



# Agenda Report

2725 Judge Fran Jamieson  
Way  
Viera, FL 32940

## Consent

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F.3.

9/1/2022

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### **Subject:**

Acceptance, Re: Binding Development Plan with Charles K. Donaldson (District 2)

### **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 a proeprty owner to self-impose limits upon development of a property. Pursuant to Section 62-1157, a BDP shall be recorded in the public records within 120 days of the Board's approval of the requested action. 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 action.

On May 26, 2022, the Board approved a Small Scale Comprehensive Plan Amendment to change the Future Land Use from RES 1 (Residential 1) to RES 4 (Residential 4), with a BDP limiting density to two (2) total units, specifically one house on each parcel, and shall meet all the requirements of Section 62-1339 (EU, Estate Use Residential) and may be further restricted by any changes to the Comprehensive Plan or the Land Development Regulations. The attached BDP includes these stipulations.

### **Clerk to the Board Instructions:**

Upon recordation, please return two certified copies of the Binding Development Plan 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

September 2, 2022

**M E M O R A N D U M**

**TO:** Jennifer Jones, Zoning

**RE:** Item F.3., Binding Development Plan Agreement with Charles K. Donaldson

The Board of County Commissioners, in regular session on September 1, 2022, executed Binding Development Plan Agreement with Charles K. Donaldson, for property located in Official Records Book 9402 and Page 1920 of the Public Records of Brevard County, Florida, lying west of North Tropical Trail. A parcel of land lying in Section 22, Township 24 South, Range 36 East. 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

  
Kimberly Powell, Clerk to the Board

/dt

Encls. (2)

Prepared by: Kimberly B. Rezanka, Esq.  
Address: Lacey Lyons Rezanka  
1290 Rockledge Blvd. Ste 201  
Rockledge, FL 32955

CFN 2022220463, OR BK 9607 PAGE 743,  
Recorded 09/08/2022 at 10:15 AM, Rachel M. Sadoff,  
Clerk of Courts, Brevard County  
# Pgs:7

### **BINDING DEVELOPMENT PLAN (FLU)**

THIS AGREEMENT, entered into this 1 day of September, 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 Charles K. Donaldson, (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", which is attached hereto and incorporated herein by this reference; and

WHEREAS, the Property currently has the zoning classification of EU pursuant to the Brevard County Code, Section 62-1157; and;

WHEREAS, Developer/Owner has requested a small scale amendment to the County's Future Land Use Map from RES1 to RES4 to develop the Property consistent with the EU requirement and subject to the terms and conditions of this BDP; and

WHEREAS, the Property's future land use was changed administratively by the County in 2009 from RES15 to RES1, resulting in an inconsistency between the future land use map and the zoning classification; and

WHEREAS, the Property was inconsistent with Section 62-1255, due to no fault of the Developer/Owner; 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 will develop the Property in accordance with the County's Comprehensive Plan and Land Development Regulations; and

WHEREAS, the County is authorized to regulate development of the Property.

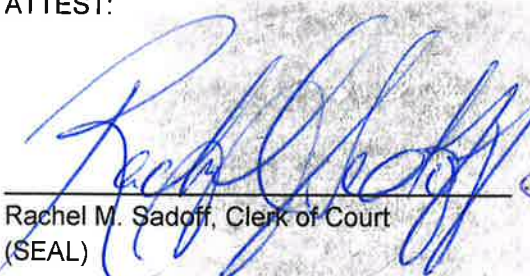
NOW, THEREFORE, the parties agree as follows:

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 two (2) total units, specifically one house on each parcel, and shall meet all the requirement of Section 62-1339 (Estate use residential-EU) 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 5/26/22. 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)

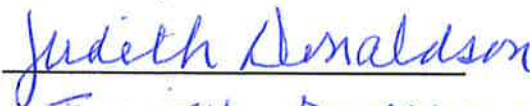
BOARD OF COUNTY COMMISSIONERS  
OF BREVARD COUNTY, FLORIDA  
2725 Judge Fran Jamieson Way  
Viera, FL 32940

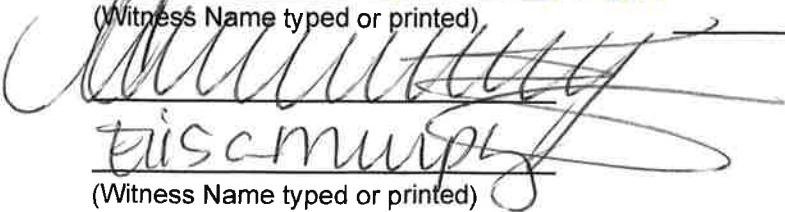
  
Kristine Zorka, Chair

As approved by the Board on September 1, 2022

WITNESSES:

DEVELOPER/OWNER  
Charles K. Donaldson  
1065 N. Tropical Trail, Merritt Island, FL 32953

  
JUDITH DONALDSON  
(Witness Name typed or printed)

  
Eric Murphy  
(Witness Name typed or printed)

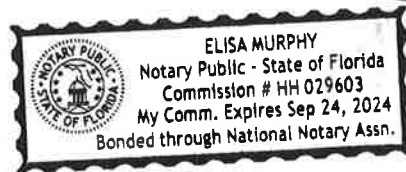
STATE OF Fla §  
COUNTY OF Brevard §

The foregoing instrument was acknowledged before me, by means of ✓ physical presence or  
\_\_\_\_\_ online notarization, this 10 day of July, 2022, by Charles K. Donaldson,  
who is personally known to me or who has produced \_\_\_\_\_ as identification.

My commission expires  
SEAL  
Commission No.:

[Signature]  
Notary Public

(Name typed, printed or stamped)



## EXHIBIT A

LEGAL DESCRIPTION FOR LANDS COVERED IN DONALDSON BINDING DEVELOPMENT PLAN

That portion of land describe below and as shown in Official Records Book 9402 at Page 1920 of the Public Records of Brevard County, Florida, THAT LIE WEST OF NORTH TROPICAL TRAIL.

To Wit:

A parcel of land lying in Section 22, Township 24 South, Range 36 East, being more particularly described as follows: Commence at the Northeast corner of the Northwest 1/4 of the Northeast 1/4 of said Section 22 (as established by "Croton River Estates", recorded in Plat Book 25, Page 10 of the Public Records of Brevard County, Florida), and run S.00°23'34"E., along the East line of said Northwest 1/4 of the Northeast 1/4 and along the East line of the Southwest 1/4 of the Northeast 1/4, a distance of 177142 feet to the Southeast corner of lands described in O. R. 2246, Page 2437 of said public records, the point of beginning; thence continue S. 00°23'24"E., along said East line, a distance of 238.92 feet (or 3 chains / 62 links as stated in Deed Book "X", Page 457); thence N.89°56'46"W., parallel with the North line of said Section 22 and along the North line of lands described in O.R. 3151, Page 4903 of said public records, a distance of 1237.47 feet to the Northwest corner of said lands (said corner being located 400.00 feet East of the "mean water level" for the Indian River as measured along the Westerly extension of said line); thence perpendicular to said North line of Section 22, a distance of 109.00 feet to the Southwest corner of said lands described in O.R. 3151, Page 4903; thence N. 89°56'46"W., parallel with said North line of Section 22, a distance of 345.41 feet to a point on the aforementioned "mean water level" for the Indian River; thence return to the point of beginning, and run N.89°56'46"W., parallel with said North line and along the South line of lands described in O.R. 2246, Page 2437, a distance of 583.31 feet to a point on the centerline of pavement of / for North Tropical Trail (a prescriptive right of way), said point being on a 404.40 foot radius curve to the left having a radial bearing of N. 53°41'59"E.; thence Southeasterly, along the arc of said curve and along said centerline and along said South line of lands of O.R. 2246, Page 2437, thru a central angle of 15°53'14" a distance of 112.13 feet to a point of tangency; thence S.50°35'38"E., along said centerline and said South line, a distance of 11.06 feet; thence departing said centerline, run N.89°56'46"W., parallel with said North line of Section 22 and along said South line of lands of O.R. 2246, Page 2437, a distance of 1110.48 feet to a point on the aforesaid "mean water level" of / for the Indian River; thence Southeasterly, meandering said "mean water level", to an intersection with the fourth course of this description; less and except East 20 feet thereof for right of way for Hill Avenue.

PREPARED BY:

DocuSigned by:  
*John Campbell*  
90B22403C9F2459...

John R. Campbell, Florida Surveyor, No. 2351

Job No. 2019-157

Dated on: June 13, 2022

06-13-2022 | 1:48 PM PDT

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 October 16, 2014, given by Charles Donaldson and Judith Donaldson, as mortgagor, in favor of the undersigned, SunTrust Bank, as mortgagee, recorded in Official Records Book 7242, Page 195, 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

SunTrust Bank

Mortgagee Corporation Name

7455 Chancellor Drive Orlando FL 32809

Street

City

State

Zip Code

Kelli Artley  
\*Authorized Agent Signature

KELLI ARTLEY / BRANCH LEADER  
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

Judith Donaldson  
Signature

JUDITH DONALDSON  
Print Name

Charles K. Donaldson  
Signature

Charles K. DONALDSON  
Print Name

**Truist Bank**  
150 Cocoa Isles Blvd  
Cocoa Beach, FL 32921



STATE OF FLORIDA

COUNTY OF BREVARD

The foregoing instrument was acknowledged before me this 22ND day of JULY, 2022,

by CHARLES + JUDITH DONALDSON, who is personally known to me or who has produced

FW DL as identification.

Kelli Artley  
Notary Public Signature

KELLI ARTLEY  
Name Printed



SEAL

## H. PUBLIC HEARINGS

Planning and Zoning Board / Local Planning Agency  
Monday, May 9, 2022, at 3:00 p.m.

Brevard County Board of County Commissioners  
Thursday, May 26, 2022, at 5:00 p.m.

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

1. **(22SS00001) CHARLES K. DONALDSON** requests a Small Scale Comprehensive Plan Amendment (22S.04) to change the Future Land Use designation from RES 1 (Residential 1) to RES 4 (Residential 4). The property is 5.51 +/- acres, located on the west side of N. Tropical Trail, approx. 500 ft. northwest of Easy Street. (1605 N. Tropical Trail, Merritt Island) (Tax Account 2416959) (District 2).

**LPA Recommendation:** Alward/Moia - Approved. The vote was unanimous.

**BCC ACTION:** Pritchett/Smith, approved with a BDP limiting density to two units, and adopted Ordinance 22-16. The vote was unanimous.

2. **(22SS00002) OBC REALTY, LLC** requests a Small Scale Comprehensive Plan Amendment (22S.05), to change the Future Land Use designation from RES 15 (Residential 15) to CC (Community Commercial). The property is 0.52 acres, located on the northwest corner of S. Atlantic Ave. and 35<sup>th</sup> St. (Lot 8 = No assigned address. Lot 9.01 = 3466 S. Atlantic Ave., Cocoa Beach) (Tax Accounts 2521003 and 2521005) (District 2)

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

**BCC ACTION:** Smith/Pritchett - Approved as recommended, and adopted Ordinance No. 22-17. The vote was unanimous.

3. **(22Z00012) CLIFTON THOMAS (Clayton Bennett)** requests a change of zoning classification from BU-1-A (Restricted Neighborhood Commercial) to RU-1-13 (Single-Family Residential), with a BDP (Binding Development Plan) limited to 1 unit. The property is 0.20 acres, located on the west side of Highway A1A, approx. 170 ft. south of Ibis Dr. (5930 Hwy A1A, Melbourne Beach) (Tax Account 2954089) (District 3) THIS ITEM WAS WITHDRAWN BY THE APPLICANT ON 05/16/22

**P&Z Recommendation:** Moia/Bartcher - Denied. The vote was unanimous.

4. **(22Z00010) WILLIAM L. (JR.) AND SHARON R. FEAGAN** request a change of zoning classification from AU (Agricultural Residential) to RR-1 (Rural Residential). The property is 1 +/- acre, located on the east side of Turpentine Rd., approx. 550 ft. south of Wherry Rd. (No assigned address. In the Mims area.) (Tax Account 3022409) (District 1)

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

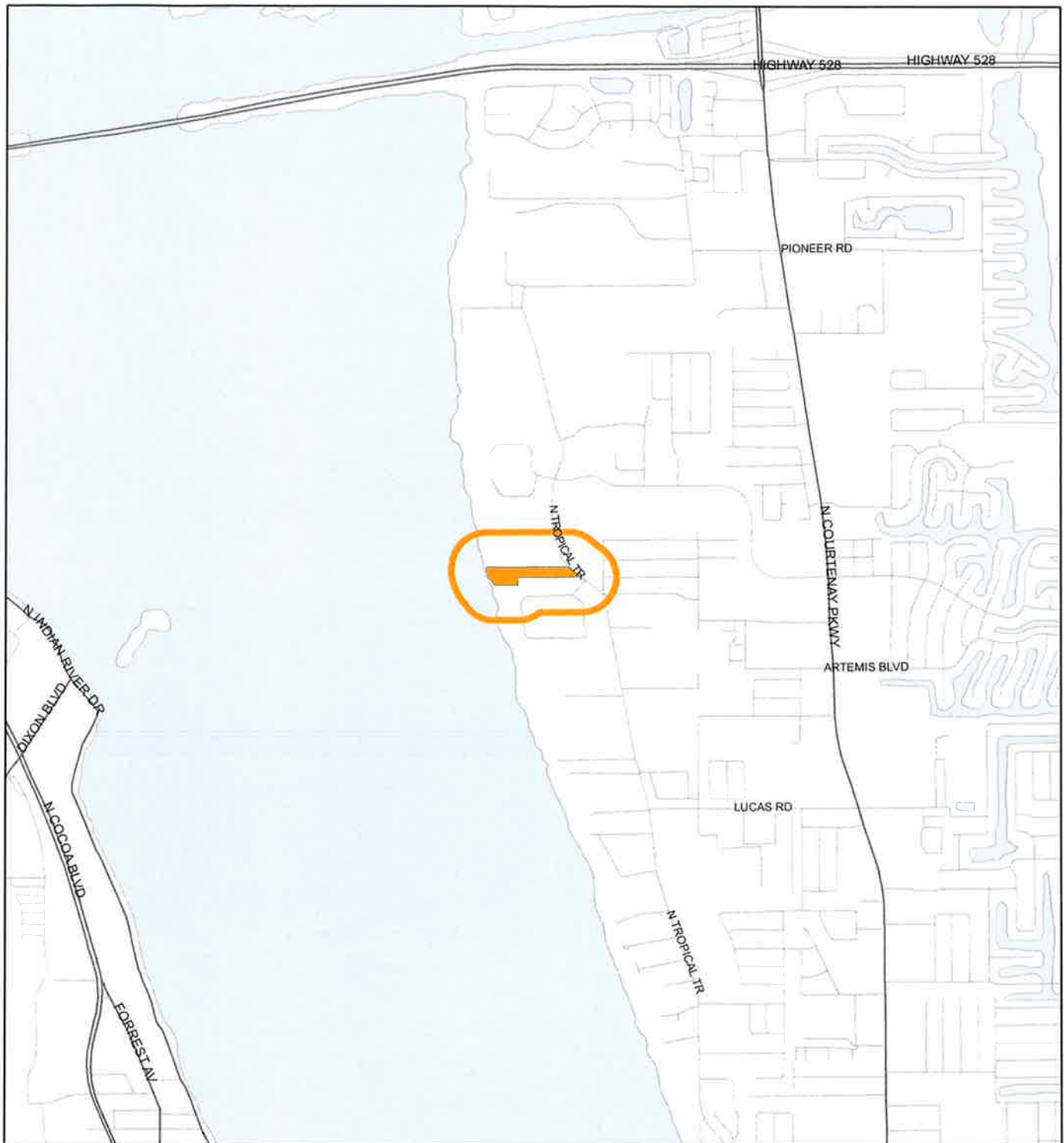
**BCC ACTION:** Pritchett/Smith - Approved as recommended. The vote was unanimous.

## **PLANNING AND ZONING BOARD RECOMMENDATIONS**

- Item H.1.** Charles F. Donaldson. Pritchett/Smith. Adopted Ordinance No. 22-16, setting forth the ninth Small Scale Comprehensive Plan Amendment (22S.04), changing the Future Land Use designation from RES 1 to RES 4, (22SS00001). With a Binding Development Plan limiting one house on both parcels. Commissioner Tobia was absent.
- Item H.2. OBC Realty, LLC. Smith/Pritchett. Adopted Ordinance No. 22-17, setting forth the tenth Small Scale Comprehensive Plan Amendment (22S.05), changing the Future Land Use designation from RES 15 to CC. (22SS00002). Commissioner Tobia was absent.
- Item H.3. Clifton Thomas. Withdrawn by applicant. Letter received 05/16/2022.
- Item H.4. William L. (Jr.) and Sharon R. Feagan. Pritchett/Smith. Approved the request of changing the zoning classification from AU to RR-1. (22Z00010). Commissioner Tobia was absent.
- Item H.5. Heath and Shannon Morgan. Pritchett/Smith. Approved the request of changing the zoning classification from RU-1-9 to SR. The property is 0.69 acres, located on the north side of Miami Avenue., approximately. 200 feet east of City Acres Road. (22Z00011). Commissioner Tobia was absent.
- Item H.6. PR Corporate Holdings, LLC; and AKBlue Holdings, LLC. (Pritchett/Smith. Approved the request of changing the zoning classification from AU to RR-1-11. (22Z00013). Commissioner Tobia was absent.
- Item H.7. Health First, Inc.; and Health First Shared Services, Inc. Continued to July 12, 2022, Zoning Meeting.

# LOCATION MAP

DONALDSON, CHARLES K.  
22SS00001 SMALL SCALE AMENDMENT 22S.04



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: 3/4/2022

— Buffer  
— Subject Property

# ZONING MAP

DONALDSON, CHARLES K.

22SS00001 SMALL SCALE AMENDMENT 22S.04



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: 3/4/2022

— Subject Property

□ Parcels

□ Zoning