



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Consent

F.2.

4/6/2023

Subject:

Acceptance, Re: Binding Development Plan with Ronald Abbott (District 3)

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 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 February 2, 2023, the Board approved a change of zoning classification from BU-1 (General Retail Commercial) to BU-2 (Retail, Warehousing, and Wholesale Commercial), with a BDP retaining all BU-1 uses and limiting the BU-2 use to boat and RV storage only. The attached BDP includes this condition.

Clerk to the Board Instructions:

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



April 7, 2023

MEMORANDUM

TO: Jennifer Jones, Zoning

RE: Item F.2., Binding Development Plan with Ronald Abbott

The Board of County Commissioners, in regular session on April 6, 2023, executed Binding Development Plan Agreement with Ronald Abbott for property located from part of Government Lots 2 and 3, Section 11, Township 30 South, Range 38 East, Brevard County, Florida, lying South of O.R. Book 4303, Page 3589, Public Records of Brevard County, Florida, East of the right of way line of the Florida East Coast Railroad right of way and North of the North right of way line of Barefoot Boulevard.

Enclosed for your necessary action are two certified copies of the recorded documents.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
RACHEL M. SADOFF, CLERK

Kimberly Powell
Kimberly Powell, Clerk to the Board

/dt

Encls. (2)

Resolution 22Z00060

On motion by Commissioner Tobia, seconded by Commissioner Feltner, the following resolution was adopted by a unanimous vote:

WHEREAS, Ronald Abbott has requested a change of zoning classification from BU-1 (General Retail Commercial) with an existing BDP (Binding Development Plan) to BU-2 (Retail, Warehousing, and Wholesale Commercial) and removal of existing BDP, on property described as Tax Parcel 504.1, as recorded in ORB 8093, Pages 1505 - 1506, of the Public Records of Brevard County, Florida.

Section 11, Township 30, Range 38. (4.58 acres) Located on the north side of Barefoot Bay Blvd., approx. 200 ft. west of U.S. Highway 1. (No assigned address, in the Micco 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 approved with a BDP retaining all BU-1 uses, and limiting the BU-2 use to boat and RV storage only; 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 retaining all BU-1 uses, and limiting the BU-2 use to boat and RV storage only; now therefore,

BE IT RESOLVED by the Board of County Commissioners of Brevard County, Florida, that the requested change of zoning classification from BU-1 with an existing BDP to BU-2 and removal of existing BDP, be approved with a BDP, recorded on 04/07/23, in ORB 9758, Pages 1833 - 1836, retaining all BU-1 uses, and limiting the BU-2 use to boat and RV storage only. 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 April 7, 2023.

BOARD OF COUNTY COMMISSIONERS
Brevard County, Florida

Rita Pritchett, Chair
Brevard County Commission

As approved by the Board on April 6, 2023.

ATTEST:

RACHEL SADOFF, CLERK

(SEAL)

Planning and Zoning Board Hearing – January 9, 2023
Board of County Commissioners Hearing - February 2, 2023

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: Kelly Hyvonen
Address: 355 Spoonbill Lane
Melbourne Beach, FL 32951

BINDING DEVELOPMENT PLAN

THIS AGREEMENT, entered into this 22nd day of March, 2023 between the BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, a political subdivision of the State of Florida (hereinafter referred to as "County") and RONALD ABBOTT (hereinafter referred to as "Owner").

RECITALS

WHEREAS, 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 and desires to develop the Property as boat and recreational vehicle storage, and pursuant to the Brevard County Code, Section 62-1157; and

WHEREAS, as part of its plan for development of the Property, 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 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 Owner retains all BU-1 uses and limits the BU-2 uses to boat and recreational vehicle storage only.

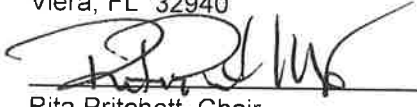
4. Owner shall comply with all regulations and ordinances of Brevard County, Florida. This Agreement constitutes Owner's agreement to meet additional standards or restrictions in developing the Property. This Agreement provides no vested rights against changes to the Brevard County Comprehensive Plan or land development regulations as they may apply to this Property.
5. 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.
6. 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 February 2, 2023. 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 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.
8. Conditions precedent. All mandatory conditions set forth in this Agreement mitigate the potential for incompatibility and shall be satisfied before 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 9 above.
9. 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:


Rachel M. Sadoff, Clerk of Court
(SEAL)


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



Rita Pritchett, Chair

As approved by the Board on 4/6/23

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

WITNESSES:


Ryan Runte
(Witness Name typed or printed)


SCOTT MARTIN
(Witness Name typed or printed)

RONALD ABBOTT
as OWNER

5345 S A1A
MEL Bch FLA 3295
(Address)


Signature

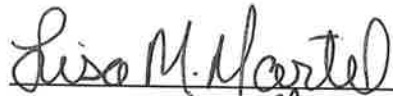
Ronald Abbott

STATE OF FL §

COUNTY OF Brevard §

The foregoing instrument was acknowledged before me, by means of ☒ physical presence or
_____ online notarization, this 22nd day of March, 2023, by
Ronald Abbott, President of _____, who is
personally known to me or who has produced _____ as identification.

My commission expires 12/17/24
SEAL
Commission No. HH 073190


Notary Public Lisa Marie Martel
(Name typed, printed or stamped)

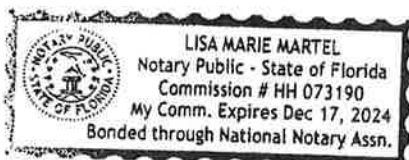


Exhibit "A"

That part of Government Lots 2 and 3, Section 11, Township 30 South, Range 38 East, Brevard County, Florida, lying South of O.R. Book 4303, Page 3589, Public Records of Brevard County, Florida, East of the right of way line of the Florida East Coast Railroad right of way and North of the North right of way line of Barefoot Boulevard, less and except that part contained in O.R. Book 3633, Page 928, recorded in Public Records of Brevard County, Florida. Less the right of way for U.S. Highway No. 1.

AND

Less and except the following as described in Warranty Deed recorded in O.R. Book 6492, Page 1998, Public Records of Brevard County, Florida:

A portion of Government Lot 2, Section 11, Township 30 South, Range 38 East, Brevard County, Florida, lying South of Official Record Book 4303, Page 3589, Public Records of Brevard County, Florida, West of U.S. Highway No. 1 and North of Barefoot Boulevard as described in Official Record Book 144, Page 610 of the Public Records of Brevard County, Florida, said parcel being more particularly described as follows:

Commence at the Northwest corner of said Government Lot 2, said point also being the Northwest corner of the SW $\frac{1}{4}$ of said Section 11; thence along the West line of Government Lot 2 and the West line of Section 11, S $00^{\circ} 09' 34''$ E, 994.98 feet; thence departing said West line N $89^{\circ} 51' 30''$ E, 1357.07 feet to the Point of Beginning, said point also lying on the South line of that certain parcel as described in Official Record Book 4303, Page 3589 of the Public Records of Brevard County, Florida; thence continue N $89^{\circ} 51' 30''$ E, 205.20 feet to a point on the West right of way of U.S. Highway No. 1; thence along said West right of way, S $25^{\circ} 27' 07''$ E, 185.78 feet; thence departing said West right of way, along the Northerly right of way of said Barefoot Boulevard S $19^{\circ} 34' 28''$ W, 71.01 feet; thence S $64^{\circ} 37' 12''$ W, 13.32 feet to a point of curvature of a curve to the right; thence 122.00 feet along the Arc of said curve having an radius of 2375.00 feet, a central angle of $02^{\circ} 56' 36''$, a chord bearing and distance of S $66^{\circ} 05' 30''$ W, 121.99 feet; thence departing said Northerly right of way N $25^{\circ} 27' 07''$ W, 320.38 feet to the Point of Beginning. Said parcel containing 1.16 acres, more or less.

STATE OF FLORIDA
COUNTY OF BREVARD

Ronald Abbott, after being duly sworn, deposes and says:

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

See Exhibit "A" for Legal Description

There are no mortgages on the above described property

Dated this 22nd day of March 2023.



Signature

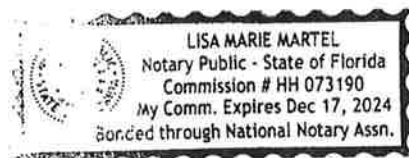
STATE OF FLORIDA
COUNTY OF BREVARD

The foregoing instrument was sworn to before me this 23rd day of March, by
Ronald Abbott, 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: 12/17/24



Prepared by: Kelly Hyvonen
Address: 355 Spoonbill Lane
Melbourne Beach, FL 32951

BINDING DEVELOPMENT PLAN

THIS AGREEMENT, entered into this _____, day of _____, 2023 between the BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, a political subdivision of the State of Florida (hereinafter referred to as "County") and RONALD ABBOTT (hereinafter referred to as "Owner").

RECITALS

WHEREAS, 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 and desires to develop the Property as boat and recreational vehicle storage, and pursuant to the Brevard County Code, Section 62-1157; and

WHEREAS, as part of its plan for development of the Property, 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 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 Owner retains all BU-1 uses and limits the BU-2 uses to boat and recreational vehicle storage only.

Rev. 3/22/2023

4. Owner shall comply with all regulations and ordinances of Brevard County, Florida. This Agreement constitutes Owner's agreement to meet additional standards or restrictions in developing the Property. 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. 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.
6. 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 February 2, 2023. 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 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.
8. Conditions precedent. All mandatory conditions set forth in this Agreement mitigate the potential for incompatibility and shall be satisfied before 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 7 above.
9. 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.

Exhibit "A"

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AND

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STATE OF FLORIDA
COUNTY OF BREVARD

Ronald Abbott, after being duly sworn, deposes and says:

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

See Exhibit "A" for Legal Description

There are no mortgages on the above described property

Dated this 22nd day of March 2023.



Signature

STATE OF FLORIDA
COUNTY OF BREVARD

The foregoing instrument was sworn to before me this 23rd day of March, by
Ronald Abbott, 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: 12/17/24

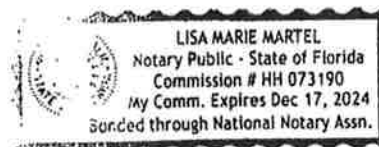


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AND

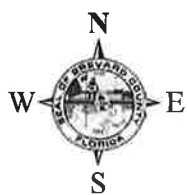
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LOCATION MAP

ABBOTT, RONALD; ABBOTT MANUFACTURED HOUSING INC
22Z00060



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

Buffer Distance: 500 feet

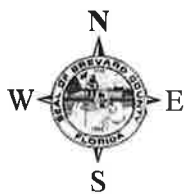
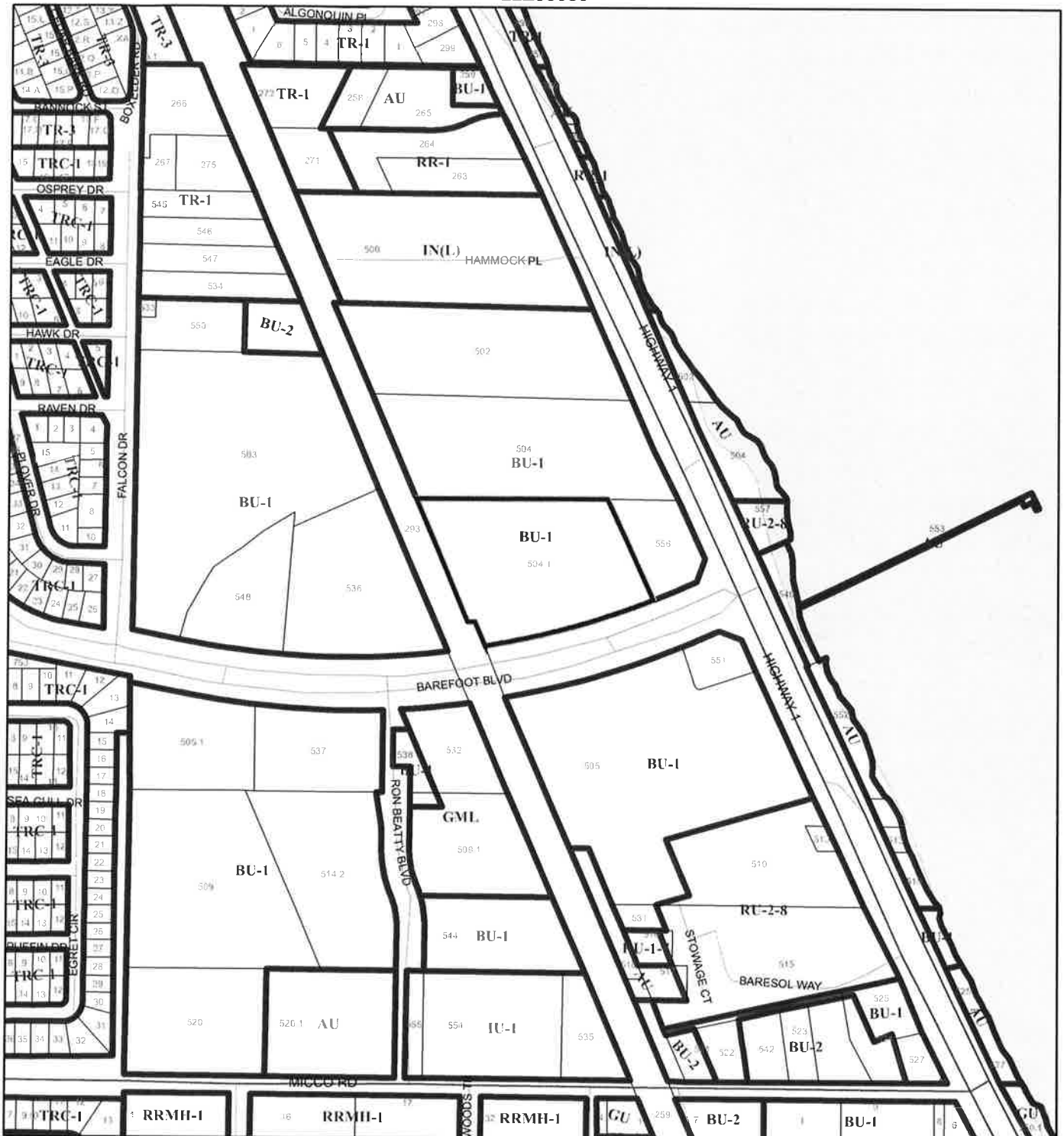
This map was compiled from recorded documents and does not reflect an actual survey. The Brevard County Board of County Commissioners does not assume responsibility for errors or omissions hereon.

Produced by BoCC - GIS Date: 11/2/2022

— Buffer
■ Subject Property

ZONING MAP

ABBOTT, RONALD; ABBOTT MANUFACTURED HOUSING INC
22Z00060



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: 11/2/2022

- Subject Property
- Parcels
- Zoning

5. **(22Z00058) Tomas Manuel Guillen Arguelles and Elsa F. Rodriguez Arriaga** request a change of zoning classification from AU (Agricultural Residential) to RU-1-9 (Single-Family Residential). The property is 0.24 acres, located on the west side of Koch St., approx. 245 ft. south of Lucas Rd. (No assigned address. In the Merritt Island area.) (Tax Account 2419383) (District 2)

P&Z Recommendation: Hodgers/Filiberto - Approved. The vote was unanimous.

BCC ACTION: Goodson/Feltner - Approved. The vote was unanimous.

6. **(22Z00060) Ronald Abbott; Abbott Manufactured Housing, Inc.** (Kelly Hyvonen) requests a change of zoning classification from BU-1 (General Retail Commercial) with an existing BDP (Binding Development Plan) to BU-2 (Retail, Warehousing, and Wholesale Commercial) and removal of existing BDP. The property is 4.58 acres, located on the north side of Barefoot Bay Blvd., approx. 200 ft. west of U.S. Highway 1. (No assigned address, in the Micco area.) (Tax Account 3010400) (District 3)

P&Z Recommendation: Bartcher/Filiberto - Approved as requested, and with a BDP retaining all BU-1 uses, and limiting the BU-2 use to boat and RV storage only. The vote was 7:2, with Minneboo and Hopengarten voting nay.

BCC ACTION: Tobia/Zonka - Approved as recommended, with a BDP retaining all BU-1 uses, and limiting the BU-2 use to boat and RV storage only. 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.

7. **(22SS00012) Kanes Furniture, LLC** (Bruce Moia) requests a Small Scale Comprehensive Plan Amendment (22S.16), to change the Future Land Use designation from CC (Community Commercial) and RES 4 (Residential 4), to RES 15 (Residential 15). The property is 12.59 acres, located on the south side of W. New Haven Ave., approx. 300 ft. east of Seminole Blvd. (No assigned address. In the West Melbourne area.) (Tax Accounts 2800116 & 2800342) (District 5)

LPA Recommendation: Glover/Bartcher - Denied. The vote was unanimous.

BCC ACTION:

8. **(22Z00052) Kanes Furniture, LLC** (Bruce Moia) requests a change of zoning classification from RU-1-7 (Single-Family Residential) and BU-1 (General Retail Commercial) with an existing BDP (Binding Development Plan), to RU-2-15 (Medium Density Multi-Family Residential), and removal of existing BDP. The property is 12.59 acres, located on the south side of W. New Haven Ave., approx. 300 ft. east of Seminole Blvd. (No assigned address. In the West Melbourne area.) (Tax Accounts 2800116 & 2800342) (District 5)

P&Z Recommendation: Glover/Sullivan - Denied. The vote was unanimous.

BCC ACTION:

9. **(22Z00062) NDA Merritt Project Zenith, LLC; and SES Merritt Project Zenith, LLC** (Ross Abramson / Kim Rezanka) requests a change of zoning classification from BU-1 (General