



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Consent

F.2.

10/6/2020

Subject:

Acceptance, Re: Binding Development Plan with The Daren T. Dempsey Revocable Trust (20Z00005) (District 2)

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 August 6, 2020, the Board approved a change of zoning classification from RR-1 (Rural Residential) to AU (Agricultural Residential) with a BDP limiting the use of the property to a small scale plant nursery for the Developer/Owner's construction company, and that the Developer/Owner waive any and all claims to use the property for agritourism, as provided for in Chapter 570, Florida Statutes. As such, Developer/Owner, its grantees, successors or assigns shall not use the property for agritourism activity as defined in Section 570.86, Florida Statutes.

Clerk to the Board Instructions:

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



October 7, 2020

M E M O R A N D U M

TO: Jennifer Jones, Zoning

RE: Item F.2., Binding Development Plan Agreement – The Daren T. Dempsey Revocable Trust

The Board of County Commissioners, in regular session on October 6, 2020, executed Binding Development Plan with The Daren T. Dempsey Revocable Trust. Said Plan was recorded in 8881/1878. 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

Kimberly Powell, Clerk to the Board

/dt

Encls. (2)

Resolution 20Z00005

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

WHEREAS, The Daren T. Dempsey Revocable Trust has requested a change of zoning classification from RR-1 (Rural Residential) to AU (Agricultural Residential), on property described as Tax Parcel 759, as recorded in ORB 8005, Pages 1099 - 1101, of the Public Records of Brevard County, Florida. **Section 25, Township 23, Range 36.** (3.07 acres) Located on the south side of Bishop Rd., approximately 935 ft. west of Broad Acres St. (1385 Bishop Rd., Merritt Island); and

WHEREAS, a public hearing of the North Merritt Island Dependent Special District Board was advertised and held, as required by law, and after hearing all interested parties and considering the adjacent areas, the North Merritt Island Dependent Special District Board recommended that the application be approved; and

WHEREAS, the Board, after considering said application and North Merritt Island Dependent Special District 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 (Binding Development Plan) waiving any and all Developer/Owner claims to agritourism, and limiting the business use to a plant nursery; now therefore,

BE IT RESOLVED by the Board of County Commissioners of Brevard County, Florida, that the requested change of zoning classification from RR-1 to AU be APPROVED with a BDP, recorded on October 9, 2020, in ORB 8881, Pages 1878 – 1883, waiving any and all Developer/Owner claims to agritourism, and limiting the business use to a plant nursery. 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 October 9, 2020.

BOARD OF COUNTY COMMISSIONERS
Brevard County, Florida

Bryan Andrew Lober
Bryan Andrew Lober, Chair
Brevard County Commission

As approved by the Board on October 6, 2020.

ATTEST

Scott Ellis
SCOTT ELLIS, CLERK

(SEAL)

North Merritt Island Dependent Special District Board Hearing – July 16, 2020
Board of County Commissioners Zoning Hearing – August 6, 2020

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: Daren Dempsey
Address: 1385 Bishop Rd., Merritt Island, FL 32953

CFN 2020222631, OR BK 8881 PAGE 1878,
Recorded 10/09/2020 at 10:42 AM, Scott Ellis, Clerk of
Courts, Brevard County
Pgs:6

BINDING DEVELOPMENT PLAN

THIS AGREEMENT, entered into this Oct. 6, 2020 between the BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, a political subdivision of the State of Florida (hereinafter referred to as "County") and The Daren T. Dempsey Revocable Trust (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 to change the zoning classification of the Property from RR-1 to AU in order to develop the Property as a small scale private plant nursery for the Developer/Owner's construction company and not as a plant nursery open to the public pursuant to Brevard County Code Section 62-1157; and

WHEREAS, as part of its plan for development of the Property, Developer/Owner wishes to mitigate negative impact 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. 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.

2. The business/commercial use of the Property shall be limited to a small scale plant nursery for the Developer/Owner's construction company.
3. The Developer/Owner waives any and all claims to use the Property for agritourism, as provided for in Chapter 570, Florida Statutes. As such, Developer/Owner, its grantees, successors or assigns shall not use the Property for agritourism or agritourism activity as defined in Section 570.86, Florida Statutes.
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 August 6, 2020. 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.

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

ATTEST:



Scott Ellis, Clerk
(SEAL)

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

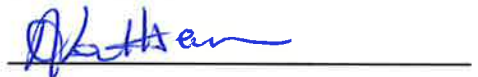


Bryan Andrew Lober, Chair
As approved by the Board on 10/6/20

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

WITNESSES:

(Daren T. Dempsey Revocable Trust)
as DEVELOPER/OWNER



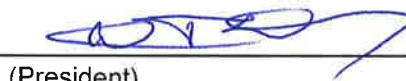
Annett Barnett-Latham
(Witness Name typed or printed)



1385 Bishop Rd. Merritt Island, FL 32953
(Address)



BYRON JONES
(Witness Name typed or printed)



(President)
Daren T. Dempsey
(Name typed, printed or stamped)

STATE OF Florida §

COUNTY OF Orange §

The foregoing instrument was acknowledged before me, by means of ☒ physical presence or
_____ online notarization, this 17th day of September, 2020, by

Daren T. Dempsey, President of Daren T. Dempsey ^{Revocable Trust}, who is
personally known to me or who has produced _____ as identification.

My commission expires
SEAL

Commission No.:



Notary Public

(Name typed, printed or stamped)

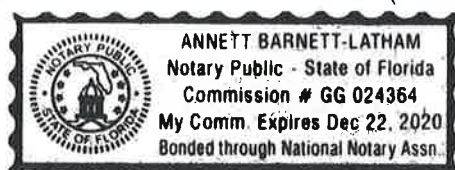


Exhibit "A"

A Parcel of land lying in the Southeast 1/4 of Section 25, Township 23 South, Range 36 East, Brevard County, Florida, being more fully described as follows: Commence at the Northwest corner of the Northeast 1/4 of the Southeast 1/4 of Section 25 and run South 00 degrees 32 minutes 50 seconds West along the West line of said Northeast 1/4 of the Southeast 1/4 of Section 25, a distance of 25 feet; thence South 89 degrees 51 minutes 39 seconds East, a distance of 25 feet to the Point of Beginning of this description; thence continue South 89 degrees 51 minutes 39 seconds East, a distance of 25 feet; thence South 00 degrees 32 minutes 50 seconds West, parallel with and 50 feet East, by right angles measurement of the aforesaid West line of the Northeast 1/4 of the Southeast 1/4 of Section 25, a distance of 728 feet to the Southwest corner of property sold to Fowler as recorded in Official Records Book 1788, Page 507, of the Public Records of Brevard County Florida; thence South 89 degrees 51 minutes 39 seconds East, a distance of 300 feet; thence South 00 degrees 32 minutes 50 seconds West, parallel with said West line of the Northeast 1/4 of the Southeast 1/4 of Section 25, a distance of 277.64 feet; thence North 89 degrees 49 minutes 40 seconds West parallel with the South line of said Northeast 1/4 of the Southeast 1/4 of Section 25, a distance of 719.96 feet; thence North 00 degrees 39 minutes 43 seconds East parallel with the West line of the Southeast 1/4 of said Section 25, a distance of 340 feet; thence South 89 degrees 49 minutes 44 seconds East a distance of 394.96 feet; thence North 00 degrees 32 minutes 50 seconds East parallel with and 25 feet East, by right angle measurement, of said West line of the Northeast 1/4 of the Southeast 1/4 of Section 25, a distance of 665.45 feet to the Point of Beginning.

LESS AND EXCEPT property as described in Official Records Book 3184, Page 821, Public Records of Brevard County, Florida, which is more particularly described as follows:

A certain Parcel of land in the Southeast 1/4 of Section 25, Township 23 South, Range 36 East, Brevard County, Florida being more particularly described as follows: Begin at the Southwest corner of the land described in Official Records Book 1788, Page 507 of the Public Records of Brevard County, Florida, thence run South 89 degrees 27 minutes 19 seconds East along the South line of said described land for 300.09 feet to a line that is parallel with and 25 feet West line of Lot 3, the North Forty, according to the Plat thereof recorded in Plat Book 28, Page 75, of said Records; thence run South 00 degrees 32 minutes 41 seconds West along said line parallel; thence run South 00 degrees 32 minutes 41 seconds West along said parallel line for 276.63 feet to the North line of land described in Official Records Book 1935 Page 678 of said Public Records; thence run North 89 degrees 49 minutes 40 seconds West along said North line for 391.90 feet; thence run North 00 degrees 32 minutes 41 seconds East parallel to the West line of said Lot 3, for 279.19 feet to the Westerly projection of the South line of land described in Official Records Book 1788, Page 507, of said Public Records; thence run South 89 degrees 27 minutes 19 seconds East along said line for 91.80 feet to the Point of Beginning.

JOINDER IN BINDING DEVELOPMENT PLAN BY MORTGAGEE CORPORATION

KNOW ALL MEN BY THESE PRESENTS, that the undersigned, being the authorized agent and signatory for the owner and holder of that certain Mortgage dated July 15, 2019, given by

Citizens Bank, N.A., A National Banking Association, as mortgagee, in favor of the undersigned,

Daren T. Dempsey and Regina M. Dempsey, AKA Regina M. Schwantz, Husband and Wife, As Co-Trustees of The Daren T. Dempsey Revocable Trust Dated September 21, 2017, as mortgagor,

Recorded in Official Records Book 8492, Page 1590, of the Public Records of Brevard County, Florida, and encumbering lands described in said

Mortgage, does hereby join in the foregoing Binding Development Plan for the purpose of consenting to the change of property use and development requirements as set forth therein.

MORTGAGEE CORPORATION NAME AND ADDRESS

Citizens Bank, N.A., A National Banking Association
Mortgagee Corporation Name

6100 Tower Circle Franklin TN 37067
Street City State Zip Code

Melanie L. Reid MELANIE L. REID, SVP
*Authorized Agent Signature Authorized Agent Printed Name and Title

*Note: All others besides CEO or President require attachment of original corporate resolution of authorization to sign documents of this type.

AFFIX CORPORATE SEAL

WITNESSES

Shari Ballweg
Signature

Shari Ballweg
Print Name

Bradley Power
Signature

Bradley Power
Print Name

COMMONWEALTH OF Virginia

COUNTY OF Henrico

The foregoing instrument was acknowledged before me this 3rd day of Sept., 20 20,
by Melanie L. Reid, who is personally known to me or who has produced
_____ as identification.

Linda Jennings

Notary Public Signature

Linda Jennings

Name Printed

SEAL

LINDA JENNINGS, NOTARY PUBLIC
COMMONWEALTH OF VIRGINIA
REGISTRATION #7109334
MY COMMISSION EXPIRES 5/31/2023