



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Consent

F.7.

12/21/2021

Subject:

Acceptance, Re: Binding Development Plan with Rodney F. McConkey (District 1)

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 November 4, 2021, the Board of County Commissioners approved a change of zoning classification from GU to AU, with a BDP prohibiting any agritourism activity, as defined by Section 570.86, F.S., as may be amended, on the Property.

Clerk to the Board Instructions:

Upon recordation, please return two certified copies of the BDP 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

December 22, 2021

M E M O R A N D U M

TO: Jennifer Jones, Zoning

RE: Item F.7., Binding Development Plan Agreement with Rodney F. McConkey

The Board of County Commissioners, in regular session on December 21, 2021, executed Binding Development Plan with Rodney F. McConkey. Said Plan was recorded in OR/BK 9365/2641. 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)

Resolution 21Z00023

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

WHEREAS, Rodney F. McConkey has requested a change of zoning classification from GU (General Use) to AU (Agricultural Residential), on property described as follows: Lot 8, Block 2, Canaveral Groves Subdivision, as recorded in ORB 9174, Pages 1070 - 1071; Lot 9, Block 2, Canaveral Groves Subdivision, as recorded in ORB 9174, Pages 1072 - 1073; Lot 10, Block 2, Canaveral Groves Subdivision, as recorded in ORB 9174, Pages 1074 - 1075; and Lot 11, Block 2, Canaveral Groves Subdivision, as recorded in ORB 9174, Pages 1076 - 1077, all of the Public Records of Brevard County, Florida. Section 28, Township 23, Range 35. (8.36 acres) Located on the east side of Golfview Ave., approx. 500 ft. north of Port St. John Parkway. (No assigned address. In the Port St. John 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 prohibiting agritourism; 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 stipulating that the owner/developer agrees not to conduct any agritourism activity, as defined by Section 570.86, F.S., as may be amended, on the Property and, therefore, is prohibited from conducting such activity; now therefore,

BE IT RESOLVED by the Board of County Commissioners of Brevard County, Florida, that the requested change of zoning classification from GU to AU be approved with a BDP stipulating that the owner/developer agrees not to conduct any agritourism activity, as defined by Section 570.86, F.S., as may be amended, on the Property and, therefore, is prohibited from conducting such activity. 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 December 22, 2021.

BOARD OF COUNTY COMMISSIONERS
Brevard County, Florida

Kristine Zonka, Chair
Brevard County Commissioner
As approved by the Board on December 21, 2021.

ATTEST:

RACHEL SADOFF, CLERK

(SEAL)

Planning and Zoning Board Hearing – October 11, 2021
Board of County Commissioners Hearing - November 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: Rodney McConkey
Address: 2000 Cheney Hwy #103

BINDING DEVELOPMENT PLAN

THIS AGREEMENT, entered into this 21 day of December, 2021 between the BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, a political subdivision of the State of Florida (hereinafter referred to as "County") and Rodney McConkey, (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 AU zoning classification(s) and desires to develop the Property as a farm, 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. The Developer/Owner agrees not to conduct any agritourism activity, as defined by Section 570.86, F.S., as may be amended, on the Property and, therefore, is prohibited from conducting such activity.
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

Brevard County 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 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 11/4/21. 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 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 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.

ATTEST:


Rachel M. Sadoff, Clerk of Court
(SEAL)

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


Kristine Zonka, Chair

As approved by the Board on December 21, 2021

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

WITNESSES:

(INSERT BUSINESS NAME or INDIVIDUAL NAME(s))
as DEVELOPER/OWNER

Michelle Adams

Michelle Adams
(Witness Name typed or printed)

2000 Cheney Hwy #103 Titusville FL 32780
(Address)

Jennifer Jones

Jennifer Jones
(Witness Name typed or printed)

(President)

Rodney F. McConkey
(Name typed, printed or stamped)

STATE OF Florida §

COUNTY OF Brevard §

The foregoing instrument was acknowledged before me, by means of ☒ physical presence or
_____ online notarization, this 7th day of December, 2021, by Rodney McConkey
, President of _____, who is personally known to me or who has produced FLTD
as identification.

My commission expires
SEAL
Commission No.:

Jennifer Jones
Notary Public

(Name typed, printed or stamped)



EXHIBIT A
Legal Description

Lot 8, Block 2, Canaveral Groves Subdivision, as recorded in ORB 9174, Pages 1070 - 1071; Lot 9, Block 2, Canaveral Groves Subdivision, as recorded in ORB 9174, Pages 1072 - 1073; Lot 10, Block 2, Canaveral Groves Subdivision, as recorded in ORB 9174, Pages 1074 - 1075; and Lot 11, Block 2, Canaveral Groves Subdivision, as recorded in ORB 9174, Pages 1076 - 1077, all of the Public Records of Brevard County, Florida.

To: Brevard County Board of Commissioners

From: Rodney McConkey

Re:BDP for Au rezoning

This statement is to confirm that there is no mortgage with any financial institution on the land related to the BDP, which is located off Golfview Ave.



Owner Rodney F. McConkey

Date: 11-18-2021



Date: 11-18-2021

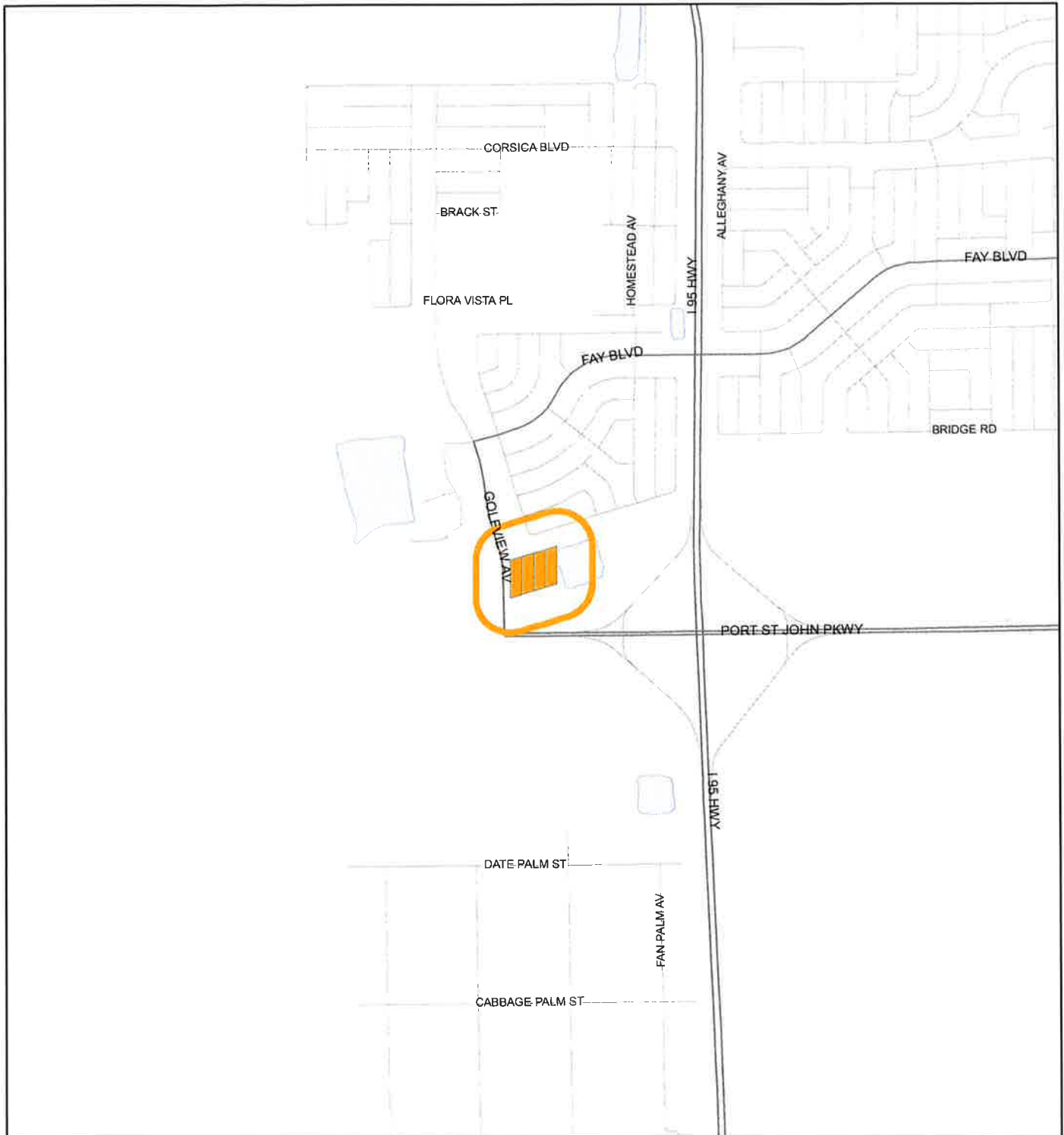
Notary

State of: Florida
County of: Brevard
The foregoing instrument was acknowledged
before me 18th day of Nov, 2021

Your Name Here, Notary Public
My Commission Expires 12-01-2023



LOCATION MAP

McCONKEY, RODNEY F.
21Z00023





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

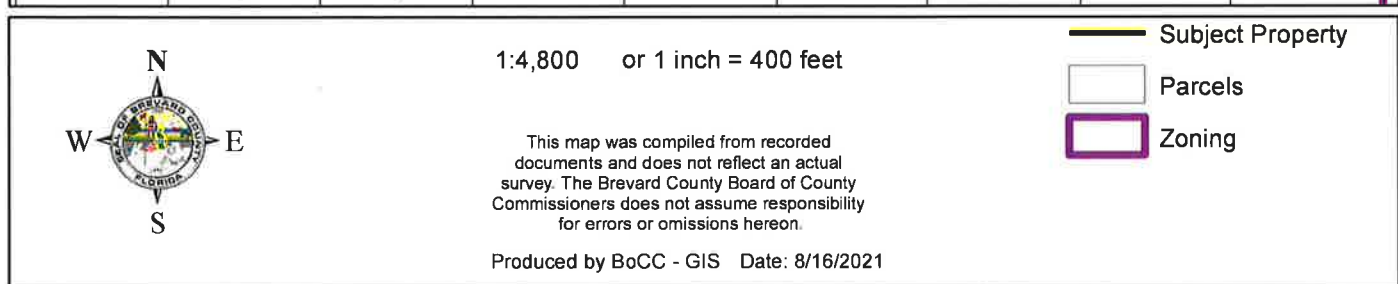
Buffer Distance: 500 feet

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: 8/16/2021

 Buffer
 Subject Property

McCONKEY, RODNEY F.
21Z00023



H. PUBLIC HEARINGS

Local Planning Agency / Planning and Zoning Board
Monday, October 11, 2021, at 3:00 p.m.

Brevard County Board of County Commissioners
Thursday, November 4, 2021, at 5:00 p.m.

Both at the
Brevard County Government Center
2725 Judge Fran Jamieson Way, Building C, First Floor, Viera, Florida

1. **(21Z00023) RODNEY F. MCCONKEY** requests a change of zoning classification from GU (General Use) to AU (Agricultural Residential). The property is 8.36 acres, located on the east side of Golfview Ave., approx. 500 ft. north of Port St. John Parkway. (No assigned address. In the Port St. John area.) (Tax Accounts 2312740, 2312741, 2312742, 2312743) (District 1)

P&Z Recommendation: Filiberto/Alward - Approved with the stipulation that agritourism is prohibited. The vote was 6:1, with Moia voting nay.

BCC ACTION: Lober/Zonka - **Approved with a BDP prohibiting Agritourism. 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.**

2. **(21Z00024) JULIA A. AND JAMES W. GARRISON** request a change of zoning classification from AU (Agricultural Residential) to RU-1-11 (Single-Family Residential). The property is 0.24 acres, located approx. 365 ft. south of Lucas Rd., approx. 145 ft. east of Bevis Rd., on the north side of Bevis Rd. (1048 Bevis Rd., Merritt Island) (Tax Account 2419400) (District 2)

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

BCC ACTION: Lober/Zonka - **Approved. The vote was unanimous.**

3. **(21Z00026) SCOTT MINNICK** requests a change of zoning classification from AU (Agricultural Residential) to SR (Suburban Residential). The property is 0.50 acres, located on the west side of U.S. Highway 1, approx. 479 ft. north of Glenn Rd. (3074 U.S. Highway 1, Mims) (Tax Account 3023195) (District 1)

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

BCC ACTION: Lober/Zonka - **Approved. The vote was unanimous.**

4. **(21Z00027) ROBERT F. ERARIO AND JEREMY SOTHEA SUN** request a change of zoning classification from BU-1 (General Retail Commercial) and AU (Agricultural Residential) to all AU. The property is 7.24 acres, located on the west side of U.S. Highway 1, approx. 500 ft. south of Aurantia Rd. (4740 N. U.S. Highway 1, Mims) (Tax Account 2001826) (District 1)

P&Z Recommendation: Moia/Hodgers - Approved. The vote was 5:2, with Alward and Filiberto voting nay.

BCC ACTION: Lober/Zonka - **Approved with a BDP stipulating a 25-foot natural buffer along the property lines abutting residentially zoned properties. The vote was**

PLANNING AND ZONING BOARD RECOMMENDATIONS

- Item H.2. Timothy and Diane Lystlund. Tobia/Lober. Adopted Ordinance No. 21-25, approving a Small Scale Comprehensive Plan Amendment (21S.03) to change the Future Land Use designation from RES 1 to RES 2 as recommended. (21PZ00026)
- Item H.3. Timothy and Diane Lystlund. Tobia/Lober. Approved change of Zoning classification from RU-1-7 to SR as recommended. (21Z00014)
- Item H.4. Rodney F. McConkey. Lober/Zonka. Approved a change of Zoning classification from GU to AU with a Binding Development Plan (BDP) stipulating that Agritourism be prohibited. Applicant to work with staff on access issues to be resolved under separate process prior to obtaining building permit. (21Z00023)
- Item H.5. Julia A. and James W. Garrison. Lober/Zonka. Approved a change of Zoning classification from AU to RU-1-11 as recommended. (21Z00024)
- Item H.6. Scott Minnick. Lober/Zonka. Approved a change of Zoning classification from AU to SR as recommended. (21Z00026)
- Item H.7. Robert F. Erario and Jeremy Sothea Sun. Smith/Lober. Approved a change of Zoning classification from BU-1 and AU to all AU, with a BDP agreeing to keep a 25-foot natural buffer around the property where there is residential. (21Z00027)

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 #: 3043702
Receipt #: 62896186
Cashier Date: 12/22/2021 03:37:47 PM
Cashier Branch: Titusville - Six Story

Print Date:
12/22/2021 03:37:51 PM

CUSTOMER INFORMATION	TRANSACTION INFORMATION		PAYMENT SUMMARY	
RODNEY F MCCONKEY 2000 CHENEY HWY STE 103 TITUSVILLE, FL 32780	Date Received:	12/22/2021	Total Fees	\$35.50
	Source Code:	Titusville - Six Story	Total Payments	\$35.50
	Return Code:	Hand Carried	Balance Due:	\$0.00
	Trans Type:	Recording		

1 Payments

CHECK #9470 \$35.50

1 Recorded Items

AGREEMENT BK/PG: 9365/2641 CFN: 2021333083 Date: 12/22/2021 03:37:46 PM
From: To
Recording @ 1st=\$10 Add'l=\$8.50 ea. 4 \$35.50

1 Miscellaneous Items

AGENT TRANSMITTAL