J. Cole Oliver, Manager

STATE OF FLORIDA.

COUNTY OF BREVARD

The foregoing instrument was acknowledged before me, by means of X physical presence or
online notarization, this 11th day of June, 2024, by J. Cole Oliver, as Manager
of West Malabar Properties, LLC, who is personally known to me or who has produced
_____ as identification.

Mindy Nicole Mason

My commission expires 10/17/2027

Notary

Public SEAL

Commission No.: #HH 413623



(Name typed, printed or stamped)

Exhibit "A"
Legal Description

DESCRIPTION:

A PARCEL OF LAND LYING WITHIN SECTION 24, TOWNSHIP 26 SOUTH, RANGE 36 EAST, AND BEING A PORTION OF LOTS 1 AND 2, BLOCK 2, PLAT OF THE MELBOURNE POULTRY COLONY ADDITION NO 1, AS RECORDED IN PLAT BOOK 7, PAGE 12, OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHEAST CORNER OF SAID LOT 1, BLOCK 2, THENCE RUN S. 88°34'45" W., ALONG THE SOUTH RIGHT OF WAY LINE OF HIELD ROAD (66' R/W) A DISTANCE OF 26.66 FEET TO A POINT ON A CURVE CONCAVE WESTERLY HAVING A RADIUS OF 37940.00 FEET, A CENTRAL ANGLE OF 00°32'55" AND THE POINT OF BEGINNING; THENCE FROM A RADIAL BEARING ON N. 89°25'21" W., RUN SOUTHERLY ALONG THE ARC OF SAID CURVE AND THE WESTERLY RIGHT OF WAY LINE OF MINTON ROAD, A DISTANCE OF 363.30 FEET TO THE POINT OF TANGENCY THERE OF; THENCE S. 01°07'34" W., A DISTANCE OF 109.50 FEET; THENCE S. 88°35'11" W., A DISTANCE OF 606.96 FEET; THENCE N. 00°31'45" E., ALONG THE WEST LINE OF SAID LOT 2, BLOCK 2, A DISTANCE OF 149.66 FEET; THENCE N. 88°32'52" E., ALONG THE NORTH LINE OF SAID LOT 2, A DISTANCE OF 274.66 FEET; THENCE N. 00°27'06" E., A DISTANCE OF 322.78 FEET TO THE SOUTH RIGHT OF WAY LINE OF HIELD ROAD; THENCE N. 88°34'45" E., ALONG HIELD ROAD, A DISTANCE OF 335.94 FEET TO THE POINT OF BEGINNING.

CONTAINING 4.57 ACRES, MORE OR LESS.

RACHEL M. SADOFF
 CLERK OF THE CIRCUIT COURT & COMPTROLLER
 BREVARD COUNTY, FLORIDA



POST OFFICE BOX 2767
 TITUSVILLE, FLORIDA 32781-2767
 (321) 637-2006
 WWW.BREVARDCLERK.US

Transaction #: 3698613
 Receipt #: 63484909
 Cashier Date: 08/08/2024 09:23:47 AM
 Cashier Branch: Titusville - Six Story

Print Date:
 08/08/2024 09:23:51 AM

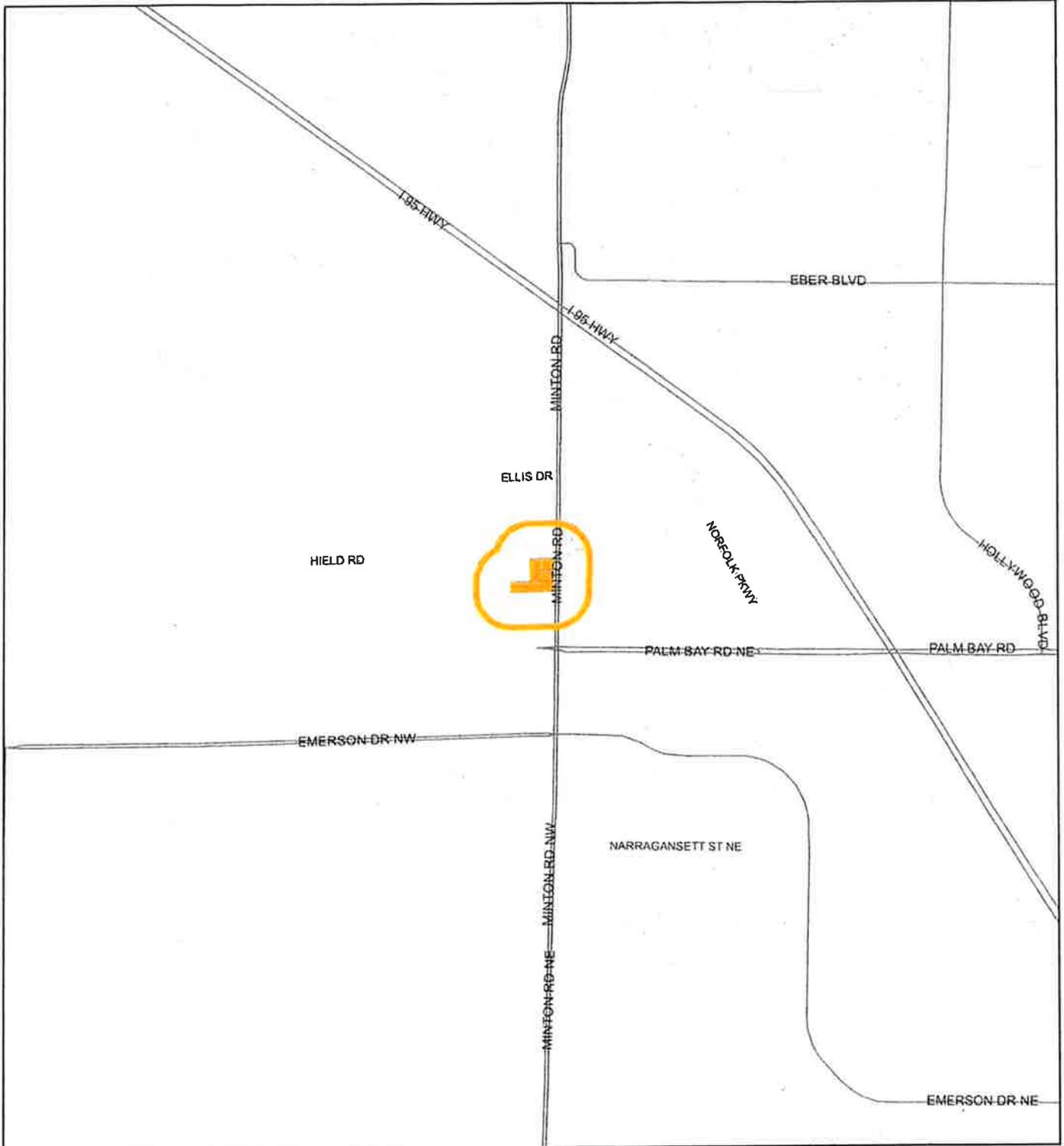
CUSTOMER INFORMATION	TRANSACTION INFORMATION		PAYMENT SUMMARY	
WEST MALABAR PROPERTIES LLC 518 DELANNOY AVE COCOA, FL 32922	Date Received:	08/08/2024	Total Fees	\$52.50
	Source Code:	Titusville - Six Story	Total Payments	\$52.50
	Return Code:	Hand Carried	Balance Due:	\$0.00
	Trans Type:	Recording		

1 Payments	
CHECK #6201	\$52.50

1 Recorded Items	
AGREEMENT	BK/PG: 10128/1544 CFN: 2024160466 Date: 08/08/2024 09:23:47 AM
From: Tax	
Recording @ 1st=\$10 Add'l=\$8.50 ea.	6 \$52.50

1 Miscellaneous Items	
AGENT TRANSMITTAL	

LOCATION MAP
WEST MALABAR PROPERTIES LLC
24Z00004



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: 2/8/2024

-  Buffer
-  Subject Property

ZONING MAP
WEST MALABAR PROPERTIES LLC
24Z00004



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: 2/8/2024

-  Subject Property
-  Parcels
-  Zoning

Brevard County Board of County Commissioners

*2725 Judge Fran Jamieson Way
Viera, FL 32940*



Minutes

Thursday, April 4, 2024

5:00 PM

Zoning

Commission Chambers

Chair Steele stated he will ask a few questions of staff; for those who do not know this, he has been in the real estate business for 50 years and he testifies in court on cases just like this; one of his biggest concerns is that in the event that the Board did not vote to approve this, that it would end up in court; it would be very difficult, in his opinion as an expert in these areas, to tell the jury that Minton Road is not one of the biggest, most active, commercial real estate roads that there is; and that is one of the things that are a problem here. He added there is Minton Road, which is a major commercial road, and he has more friends that live on Hield Road than one could shake a stick at; after tonight, he may not have any, but he can say he knows Hield Road and Minton Road like the back of his hand, so he understands it; and he asked Mr. Calkins how many times have they had the opportunity to extend the road and get other access into Hield Road so that some of the traffic could be alleviated.

Mr. Calkins replied there has been three or four times.

Chair Steele noted that three or four times it was decided they did not want a road going through, knowing that is a large growth area; it was also mentioned that there was no homeowner's association and there were no fire hydrants; his suggestion is that they form a homeowner's association and they get the protection they need; this is not a tough situation for him, but it is a tough situation because he has friends there; and he would love to protect it but he does not want to end up in court over it.

Chair Steele passed the gavel to Vice-Chair Pritchett..

The Board conducted the public hearing and adopted Ordinance No. 24-06, setting forth the first Small Scale Plan Amendment of 2024, (24S.01), to the Future Land Use Map of the Comprehensive Plan; amending Section 62-501 entitled Contents of the Plan; specifically amending Section 62-501, Part XVI(E), entitled the Future Land Use Map Appendix; provisions which require amendment to maintain internal consistency with these amendments; providing legal status; providing a severability clause; and providing an effective date.

Result: APPROVED

Mover: Jason Steele

Seconded: John Tobia

Ayes: Pritchett, Goodson, Tobia, Feltner, and Steele

G.5. West Malabar Properties, LLC requests a change of zoning classification from RP and AU to all BU-2 with a BDP. (24Z00004) (Tax Account 2806110, 2806111, 2806115, 2808112) (District 5)

Chair Steele called for a public hearing to consider a request for a change of zoning classification from RP and AU to all BU-2, with a Binding Development Plan (BDP), limiting the use to BU-1 uses and the BU-2 use to indoor climate controlled mini storage.

Commissioner Pritchett noted since she still had the gavel, this is just approving the zoning; there is still the traffic impact study; they still have to come back with the site plan; this is just baby stages and there is still a long process to go; and there are people watching out for them.

Commissioner Goodson asked Mr. Oliver if he would commit to meeting with these people again on his site plan to try to work the best he can with him.

Cole Oliver, applicant, responded he is happy to meet with them again to work as best he can;

and the logger heads he has always come to has been the access onto Hield Road.

Commissioner Goodson reiterated that Mr. Oliver is willing to meet again on his site plan; and once it comes back to the Board, it will vote on it again and maybe it will not like it.

Tad Calkins, Planning and Development Director, stated he wanted to clarify if the Board's motion included the BDP.

Chair Steele replied yes.

The Board conducted the public hearing and approved the request for a change of zoning classification from RP and AU to all BU-2, with a Binding Development Plan, limiting the use to BU-1 uses and the BU-2 use to indoor climate controlled mini storage.

Vice-Chair Pritchett passed the gavel back to Chair Steele.

Result: APPROVED

Mover: Jason Steele

Secunder: John Tobia

Ayes: Pritchett, Goodson, Tobia, Feltner, and Steele

J.6. Rob Feltner, Commissioner District 4, Re: Board Report

Commissioner Feltner stated in each of these meetings, the Board is fortunate to have members of Brevard County Sheriff's Office here to keep it safe; and he would like to recognize Lieutenant Craig Adelman for his 25 years in the Sheriff's Office.

Chair Steele noted he had a report but he will hold it until the next meeting, as there is a lot to talk about from the Brightline station and all kinds of other issue; he does not want to take the time tonight to do it; and he wants to get more information so that he can give a more accurate report at the next meeting.

Result: APPROVED

Mover: Tom Goodson

Secunder: Rob Feltner

Ayes: Pritchett, Goodson, Tobia, Feltner, and Steele

Upon motion and vote, the meeting adjourned at 6:14 p.m.

Result: APPROVED

Mover: Tom Goodson

Secunder: Rob Feltner

Ayes: Pritchett, Goodson, Tobia, Feltner, and Steele

ATTEST:

RACHEL M. SADOFF, CLERK

JASON STEELE, CHAIR