



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Consent

F.1.

10/7/2021

Subject:

Acceptance, Re: Binding Development Plan with CBH Properties, LLC (District 4)

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 August 3, 2021, the Board approved a change of zoning classification from BU-1 to BU-2 with an amendment to an existing BDP. The conditions of the amended BDP include, but are not limited to the following:

- The property shall remain in conformance with the terms and provisions of the approved Binding Development Plan as recorded in ORB 8345, Page 662.
- The approved uses shall be limited to those permitted uses of BU-1 and major automotive repairs only.
- Parts and materials shall be stored in the rear of the shop, out of view from Wickham Road.

The BDP is consistent with the prior Board action and contains all the provisions agreed upon by the parties.

Clerk to the Board Instructions:

Upon recordation of the BDP, please return two certified copies 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

October 8, 2021

M E M O R A N D U M

TO: Jennifer Jones, Zoning

RE: Item F.1., Binding Development Plan Agreement with CBH Properties, LLC

The Board of County Commissioners, in regular session on October 7, 2021, executed Binding Development Plan with CBH Properties, LLC. Said Plan was recorded in OR/BK 9289/2616. 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

Kimberly Powell, Clerk to the Board

/dt

Encls. (2)

Resolution 21Z00012

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

WHEREAS, CBH Properties Melbourne, LLC. 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 an amendment to the existing BDP, on property described as Lot 1, Block A, Oakwood Landing Commercial, according to the Plat thereof, as recorded in Plat Book 68, Page 27, of the Public Records of Brevard County, Florida. **Section 19, Township 26, Range 37** (1.15 acres) Located on the east side of N. Wickham Rd., approx. 0.13 mile south of Jordan Blass Dr. (6315 N. Wickham Rd., Melbourne); 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 an amended BDP stipulating that the property shall remain in conformance with the terms and provisions of the approved BDP recorded in ORB 8345, Page 662; the approved uses shall be limited to those permitted uses of BU-1 and major automotive repairs only; and parts and materials shall be stored in the rear of the shop, out of view from Wickham Road; 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 as recommended, with an amended BDP stipulating that the property shall remain in conformance with the terms and provisions of the approved BDP recorded in ORB 8345, Page 662; the approved uses shall be limited to those permitted uses of BU-1 and major automotive repairs only; and parts and materials shall be stored in the rear of the shop, out of view from Wickham Road; 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 an amendment to the existing BDP be approved, with a BDP recorded in ORB 9289, Pages 2616 - 2623, dated October 13, 2021, stipulating that the property shall remain in conformance with the terms and provisions of the approved BDP recorded in ORB 8345, Page 662; the approved uses shall be limited to those permitted uses of BU-1 and major automotive repairs only; and parts and materials shall be stored in the rear of the shop, out of view from Wickham Road. 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 13, 2021.

BOARD OF COUNTY COMMISSIONERS

Brevard County, Florida


Rita Pritchett, Chair

Brevard County Commission

As approved by the Board on October 7, 2021.

ATTEST:


RACHEL M. SADOFF, CLERK

(SEAL)

Planning and Zoning Board Hearing – July 26, 2021
Board of County Commissioners Hearing - August 5, 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: MBV Engineering, Inc.
Address: 1250 W. Eau Gallie Blvd., Melbourne, FL 32935

BINDING DEVELOPMENT PLAN

THIS AGREEMENT, entered into this 7 day of OCTOBER, 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 CBH Properties Melbourne, LLC (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 BU-2 zoning classification(s) and desires to develop the Property as a major automobile repair facility, 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 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 property shall remain in conformance with the terms and provisions of the approved Binding Development Plan, as recorded in ORB 8345, Page 662.
3. The approved uses shall be limited to those permitted uses of BU-1 and major automotive repairs only.

Rev. 8/6/2021

4. Parts and materials shall be stored in the rear of the shop, out of view from Wickham Road.
5. 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 Comprehensive Plan or land development regulations as they may apply to this Property prior to issuance of an approved development order.
6. 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.
7. 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 10/7/21. In the event the subject Property is annexed into a municipality and rezoned, this Agreement shall be null and void.
8. 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.
9. 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 8 above.
10. 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:

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

Rachel Sadoff
Rachel Sadoff, Clerk of Court
(SEAL)

Rita Pritchett
Rita Pritchett, Chair
As approved by the Board on 10/7/2021

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

WITNESSES:

CBH Properties Melbourne, LLC
as DEVELOPER/OWNER

Billy Green Jr.
Billy Green Jr.
(Witness Name typed or printed)

Jacques Craig
17725 Katy Freeway Suite 200 Houston TX,
(Address) 77094

Cynthia Murphy
Cynthia Murphy
(Witness Name typed or printed)

Jacques Craig Vice President
(President)
(Name typed, printed or stamped)

STATE OF TEXAS §

COUNTY OF HARRIS §

The foregoing instrument was acknowledged before me, by means of ☒ physical presence or
_____ online notarization, this 10th day of August, 2021, by
Jacques Craig Vice President President of CBH Properties Melbourne, LLC, who is
personally known to me or who has produced _____ as identification.

My commission expires 7-1-2023
SEAL
Commission No.:
130280881

Christine Paula Butt
Notary Public
(Name typed, printed or stamped)

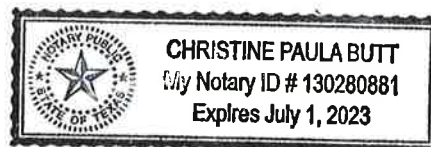


EXHIBIT "A"
LEGAL DESCRIPTION

Lot 1, Block A, Oakwood Landing Commercial, according to the Plat thereof, as recorded in Plat Book 68, Page 27, of the Public Records of Brevard County, Florida.

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 September 25, 2020, given by CBH Properties Melbourne, LLC, a Florida limited liability company, as mortgagor, in favor of the undersigned, CBH Properties Investments, LLC, as mortgagee, recorded in Official Records Book 8874, Page 508, 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

CBH Properties Investments, LLC

Mortgagee Corporation Name

17725 Katy Freeway Suite 200 Houston

Street

City

TX 77094

State Zip Code



*Authorized Agent Signature

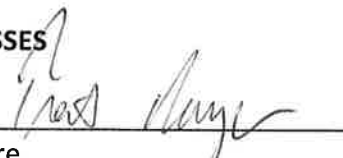
Jacques Craig, Vice President

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



Signature

Trent Darger

Print Name



Signature

John Baby

Print Name

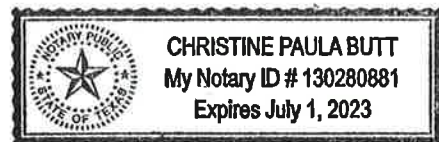
COUNTY OF HARRIS

by Jacques Craig Vice President, who is personally known to me or who has produced

Charles L. Butt

Christine Paula Butt

SEAL



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 September 25, 2020, given by CBH Properties Melbourne, LLC, a Florida limited liability company, as mortgagor, in favor of the undersigned, Origin Bank, a Louisiana banking association, as mortgagee, recorded in Official Records Book 8874, Page 475, 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

Origin Bank

Mortgagee Corporation Name

9805 Katy Freeway, Suite 200

Houston

TX 77024

Street

City

State

Zip Code



Carmen Jordan, Executive Vice President

*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


Signature

Mark E. Story
Print Name


Signature

Ryan Searle
Print Name

STATE OF Texas

COUNTY OF Harris

The foregoing instrument was acknowledged before me this 18th day of August, 2021,

by Carmen Jordan, Executive Vice President, who is personally known to me or who has produced

(known to me) as identification.

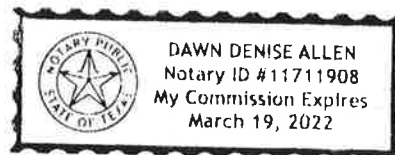
Dawn Denise Allen

Notary Public Signature

Dawn Denise Allen

Name Printed

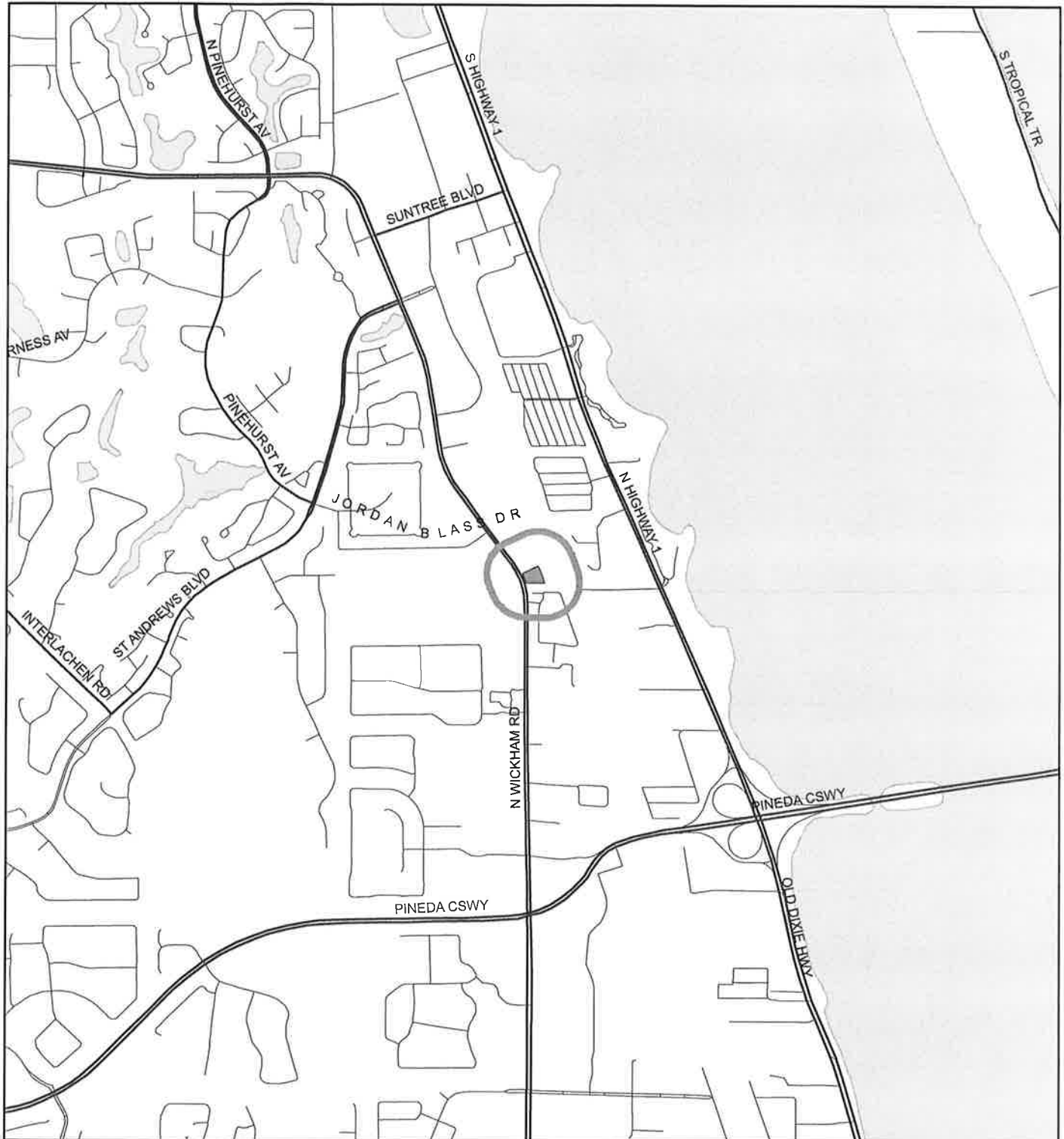
SEAL



LOCATION MAP

CBH PROPERTIES MELBOURNE, LLC

21Z00012



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

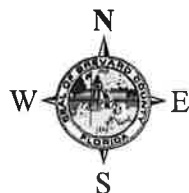
Buffer Distance: 500 feet

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: 3/29/2021

— Buffer
■ Subject Property

CBH PROPERTIES MELBOURNE, LLC
21Z00012



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.

 Subject Property
 Parcels
 Zoning

H. PUBLIC HEARINGS

Local Planning Agency
Monday, July 26, 2021, at 3:00 p.m.

Brevard County Board of County Commissioners
Thursday, August 3, 2021, at 5:00 p.m. (Items 1 & 2)

Brevard County Board of County Commissioners
Thursday, August 24, 2021, at 9:00 a.m. (Item 3)

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

1. **CBH PROPERTIES MELBOURNE, LLC** (Bruce Moia) 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 an amendment to the existing BDP. The property is 1.15 acres, located on the east side of N. Wickham Rd., approx. 0.13 mile south of Jordan Blass Dr. (6315 N. Wickham Rd., Melbourne) (21Z00012) (Tax Account 3022324) (District 4) This item was tabled from the 07/12/21 P&Z meeting.
Planning and Zoning Board Recommendation: Glover/Capote - Approved. The vote was unanimous.
Board of County Commissioners Action: Smith/Zonka - Approved as recommended, with a BDP including, but not limited to, the following stipulations: the property shall remain in conformance with the terms and provisions of the approved BDP recorded in ORB 8345, Pages 662 - 666; the approved uses shall be limited to those permitted uses of BU-1 and major automotive repairs only; parts and materials shall be stored in the rear of the shop, out of view from Wickham Road. The vote was unanimous, with Commissioner Tobia absent. 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. **4090 AURORA PINES, LLC** (Bruce Moia) requests a Small Scale Comprehensive Plan Amendment (21S.04) to change the Future Land Use designation from RES 4 (Residential 4) to RES 6 (Residential 6). The property is 6.21 acres, located on the north side of Aurora Rd., approx. 677 ft. west of Turtle mound Rd. (4090 Aurora Rd., Melbourne) (21PZ00030) (Tax Account 2702879) (District 5) This item was tabled from the 07/12/21 P&Z meeting. **Planning and Zoning Board Recommendation:** Glover/Buchanan - Approved. The vote was unanimous.
Board of County Commissioners Action: Zonka/Lober - Approved with Waiver Agreement, and adopted Ordinance No. 21-17. The vote was unanimous, with Commissioner Tobia absent.
3. **4090 AURORA PINES, LLC** (Bruce Moia) requests a change of zoning classification from TR-3 (Mobile Home Park) to TR-1-A (Single-Family Mobile Home). The property is 6.21 acres, located on the north side of Aurora Rd., approx. 677 ft. west of Turtle mound Rd. (4090 Aurora Rd., Melbourne) (21Z00016) (Tax Account 2702879) (District 5). This item was tabled from the

PLANNING AND ZONING BOARD RECOMMENDATIONS

- Item H.1. CBH Properties Melbourne, LLC. Smith/Zonka, with Tobia absent. Approved changing zoning classification from BU-1, with an existing Binding Development Plan, to BU-2 and an amendment to the existing Binding Development Plan as recommended. (21Z00012).
- Item H.2. Joshua E. Motta and Virginia L. Rymer. Lober/Zonka, with Tobia absent. Approved changing zoning classification from GU to AU as recommended. (21Z00017).
- Item H.3. Schwab Construction Group, Inc. Lober/Smith, with Tobia absent. Approved changing zoning classification from BU-1 to RU-2-15 as recommended. (21Z00015).
- Item H.4. Gary E. and Joanna L. Mills. Lober/Smith, with Tobia absent. Approved changing zoning classification from AU to RR-1 as recommended. (21Z00013).
- Item H.5. 4090 Aurora Pines, LLC. Zonka/Lober, with Tobia absent. Adopted Ordinance No. 21-17, Small Scale Comprehensive Plan Amendment 21S.04 to change Future Land Use Designation from RES 4 to RES 6, with inclusion of the applicants waiver. (21PZ00030).
- Item H.6. 4090 Aurora Pines, LLC. Zonka/Lober, with Tobia absent. Approved changing zoning classification from TR-3 to TR-1-A as recommended. (21Z00016).
- Item H.7. Timothy and Diane Lystlund. Lober/Zonka, with Tobia absent. Continued to November 4, 2021, meeting.
- Item H.8. Timothy and Diane Lystlund. Lober/Smith, with Tobia absent. Continued to November 4, 2021, meeting.
- Item H.9. 395, East, LLC. Lober/Smith, with Tobia absent. Approved changing zoning classification from SEU to EU; approved with a BDP including, but not limited to, the following conditions: development shall be limited to a maximum of four single-family residences; guesthouses shall be prohibited; maximum height of structures not to exceed 35 feet; single-family residences shall connect to sewer at time of permitting. If sewer is unavailable at time of permitting, all homes shall utilize the advanced septic systems providing no less than 65% nitrogen removal; ingress/egress from Curry Dell Lane shall be prohibited; ingress/egress shall be by newly constructed driveway to both S. Tropical Trail and N. Courtenay Parkway. (21Z00018).

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 #: **2986117**
Receipt #: **62841516**
Cashier Date: **10/13/2021 11:54:04 AM**
Cashier Branch: **Titusville - Six Story**

Print Date:
10/13/2021 11:54:11 AM

CUSTOMER INFORMATION	TRANSACTION INFORMATION		PAYMENT SUMMARY	
CHRISTIAN BROTHERS AUTOMOTIVE CORPORAT 17725 KATY FREEWAY STE 200 HOUSTON, TX 77094	Date Received:	10/13/2021	Total Fees	\$69.50
	Source Code:	Titusville - Six Story	Total Payments	\$69.50
	Return Code:	Mail (U.S. Postal Service)	Balance Due:	\$0.00
	Trans Type:	Recording		

1 Payments

CHECK #003024	\$69.50
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1 Recorded Items

AGREEMENT	BK/PG: 9289/2616 CFN: 2021267696 Date: 10/13/2021 11:54:03 AM
From: Tα	
Recording @ 1st=\$10 Add'l=\$8.50 ea.	8 \$69.50