



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Consent

F.7.

10/11/2022

Subject:

Acceptance, Re: Binding Development Plan with Daren and Regina Dempsey (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 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 September 1, 2022, the Board of County Commissioners approved a change of zoning classification from AU (Agricultural Residential) to RU-1-13 (Single-Family Residential), with a BDP limited to two lots, with one house on each lot. The attached BDP includes this provision.

Clerk to the Board Instructions:

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

Resolution 22Z00033

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

WHEREAS, Daren T. and Regina M. Dempsey have requested a change of zoning classification from AU (Agricultural Residential) to RU-1-13 (Single-Family Residential), on property described as Tax Parcel 8, as recorded in ORB 9453, Pages 917 - 919, of the Public Records of Brevard County, Florida. **Section 34, Township 23, Range 36.** (1.41 acres) Located on the east side of N. Tropical Trail, approx. 120 ft. north of Citrus Club Dr. (4850 N. Tropical Trail, 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 as SR (Suburban Residential); 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 denied; and

WHEREAS, the Board, after considering said application and the North Merritt Island Dependent Special District Board, and the Planning and Zoning Board's recommendations, 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 requested, with a BDP limited to two lots, with one house on each lot; now therefore,

BE IT RESOLVED by the Board of County Commissioners of Brevard County, Florida, that the requested change of zoning classification from AU to RU-1-13, be approved, with a BDP recorded on October 12, 2022, in ORB 9632, Pages 2411 - 2416, limited to two lots, with one house on each lot. 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 12, 2022.

BOARD OF COUNTY COMMISSIONERS
Brevard County, Florida

Kristine Zonka, Chair
Brevard County Commission

As approved by the Board on October 11, 2022.

ATTEST:

RACHEL M. SADOFF, CLERK

(SEAL)

NMI Hearing – August 11, 2022

P&Z Hearing - August 15, 2022

BCC Hearing - September 1, 2022

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 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.**



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

October 12, 2022

MEMORANDUM

TO: Jennifer Jones, Zoning

RE: Item F.7., Binding Development Plan with Daren and Regina Dempsey

The Board of County Commissioners, in regular session on October 11, 2022, executed Binding Development Plan Agreement with Daren and Regina Dempsey for property located in Tax Parcel 8, recorded in ORB 9453, pages 917 – 919, of Section 34, Township 23 and Range 36 in Brevard County, Florida. 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

A handwritten signature in cursive script that reads "Kimberly Powell".

Kimberly Powell, Clerk to the Board

/dt

Encls. (2)

BINDING DEVELOPMENT PLAN

THIS AGREEMENT, entered into this 19th day of Sept, 2022 between the BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, a political subdivision of the State of Florida (hereinafter referred to as "County") and Daren and Regina Dempsey, a corporation (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 RU1-13, zoning classification(s) and desires to develop the Property as single family residential, 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 shall limit density to a maximum of two (2) lots, with one house on each lot, and may be further restricted by any changes to the Comprehensive Plan or the Land Development Regulations.

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 September 01, 2022. 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 10/11/22

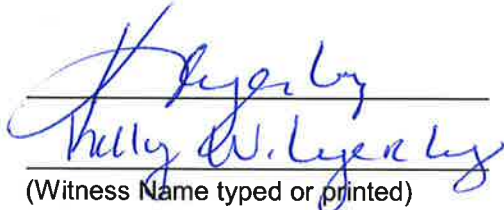
(Please note: You must have two witnesses and a notary for each signature required. The notary may serve as one witness.)

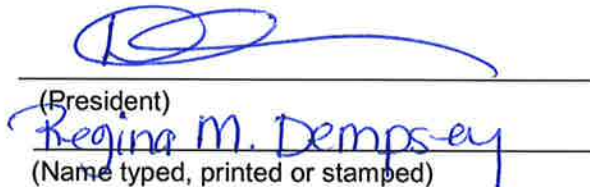
(DEVELOPER/OWNER)

WITNESSES:

Lisa Nowak
Lisa Nowak
(Witness Name typed or printed)

1385 Bishop rd
Meritt Island, FL 32953
(Address)


(Witness Name typed or printed)


(President)
(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 19th day of, 2022, by Regina Dempsey, President of, 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)

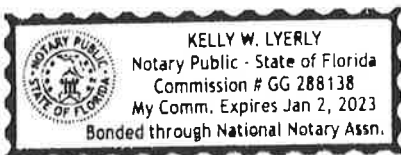


EXHIBIT A

Tax Parcel 8, as recorded in ORB 9453, Pages 917 - 919, of the Public Records of Brevard County, Florida. Section 34, Township 23, Range 36.

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 3/23/22, given by FBC Mortgage LLC, as mortgagor, in favor of the undersigned, Daren & Regina Dempsey, as mortgagee, recorded in Official Records Book 9453 Page 930 - 935, 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

FBC Mortgage LLC
Mortgagee Corporation Name
PO Box 77404 Ewing NJ 08628
Street City State Zip Code
[Signature] Regina M. Dempsey
*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

Lisa Nowak
Signature

Lisa Nowak
Print Name

[Signature]
Signature

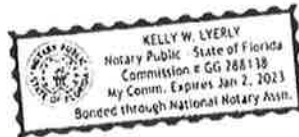
Kelly Lyerly
Print Name

STATE OF Florida

COUNTY OF Brevard

The foregoing instrument was acknowledged before me this 3rd day of Sept, 2022
by Regina Dempsey, who is personally known to me or who has produced
_____ as identification.

Kelly W. Lyerly
Notary Public Signature
Kelly W. Lyerly
Name Printed

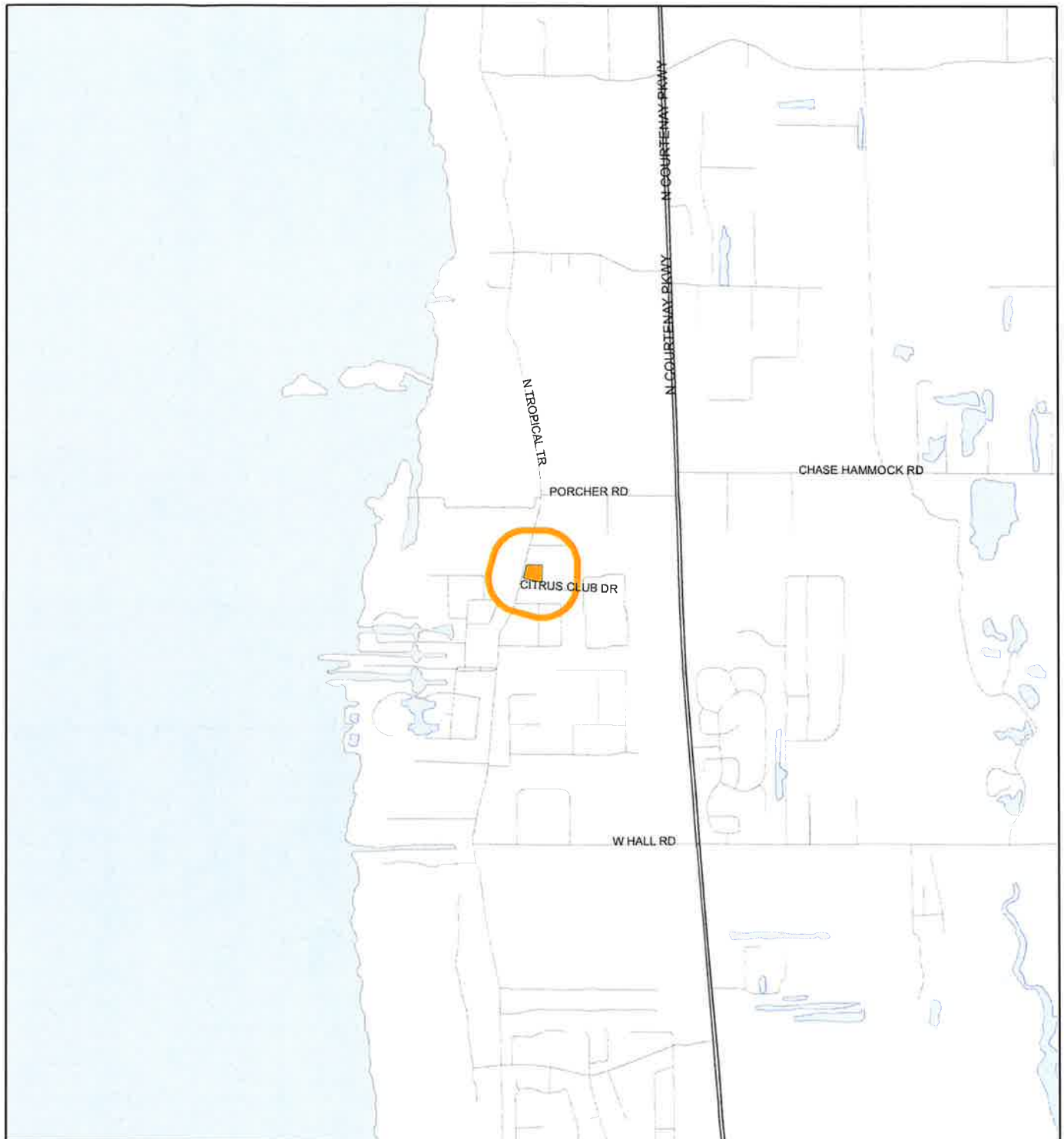


SEAL

LOCATION MAP

DEMPSEY, DAREN T

22Z00033



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.

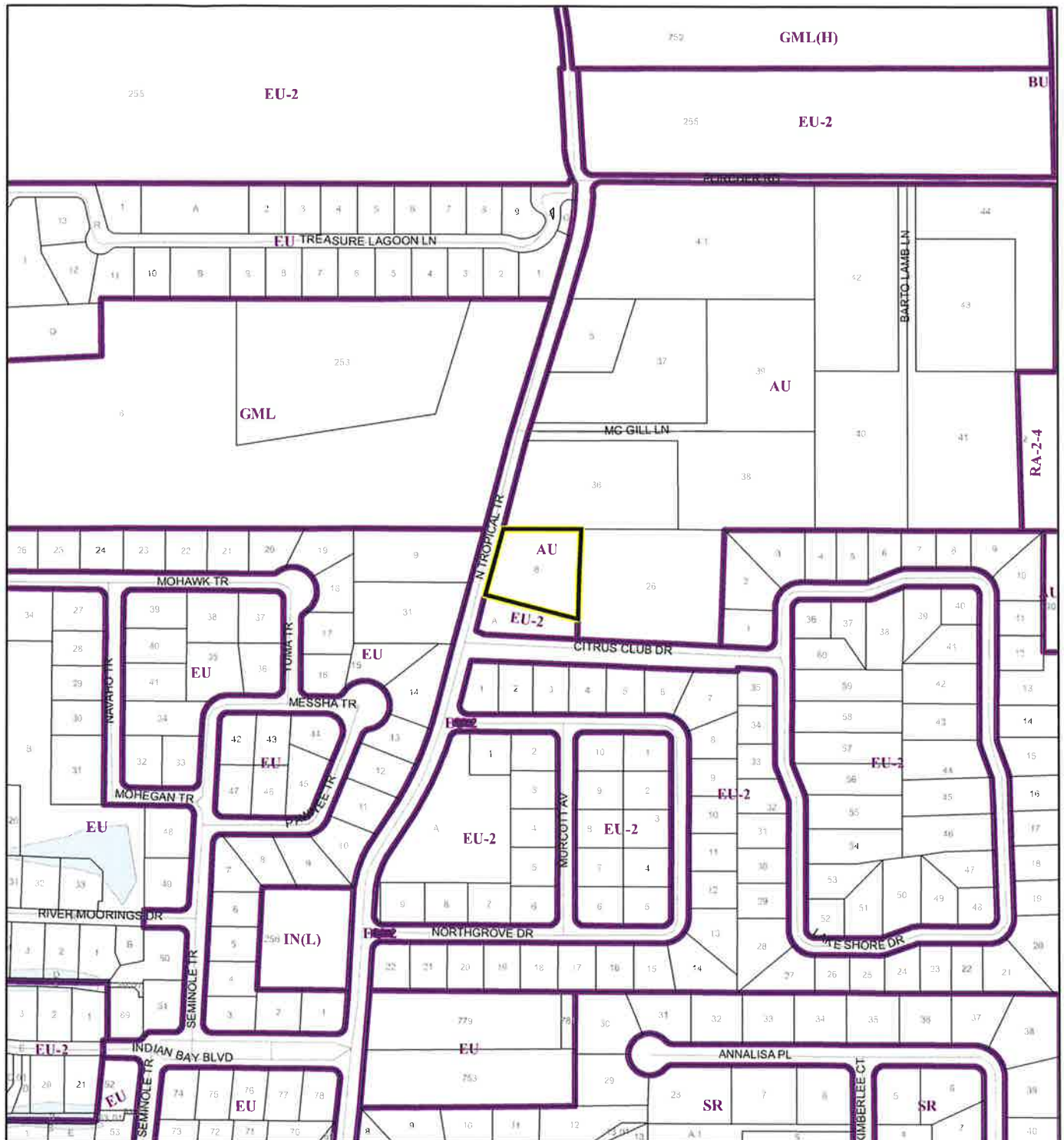
Produced by BoCC - GIS Date: 6/17/2022

— Buffer
■ Subject Property

ZONING MAP

DEMPSEY, DAREN T

22Z00033



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: 6/17/2022

Subject Property

Parcels

Zoning

H. PUBLIC HEARINGS

North Merritt Island Dependent Special District Board
Thursday, August 11, 2022, at 6:00 p.m.
Brevard County Government Center
2725 Judge Fran Jamieson Way, Building C, First Floor, Viera, Florida

Planning & Zoning Board (Item 2 only)
Monday, August 15, 2022, at 3:00 p.m.
Brevard County Government Center
2725 Judge Fran Jamieson Way, Building C, First Floor, Viera, Florida

Brevard County Board of County Commissioners
Thursday, September 1, 2022, at 5:00 p.m.
Brevard County Government Center
2725 Judge Fran Jamieson Way, Building C, First Floor, Viera, Florida

1. **(22Z00026) Laura and Earl McCullough** request a change of zoning classification from SR (Suburban Residential), with an existing BSP (Binding Site Plan), to RR-1 (Rural Residential), retaining the existing BSP. The property is 2.35 acres, located on the north side of Hall Rd., approx. 285 ft. east of Wood Duck Lane. (4400 Sea Island Dr., Merritt Island) (Tax Account 2320550) (District 2)

NMI Recommendation: Carbonneau/Balke - Approved. The vote was unanimous.

BCC ACTION: Pritchett/Tobia - **Approved. The vote was unanimous.**

2. **(22Z00033) Daren T. and Regina M. Dempsey** request a change of zoning classification from AU (Agricultural Residential) to RU-1-13 (Single-Family Residential). The property is 1.41 acres, located on the east side of N. Tropical Trail, approx. 120 ft. north of Citrus Club Dr. (4850 N. Tropical Trail, Merritt Island) (Tax Account 2318342) (District 2)

NMI Recommendation: Lindhorst/Cook - Approved as SR, and requested the Board of County Commissioners not take action until there is a District 2 Commissioner in place. The vote was 4:2, with Carbonneau and Balke voting nay.

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

BCC ACTION: Pritchett/Tobia - **Approved as RU-1-13, with a BDP (Binding Development Plan) limited to two lots, with one house on each lot. 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.**

PLANNING AND ZONING BOARD RECOMMENDATIONS

- Item H.1. Laura and Earl McCullough. Pritchett/Tobia. Approved the request of changing the zoning classification from SR, with an existing BSP, to RR-1, retaining the existing BSP. (22Z00026).
- Item H.2. 2354 Talmadge Drive, LLC. Pritchett/Smith. Approved the request of changing the zoning classification from AU to RU-1-11. (22Z00028).
- Item H.3. Carla Theadora Reece. Pritchett/Tobia. Approved the request of changing the zoning classification from RR-1 to AU. (22Z00032).
- Item H.4. Daren T. and Regina M. Dempsey. Pritchett/Tobia. Approved the request of changing the zoning classification from AU to RU-1-13, with a BDP limiting one house on each lot. (22Z00033).
- Item H.5. Robert Clay and EthylMay Kirk. Pritchett/Tobia. Adopted Ordinance No. 22-26, setting forth the fourteenth Small Scale Comprehensive Plan Amendment (22S.10), to change the Future Land Use designation from REC to RES 4. (22SS00007).
- Item H.6. Paul J. Marion, Kimberly Ann LaMattina, Kayla Marie Losat, and Jessica Lynn Ripper; and Robert Clay Kirk and Ethylmay Kirk. Pritchett/Tobia. Adopted Ordinance No. 22-27, setting forth the fifteenth Small Scale Comprehensive Plan Amendment (22S.11), to change the Future Land Use designation from RES 2 to RES 4. (22SS00008).
- Item H.7. Paul J. Marion, Kimberly Ann LaMattina, Kayla Marie Losat, and Jessica Lynn Ripper; and Robert Clay Kirk and Ethylmay Kirk. Pritchett/Tobia. Approved the request of changing the zoning classification from AU, SR, RU-1-11, and GML, with an existing Binding Development Plan on SR and RU-1-11 portions, to RU-1-7, removing the existing Binding Development Plan, and adding a new Binding Development Plan. (22Z00029).
- Item H.8. Lynda L. Lyles. Tobia/Smith. Approved the request of removing an existing Binding Development Plan; and approved adding a new Binding Development Plan, limiting development to two lots with one house on each lot in AU zoning classification. (22Z00035).
- Item H.10. Brian G. and Debra S. Lawson; and David and Alicia McCabe. Pritchett/Tobia. Approved the request of changing of zoning classification from GU to RR-1 with a Binding Development Plan, limiting the property that is not Homesteaded, which is Tax Account 2314737, that it would apply to the remaining acreage there, and limiting the development of that to three units. (22Z00005).