



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Consent

F.3.

8/22/2023

Subject:

Approval, Re: Extension of 60 days from the 120-day requirement to record a Binding Development Plan in the Public Records. (District 1)

Fiscal Impact:

None

Dept/Office:

Planning and Development

Requested Action:

It is requested that the Board of County Commissioners grant a 60-day extension to the 120-day requirement to have a BDP (Binding Development Plan) recorded, as provided in Section 62-1157.

Summary Explanation and Background:

On May 4, 2023, the Board approved a change of zoning classification from AU (Agricultural Residential) to BU-2 (Retail, Warehousing, and Wholesale Commercial) for Austin A. and Kailey R. Mahan, with a BDP retaining all BU-1 uses, limiting the BU-2 use to kayak storage only, and limiting egress only to E.R. Smyth Drive, with ingress and egress to U.S. Highway 1.

The applicants have experienced unexpected delays in obtaining the mortgager signoff of the BDP. Section 62-1157(1)g., requires the BDP to be recorded in the Public Records within 120 days of approval by the Board of County Commissioners. The code also states that the zoning action is not effective until the BDP is recorded, and if the BDP is not recorded within the 120-day timeframe it shall be considered withdrawn.

Granting the 60-day extension would allow the applicants until October 31, 2023, to have the BDP recorded in the Public Records. If the BDP is not recorded by October 31, 2023, the application will be considered withdrawn and the applicant would need to re-apply for the zoning change.

Clerk to the Board Instructions:

None.



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

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Kimberly.Powell@brevardclerk.us

August 23, 2023

MEMORANDUM

TO: Tad Calkins, Planning and Development Director

RE: Item F.3., Approval of Extension of 60 Days from the 120-Day Requirement to Record a Binding Development Plan (BDP) in the Public Records

The Board of County Commissioners, in regular session on August 22, 2023, approved granting a 60-day extension to the 120-day requirement to have a BDP recorded, as provided in Section 62-1157, regarding the BDP approved on May 4, 2023, for Austin A. and Kailey R. Mahan.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
RACHEL M. SADOFF, CLERK

Kimberly Powell
Kimberly Powell, Clerk to the Board

/tr

BINDING DEVELOPMENT PLAN

THIS AGREEMENT, entered into this _____ day of _____, 20__ between the BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, a political subdivision of the State of Florida (hereinafter referred to as "County") and Austin and Kailey Mahan (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 Retail, warehousing and wholesale commercial and pursuant to the Brevard County Code, Section 62-1483; 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. 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. Developer/Owner shall limit egress only to E.R. Smyth Drive, with ingress and egress to U.S. Highway 1.
4. Developer/Owner shall retain all BU-1 uses, limiting the BU-2 uses to kayak storage only.
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 Brevard County 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 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 05/04/2023. 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.

(SIGNATURES ON NEXT PAGE)

ATTEST:

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

Rachel M. Sadoff, Clerk of Court

(SEAL)

Rita Pritchett, Chair

As approved by the Board on _____

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

WITNESSES:

AUSTIN MAHAN AND KAILEY MAHAN
as DEVELOPER/OWNER

(Witness Name typed or printed)

(Address)

(Witness Name typed or printed)

(Name typed, printed or stamped)

STATE OF _____ §. COUNTY OF _____ §

The foregoing instrument was acknowledged before me, by means of ____ physical presence or
____ online notarization, this ____ day of _____, 20____, by AUSTIN MAHAN, who is
personally known to me or who has produced _____ as identification.

My commission expires

Notary Public

SEAL

Commission No.:

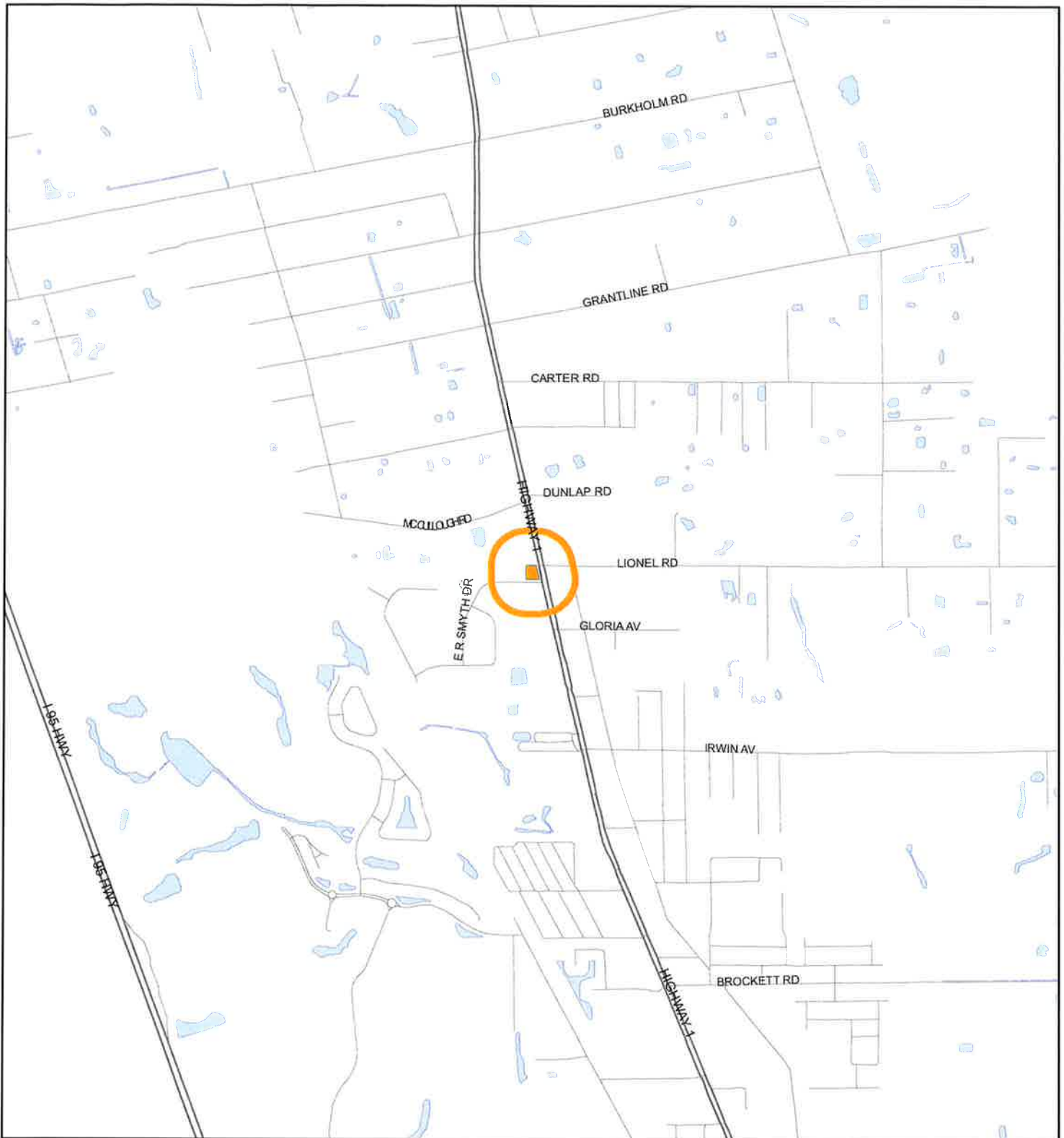
(Name typed, printed or stamped)

Exhibit "A"

A parcel of land situated in the NW $\frac{1}{4}$ of Section 6, Township 21S, Range 35E, Brevard County, Florida. Being more particularly described as follows:

Commence at the NE corner of the NW corner $\frac{1}{4}$ of the NW $\frac{1}{4}$ of said Section 6, Township 21S, Range 35E, said point being shown as the NW corner of Lot 1, Quail Haven Section One, a subdivision recorded in Plat Book 29, Page 68, Public Records of Brevard County, Florida. Thence run S88deg43'10"E, along the north line of said Section 6, a distance of 223 ft, to the Point of Beginning; thence continue S88deg43'10"E, along said north line, a distance of 150.77 ft. to the westerly right-of-way line of U.S. Highway No. 1, (a 143-ft. wide right-of-way) thence run S11deg22'07"E, along said westerly right-of-way line a distance of 200 ft., to the north right-of-way line of E.R. Smyth Drive as shown on said plat of Quail Haven Section One; thence run N88deg43'10"W, along said north right-of-way line, a distance of 192.67 ft.; thence run N00deg43'24"E, along a line parallel to the east line of said Lot 1, Quail Haven Section One, a distance of 195.16 ft., to the Point of Beginning. Afore described parcel of land containing 0.77 acres, more or less.

LOCATION MAP
MAHAN, AUSTIN and KAILEY ROSE
22Z00054



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: 3/24/2023

— Buffer
■ Subject Property

ZONING MAP

MAHAN, AUSTIN and KAILEY ROSE

22Z00054



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: 3/24/2023

 Subject Property

 Parcels

 Zoning

H. PUBLIC HEARINGS

Planning and Zoning Board / Local Planning Agency
Monday, April 17, 2023, at 3:00 p.m.

Brevard County Board of County Commissioners
Thursday, May 4, 2023, at 5:00 p.m.

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

1. **(22SS00013) Austin A. and Kailey R. Mahan** request a *Small Scale Comprehensive Plan Amendment (22S.15)*, to change the *Future Land Use designation* from *NC (Neighborhood Commercial)* to *CC (Community Commercial)*. The property is 0.77 acres, located on the north corner of U.S. Highway 1, and E.R. Smyth Drive, Mims. (3716 E.R. Smyth Dr., Mims) (Tax Account 3030132) (District 1) This item was automatically tabled by the applicant from the 1/09/23 P&Z/LPA meeting, and the 2/2/23 BCC meeting.

LPA Recommendation: Thomas/Luse - Approved. The vote was unanimous.

BCC ACTION: Feltner/Tobia - Approved as recommended, and adopted Ordinance No. 23-07. The vote was unanimous.

2. **(22Z00054) Austin A. and Kailey R. Mahan** request a change of zoning classification from AU (Agricultural Residential) to BU-2 (Retail, Warehousing, and Wholesale Commercial). The property is 0.77 acres, located on the north corner of U.S. Highway 1, and E.R. Smyth Drive, Mims. (3716 E.R. Smyth Dr., Mims) (Tax Account 3030132) (District 1) This item was automatically tabled by the applicant from the 1/09/23 P&Z/LPA meeting, and the 2/2/23 BCC meeting.

P&Z Recommendation: Bartcher/Sullivan - Approved with a BDP retaining all BU-1 uses, limiting the BU-2 use to kayak storage only, and limiting egress only to E.R. Smyth Drive, with ingress and egress to U.S. Highway 1. The vote was unanimous.

BCC ACTION: Feltner/Tobia - Approved as recommended, with a BDP retaining all BU-1 uses, limiting the BU-2 use to kayak storage only, and limiting egress only to E.R. Smyth Drive, with ingress and egress to U.S. Highway 1. 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.

3. **(23Z00010) Matthew and Christine Morak** request a change of zoning classification from AU (Agricultural Residential) to RR-1 (Rural Residential), on 2.22 acres, located on the north side of Burkholm Rd., approx. 0.38 mile east of U.S. Highway 1 (3660 Burkholm Rd., Mims) (Tax Account 2004738) (District 1)

P&Z Recommendation: Bartcher/Sullivan - Approved. The vote was unanimous.

BCC ACTION: Feltner/Tobia - Approved as recommended. The vote was unanimous.

4. **(23Z00011) Rebecca and Allen Potter** request a change of zoning classification from RR-1 (Rural Residential) and AU (Agricultural Residential) to all AU, on 3.53 acres, located on the east side of U.S. Highway 1, approx. 0.24 mile north of Barefoot Bay Blvd. (7660 U.S. Highway

PLANNING AND ZONING BOARD RECOMMENDATIONS

- Item H.1. **Lake Geneva Group, LLC.** Automatically tabled to the July 13, 2023, Board of County Commissioners (BoCC) zoning meeting.
- Item H.2. **Rebecca and Allen Potter.** Automatically tabled to the July 13, 2023, Board of County Commissioners (BoCC) zoning meeting.
- Item H.3. **Mehran Ghaeenzadeh.** Automatically tabled to the July 13, 2023, Board of County Commissioners (BoCC) zoning meeting.
- Item H.4. **Austin A. and Kailey R. Mahan.** Feltner/Tobia. Adopted Ordinance No. 23-07, setting forth the twenty-first Small Scale Comprehensive Plan Amendment (22S.15), Approved the request of a Small Scale Comprehensive Plan Amendment to change the Future Land Use designation from NC to CC as recommended. (22SS00013).
- Item H.5. **Austin A. and Kailey R. Mahan.** Feltner/Tobia. Approved the request of changing zoning classification from AU to BU-2 with a BDP retaining all BU-1 uses, limiting the BU-2 use to kayak storage only, and limiting egress only to E.R. Smyth Drive, with ingress and egress to U.S. Highway 1. as recommended. (22Z00054).
- Item H.6. **Matthew and Christine Morak.** Feltner/Tobia. Approved the request of changing zoning classification from AU to RR-1 as recommended. (23Z00010).
- Item H.7. **Melanie Rondeau and Zakry Corter.** Tobia/Godson. Approved the request of changing zoning classification from GU to RRMH-1 as recommended. (22Z00056).
- Item H.8. **Terrance P. and Peggy A. Mulreany.** Feltner/Tobia. Adopted Ordinance No. 23-08, setting forth the twentieth Small Scale Comprehensive Plan Amendment (22S.20), Approved the request of a Small Scale Comprehensive Plan Amendment to change the Future Land Use designation from NC and RES 4 to CC as recommended. (22SS00017).
- Item H.9. **Terrance P. and Peggy A. Mulreany.** Feltner/Goodson. Approved the request of changing zoning classification from GU to BU-2 as recommended. (22Z00073).
- Item H.10. **Norman Leigh Sherman Jr. and Karen Denise Turowski.** Feltner/Goodson. Adopted Ordinance No. 23-09, setting forth the eighteenth Small Scale Comprehensive Plan Amendment (22S.17), Approved the request of a Small Scale Comprehensive Plan Amendment