



# Agenda Report

2725 Judge Fran Jamieson  
Way  
Viera, FL 32940

## Consent

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F.4.

10/8/2019

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### Subject:

Acceptance, Re: Binding Development Plan - Clark and Patricia Simms (18PZ00130) (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 authorize the Chair to sign, the Binding Development Plan.

### Summary Explanation and Background:

On May 30, 2019, the Board approved a rezoning request from EU (Estate Use Residential) and RU-1-9 (Single-Family Residential) to all RU-1-9 with a BDP (Binding Development Plan). The BDP 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 approval of the rezoning request by the Board. Following staff and legal review, a BDP is presented to the Board in recordable form as a Consent Agenda Item in order to finalize the zoning action.

The limitations in the BDP include, but are not limited to, the following:

- Development shall be limited to two lots, each developed with one single-family dwelling and one guesthouse with kitchen facilities.
- Any new single-family residence will be connected to sewer.
- A cross-access easement will be recorded for the utilization of one single driveway for both lots to access North Tropical Trail.

### Clerk to the Board Instructions:

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



Tammy Rowe, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

Telephone: (321) 637-2001  
Fax: (321) 264-6972  
Tammy.Rowe@brevardclerk.us

October 9, 2019

MEMORANDUM

TO: Jennifer Jones, Zoning

RE: Item F.4., Binding Development Plan Agreement – Clark and Patricia Simms

The Board of County Commissioners, in regular session on October 8, 2019, executed Binding Development Plan with Clark and Patricia Simms. Said Plan was recorded in OR/BK 8562/152. 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

*Tammy Rowe*

Tammy Rowe, Deputy Clerk

/dt

Encls. (2)

cc: Contracts Administration

Prepared by: Patricia and Clark Simms

Address: 1201 N. Tropical Trail

### **BINDING DEVELOPMENT PLAN**

THIS AGREEMENT, entered into this \_\_\_\_\_ day of \_\_\_\_\_ 2019 between the BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, a political subdivision of the State of Florida (hereinafter referred to as "County") and Clark and Patricia Simms (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 RU 1-9 zoning classification(s) and desires to develop the Property with a BDP shall limit development to two lots, each developed with one single-family dwelling and one guesthouse with kitchen facilities 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 Developer/Owner shall limit development to two lots, each developed with one single-family dwelling and one guesthouse with kitchen facilities, which may be further restricted by any changes to the Comprehensive Plan or to the Land Development Regulations.
3. Any new single-family residence and guesthouse will be connected to sewer.
4. A cross-access easement will be recorded for the utilization of one single driveway for both lots to access North Tropical Trail.
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.
6. Developer/Owner, upon execution of this Agreement, shall pay to the Clerk of Court the cost 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 be binding upon any person, firm or corporation who may become the successor in interest directly or indirectly to the subject Property, and be subject to the above referenced conditions as approved by the Board of County Commissioners on May 30, 2019. 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 will also constitute a violation of the Zoning Classification and this Agreement may be enforced by Sections 1.7 and 62-5, 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 must be satisfied before Developer/Owner may implement the approved use(s), unless stated otherwise. The failure to timely comply with any mandatory condition is a violation of this Agreement, constitutes a violation of the Zoning Classification and is subject to enforcement action as described in Paragraph 8 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:

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

  
\_\_\_\_\_  
  
\_\_\_\_\_

Scott Ellis, Clerk

Kristine Isnardi, Chair

(SEAL)

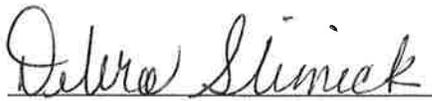
As approved by the Board on Oct. 8, 2019

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

(INSERT BUSINESS NAME or INDIVIDUAL NAME(s))

WITNESSES:

as DEVELOPER/OWNER

  
\_\_\_\_\_

  
\_\_\_\_\_

  
\_\_\_\_\_

  
\_\_\_\_\_

  
\_\_\_\_\_

  
\_\_\_\_\_

*Delora Simick  
9/13/19*

Sallie A. Gould

(Witness name typed or printed)

STATE OF Florida §

COUNTY OF Brevard §

The foregoing instrument was acknowledged before me this 16 day of August, 2019 by \_\_\_\_\_, who is personally known to me or who has produced \_\_\_\_\_ as identification.



Debra Slimick

Notary Public

Debra Slimick

(Name typed, printed or stamped)

LEGAL DESCRIPTION

Tax Parcel 811, as recorded in ORB 6640, Pages 2872 – 2875, of the Public Records of Brevard County, Florida.

JOINDER IN BINDING DEVELOPMENT PLAN

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 9-16-16, given by Freedom Mortgage Corporation as mortgagor, in favor of the undersigned, Clark A. Simms, as mortgagee, recorded in Official Records Book 6640, page 2872, 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.

WITNESSES:

MORTGAGEE NAME/ADDRESS

Clark A. Simms

1201 N. Tropical Trail  
Merritt Island, FL 32953

(Address)

\_\_\_\_\_



Authorized Agent Signature



(Witness name typed or printed)

PATRICIA ORZECHOWSKA



(Name/title typed, printed or stamped)

(Witness name typed or printed)

STATE OF New Jersey §

COUNTY OF Burlington §

The foregoing instrument was acknowledged before me this 10 day of September, 2019, by  
, who is personally known to me or who has produced badge as identification.

My commission expires

Brenda Rostrom

Notary Public

SEAL

Brenda Rostrom

Commission No.:

(Name typed, printed or stamped)

**BRENDA ROSTROM  
NOTARY PUBLIC OF NEW JERSEY  
Comm. # 2283515  
My Commission Expires 1/29/2022**

LOCATION MAP  
CLARK A. AND PATRICIA A. SIMMS  
18PZ00130



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.

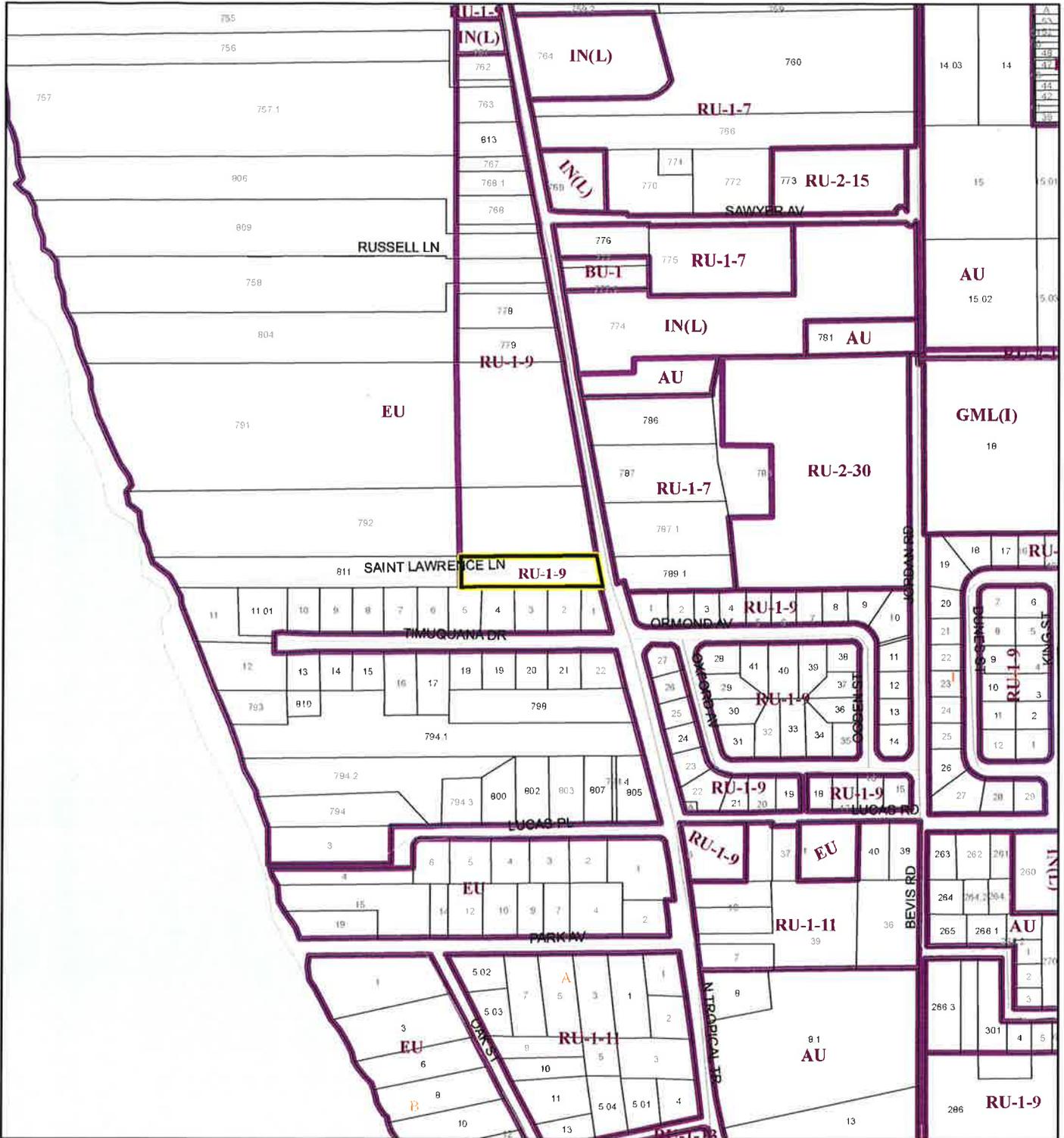
Produced by BoCC - GIS Date: 11/2/2018

-  Buffer
-  Subject Property

# ZONING MAP

## CLARK A. AND PATRICIA A. SIMMS

### 18PZ00130



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: 11/2/2018

- Subject Property
- Parcels
- Zoning

*full*

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

**WHEREAS, Clark A. and Patricia A. Simms** have requested a change of zoning classification from RU-1-9 (Single-Family Residential) and EU (Estate Use Residential) to all RU-1-9, on property described Tax Parcel 811, as recorded in ORB 6640, Pages 2872 – 2875, of the Public Records of Brevard County, Florida. **Section 22, Township 24, Range 36.** (2.92 acres) Located on the west side of N. Tropical Trail, approx. 685 feet north of Lucas Road. (700 Saint Lawrence Lane, Merritt Island.); 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 a BDP (Binding Development Plan) limited to two lots, each developed with one single-family dwelling and one guesthouse with kitchen facilities, and that the sewer be installed at the owner's expense; 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; now therefore,

**BE IT RESOLVED** by the Board of County Commissioners of Brevard County, Florida, that the requested change of zoning classification from RU-1-9 and EU to all RU-1-9, be approved with a BDP recorded on October 11, 2019, in Official Records Book 8562, Pages 152 – 158, limited to two lots, each developed with one single-family dwelling and one guesthouse with kitchen facilities, and that the sewer be installed at the owner's expense. 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 11, 2019.

BOARD OF COUNTY COMMISSIONERS  
Brevard County, Florida  
*Kristine Isnardi*  
Kristine Isnardi, Chair  
Brevard County Commission  
As approved by the Board on October 8, 2019.

ATTEST:  
*Scott Ellis*  
SCOTT ELLIS, CLERK  
(SEAL)

Planning and Zoning Board Hearing – May 6, 2019

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.**

## H. PUBLIC HEARINGS

Planning and Zoning Board  
Monday, May 6, 2019, at 3:00 p.m.  
and  
Brevard County Board of County Commissioners  
Thursday, May 30, 2019, at 5:00 p.m.  
Both at the  
Brevard County Government Center  
2725 Judge Fran Jamieson Way, Building C, First Floor, Viera, Florida

The Board of County Commissioners may approve or deny the requested classification, or may approve a classification of lesser intensity than that requested.

1. **Clark A. and Patricia A. Simms** request a change of zoning classification from RU-1-9 (Single-Family Residential) and EU (Estate Use Residential) to all RU-1-9. The property is 2.92 acres, located on the west side of North Tropical Trail, approximately 685 feet north of Lucas Road. (700 Saint Lawrence Lane, Merritt Island. (18PZ00130) (District 2)

**Planning and Zoning Board Recommendation:** Moia/Lawandales – Denied. The vote was 7:1, with Bartcher voting nay.

**Board of County Commissioners Action:** Lober/Pritchett – Approved with a BDP (Binding Development Plan) limited to two lots, each developed with one single-family dwelling and one guesthouse with kitchen facilities, and that the sewer be installed at the owner's expense. 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.**

2. **Robert Bailey** requests a Small Scale Comprehensive Plan Amendment to change the Future Land Use designation from Residential 1 to Residential 4. The property is 0.35 acres, located on south side of Craig Road, approximately 495 feet west of Friday Road. (5055 Craig Road, Cocoa) (19PZ00028) (District 1)

**Local Planning Agency Recommendation:** Hodgers/Moia – Approved. The vote was unanimous.

**Board of County Commissioners Action:** Pritchett/Lober – Denied. The vote was 4:1, with Tobia nay.

3. **Robert Bailey** requests a change of zoning classification from GU (General Residential) to RU-1-13 (Single-Family Residential). The property is 0.35 acres, located on the south side of Craig Road, approximately 495 feet west of Friday Road. (5055 Craig Road, Cocoa) (19PZ00029) (District 1)

**Planning and Zoning Board Recommendation:** Hodgers/Moia – Approved. The vote was unanimous.

**Board of County Commissioners Action:** Pritchett/Lober – Denied. The vote was 4:1, with Tobia nay.

4. **Xiaolu Yin and Robert McBride** (Oscar Busso) requests a Small Scale Comprehensive Plan Amendment to change the Future Land Use designation from NC (Neighborhood Commercial) to CC (Community Commercial). The property is 3.57 acres, located on the northeast corner of Waelti Drive and Freeman Lane. (3550 Freeman Lane, Melbourne) (19PZ00034) (District 4)

## PLANNING AND ZONING BOARD RECOMMENDATIONS

- Item H.1. Clark A. and Patricia Simms. Lober/Pritchett. Approved with Binding Development Plan limiting development to two lots, each developed with one single-family dwelling and one guesthouse with kitchen facilities.
- Item H.2. Robert Bailey. Pritchett/Lober. Denied request for Small Scale Plan.
- Item H.3. Robert Bailey. Pritchett/Lober. Denied.
- Item H.4. Xiaolu Yin. Smith/Lober. Adopted Ordinance No. 19-12, for Small Scale Plan Amendment 19S.09.
- Item H.5. Xiaolu Yin. Smith/Lober. Approved as recommended with Binding Development Plan limited to no auditoriums; automobile hire; automobile paint and body repair; automobile repairs; automobile sales; automobile tire and muffler sales and service; automobile washing – mechanized; boat service; building materials and supplies; cabinetmaking and carpentry; commercial entertainment and amusement enterprises; contractors outdoor storage yards; engine service; farm machinery sales and service; feed and hay for animals and stock; fertilizer stores; flea markets; gasoline service stations; hotels; lumber sales; motels; motorcycle sales and service; outside sale of mobile homes; pet kennels; plant nurseries; recovered materials processing facility; restaurant outdoor seating; seafood processing plants; service station for automotive vehicles and UHaul service; sharpening and grinding shops; theatres; towers and antennas; trailer and truck service; treatment and recovery facility; welding repairs and metal fabrication; outdoor storage or display of large items or material which may require a forklift, front loader, tractor, or similar machinery to move shall be prohibited. Outdoor intercoms and public address systems shall be prohibited. Digital or electronic signs and billboards, whether static, animated, or intermittent, shall be prohibited. Freestanding signs shall be limited to the Sign Code.
- Item H.6. Palm Bay REH, LLC (Hitesh Patel). Pritchett/Lober. Approved as recommended.
- Item H.7. Mark D. Hansson. Pritchett/Lober. Adopted Ordinance No. 19-13, for Small Scale Plan Amendment 19S.08.
- Item H.8. Mark D. Hansson. Pritchett/Lober. Approved with a Binding Development Plan limiting it to the operation being on the east side of the railroad tracks, no fast food restaurants, and no convenience stores with or without gas pumps.
- Item H.9. Douglas and Cindy Robertson (Bruce Moia). Tobia/Lober. Denied.
- Item H.10. Douglas and Cindy Robertson (Bruce Moia). Withdrawn by Applicant.