



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Consent

F.5.

8/30/2022

Subject:

Legislative Intent and Permission to Advertise Amendments to Sec. 62-1157, Brevard County Code of Ordinances RE: Binding Development Plan Requirements

Fiscal Impact:

Cost of advertisement of associated ordinance amendments

Dept/Office:

Planning and Development

Requested Action:

Legislative intent and permission to advertise are requested in amending Sec. 62-1157, Brevard County Code of Ordinances, to: (1) require that an application for a Binding Development Plan ("BDP") identify all legal and equitable owners of the property, and any entity with an interest in the property, including, but not limited to, any lienor(s); (2) require that all legal or equitable owners of the property, and any entity with an interest in the property, including, but not limited to, any lienor(s) be a party to the BDP prior to final approval by the Board of County Commissioners; and, (3) clarify when the 120-day period to record a BDP begins.

Summary Explanation and Background:

This item is to seek legislative intent and permission to advertise code amendments to Section 62-1157, Brevard County Code of Ordinances, in order to rectify several issues surrounding Binding Development Plans ("BDP") that have been identified.

It is requested that Section 62-1157 be amended to require all those with a legal or equitable interest in the property at issue, as well as any entity with an interest in the property, including, but not limited to, any lienor(s), be party to a BDP. Requiring the owners of and interest holders in the subject property be identified in the application and, ultimately, joined in the BDP is necessary to ensure such individuals/entities are bound by the BDP's terms and conditions. The requirement of being a party to the BDP could be met by either being a signatory to the BDP itself, or a legal instrument such as a joinder that would bind the interest-holder to the BDP.

Additionally, while Section 62-1157(1)(g) states, in pertinent part, that "a certified copy of the recorded document shall be supplied to the zoning division within 120 days of approval by the board of county commissioners," the Ordinance does not specify that the "approval" being referred to is the approval of the associated rezoning application at the public hearing stage or, where there is no associated rezoning application, when the Board approves an application to amend a BDP or otherwise makes an initial approval of a BDP application. Staff has consistently interpreted this subsection to have this meaning, but clearing this potential ambiguity would assist in ensuring these agreements are executed and recorded within a reasonable time going forward. This is of particular significance because the County's zoning maps, which the public and many entities rely on, will not reflect the Board's decision regarding an approval subject to the

execution of a BDP until such recordation occurs.

As such, legislative intent and permission to advertise are sought regarding the following amendments to Section 62-1157:

1. Require that an application for a Binding Development Plan identify all legal and equitable owners of the subject property, as well as any entity with an interest in the property, including, but not limited to, any lienor(s).
2. Require that all persons or entities with a legal or equitable interest in the subject property be a party to the BDP, as well as any entity with an interest in the property, including, but not limited to, any lienor(s). This can be satisfied by either being listed as a party within the BDP itself, or through an instrument, such as a joinder, which binds all owners and interest-holders to the agreement.
3. Clarify that the "approval by the Board of County Commissioners" referred to in Section 62-1157(1)(g) is approval of the associated rezoning application at the public hearing stage or, where there is no associated rezoning application, when the Board approves an application to amend a BDP or otherwise makes an initial approval of a BDP application.

Should the Board approve this request, the resulting draft ordinance will be reviewed by the Building Construction Advisory Committee (BCAC) and the Local Planning Agency/Planning and Zoning Board prior to returning to the Board of County Commissioners for consideration.

Clerk to the Board Instructions:

N/A



August 31, 2022

MEMORANDUM

TO: Tad Calkins, Planning and Development

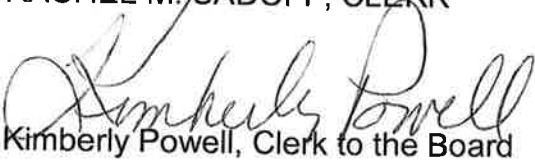
RE: Item F.5., Legislative Intent and Permission to Advertise Amendments to Sec. 62-1157, Brevard County Code of Ordinances, for Binding Development Plan (BDP) Requirements

The Board of County Commissioners, in regular session on August 30, 2022, granted legislative intent and permission to advertise to amend Sec. 62-1157, Brevard County Code of Ordinances, to require that an application for a BDP identify all legal and equitable owners of the property, and any entity with an interest in the property, including, but not limited to, any lienor(s); require that all legal or equitable owners of the property, and any entity with an interest in the property, including, but not limited to, any lienor(s) be a party to the BDP prior to final approval by the Board of County Commissioners; and clarified when the 120-day period to record a BDP begins.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
RACHEL M. SADOFF, CLERK


Kimberly Powell, Clerk to the Board

/sm

cc: Budget
Finance