



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Consent

F.3.

11/9/2021

Subject:

Acceptance, Re: Binding Development Plan with 395 East, LLC (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 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 5, 2021, the Board approved a change of zoning classification from SEU to EU, with a BDP containing the following conditions:

- A maximum of four single-family residences shall be constructed upon the Property.
- Home or portion thereof shall not exceed a height of 35 feet.
- No guest houses shall be constructed on the Property.
- Ingress/egress shall be by newly constructed driveway to both South Courtenay Parkway and South Tropical Trail.
- Ingress/egress or use of Curry Dell Lane to access the Property is prohibited.
- Each residence must connect to the sanitary sewer system if available at time of permitting and if sewer is unavailable at the time of permitting, each residence must be plumbed to an advanced septic system providing not less than 65% nitrogen removal.

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

Clerk to the Board Instructions:

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



November 10, 2021

M E M O R A N D U M

TO: Jennifer Jones, Zoning

RE: Item F.3., Binding Development Plan Agreement with 395 East, LLC

The Board of County Commissioners, in regular session on November 9, 2021, executed Binding Development Plan with 395 East, LLC. Said Plan was recorded in OR/BK 9324/583. 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
Kimberly Powell, Clerk to the Board

/dt

Encls. (2)

Resolution 21Z00018

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

WHEREAS, 395 East, LLC has requested a change of zoning classification from SEU (Suburban Estate Use Residential) to EU (Estate Use Residential), on property described as Tax Parcel 31, as recorded in ORB 8888, Page 1802, of the Public Records of Brevard County, Florida. **Section 24, Township 25, Range 36.** (6.33 acres) Located on the southwest corner of Curry Dell Ln., and S. Courtenay Pkwy. (No assigned address. In the Merritt Island area.); 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 no more than four single-family residences; residences not to exceed two stories; no ingress/egress to Curry Dell Lane; utilization of the advanced septic systems; and a maximum height of structures not to exceed 35 feet; and

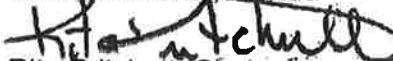
WHEREAS, the Board, after considering said application and Brevard County Planning and Zoning Board's recommendation, and hearing all interested parties, and after due and proper consideration having been given to the matter, find that the application should be approved with a BDP, including but not 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; now therefore,

BE IT RESOLVED by the Board of County Commissioners of Brevard County, Florida, that the requested change of zoning classification from SEU to EU be approved with a BDP, recorded on November 12, 2021, in ORB 9324, Pages 583 - 591, 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. 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 November 9, 2021.

BOARD OF COUNTY COMMISSIONERS

Brevard County, Florida



Rita Pritchett, Chair

Brevard County Commission

As approved by the Board on November 9, 2021.

ATTEST



RACHEL SADOFF, CLERK

(SEAL)

Planning and Zoning Board Hearing – July 12, 2021

Board of County Commissioners Zoning 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:
Dale A. Dettmer, Esquire
KRASNY AND DETTMER
304 South Harbor City Blvd., Suite 201
Melbourne, FL 32901

BINDING DEVELOPMENT PLAN

THIS AGREEMENT, entered into this _____ day of September, 2021 between the **BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA**, a political subdivision of the State of Florida ("County") and **395 EAST, LLC**, a Florida limited liability company ("Developer/Owner").

RECITALS

WHEREAS, Developer/Owner owns property ("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 EU zoning classification and desires to develop the Property into four (4) single-family residential lots pursuant to the Brevard County Code, Section 62-1157 as depicted on Exhibit "B"; and

WHEREAS, as part of its plan for development of the Property, Developer/Owner wishes to mitigate negative impact on abutting landowners and affected facilities or services; and

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

NOW, THEREFORE, the parties agree as follows:

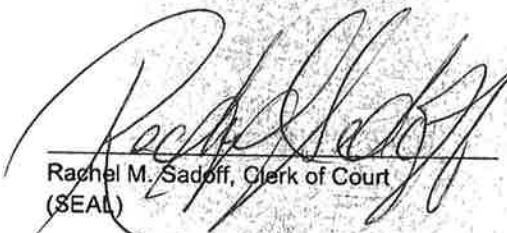
1. The above recitals are true and correct and are incorporated into this Agreement by their reference.
2. The County shall not be required or obligated in any way to construct or maintain or participate in any way in the construction or maintenance of the improvements. It is the intent of the parties that the Developer/Owner, their 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 agrees that (i) a maximum of four (4) single-family residences shall be constructed upon the Property; (ii) homes or portion thereof shall not exceed a height of thirty-five (35) feet; (iii) no guest houses shall be constructed on the property; (iv) ingress/egress shall be by newly constructed driveway to both South Courtenay Parkway and South Tropical Trail; (v) ingress/egress

- or use of Curry Dell Lane to access the Property is prohibited; and (vi) each residence must connect to the sanitary sewer system if available at time of permitting and if sewer is unavailable at the time of permitting, each residence must be plumbed to an advanced septic system providing not less than 65% nitrogen removal.
4. Developer/Owner shall comply with all regulations and ordinances of Brevard County, Florida. This Agreement constitutes Developer's/Owner's agreement to meet any 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 August 5, 2021. In the event the Property is annexed into a municipality or 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.

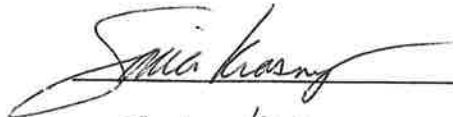
ATTEST:


Rachel M. Sadoff, Clerk of Court
(SEAL)

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


Rita Pritchett, Chair
As approved by the Board on 11/09/2021

WITNESSES:



Sonia Kowal
(Witness Name typed or printed)

395 EAST, LLC, a Florida limited liability
company, as DEVELOPER/OWNER

By: 

Michael E. Maguire, Manager

Address: 18 Marina Isle Blvd. #304
Indian Harbour Beach, FL 32937

STATE OF FLORIDA

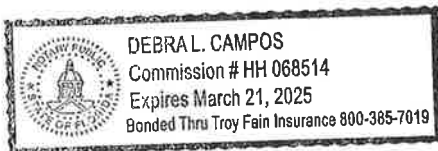
COUNTY OF BREVARD

The foregoing instrument was acknowledged before me, by means of ☒ physical presence or
_____ online notarization, this 5 day of October, 2021, by Michael E. Maguire, Manager of 395
East, LLC, a Florida limited liability company, who is personally known to me or who has produced
as identification.

My commission expires 3-21-2025
SEAL
Commission No.: HH 068514




Notary Public
(Name typed, printed or stamped)



WITNESSES:

FLORIDA DEVELOPMENT COMPANY, LLC, a Florida
limited liability company, as MORTGAGEE



Yelena Todorova
(Witness Name typed or printed)

By:



Alex Berkovich, Manager

Address: 1835 E. Hallandale Beach Blvd., #807
Hallandale Beach, Florida 33009

STATE OF FLORIDA

COUNTY OF BROWARD

The foregoing instrument was acknowledged before me, by means of ☒ physical presence or
_____ online notarization, this 3 day of October, 2021, by Alex Berkovich,
Manager of Florida Development Company, LLC, a Florida limited liability company, who is personally
known to me or who has produced _____ as identification.

My commission expires
SEAL
Commission No.:





Notary Public

(Name typed, printed or stamped)

Yelena Todorova

Exhibit "A"

A parcel of land being part of Government Lot 4, Section 24, Township 25 South, Range 36 East and part of Government Lot 5, Section 19, Township 25 South, Range 37 East described in Official Records Book 261, Page 620 lying east of State Road 3, less and except that portion as described in Official Records Book 701, Page 87, of the Public Records of Brevard County, Florida, together being more particularly described as follows:

A strip of land 8 rods 7 1/2 feet wide extending across Merritt Island from Indian River to Banana River, the south line of which is a line 63 rods north of and parallel to the south line of Section 24, Township 25 South, Range 36 East also 63 rods north of and parallel to the south line of Section 19, Township 25 South, Range 36 East and the north line of which is 146.4 feet south of the north line of United States Government Lot 4 of Section 24, Township 25 South, Range 36 East and 146.4 feet south of the north line of United States Government Lot 5, Section 19, Township 25 South, Range 37 East.

Less and except therefrom that portion of the aforesaid strip extending from the paved State Road running northerly and southerly across the above described property to the Indian River.

Also, less and except that portion thereof described in deed from Raymond F. Holland and Ruby E. Holland, his wife, in favor of Archie P. Barksdale and Dorothy D. Barksdale, his wife, dated June 17, 1964 and recorded in Official Records Book 701, Page 87 of the Public Records of Brevard County, Florida being described as follows:

Begin at the Southwest corner of the property described In Official Records Book 261, Page 620 and for a first course run Northwesterly along the West line of said land which is also the East right of way of State Road 3, as presently located, 147.30 feet to the Northwest corner of said land; thence run easterly along the north line of said land 257.10 feet to a point; thence run Southerly perpendicular to said North line 139.40 feet to the South line of said land; thence run Westerly along said South line 210.00 feet to the Point of Beginning. Less the South 35 feet thereof.

Less a right of way 100 feet wide through that portion of Government Lot 5, Section 19, Township 25 South, Range 37 East as described In Official Records Book 795, Page 28, Public Records of Brevard County, Florida, the centerline of which is described as follows: Beginning at a point on the North line of that parcel of land described in Official Records Book 261, Page 620 which is 752.26 feet East of the East line of Section 24, Township 25 South, Range 36 East, Brevard County, Florida; thence run South 20°40'45" East a distance of 141.72 feet to the South line of the above referenced parcel.

Exhibit "B"



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 03/04/2021, given by 395 East, LLC, as mortgagor, in favor of the undersigned, Florida Development Company, LLC, as mortgagee, recorded in Official Records Book 9042, Page 580, 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

Florida Development Company, LLC

Mortgagee Corporation Name

1835 E. Hallandale Bch Blvd, # 807 Hallandale Beach FL 33009

Street

City

State

Zip Code



Alex Berkovich, Manager

*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

Karen DeLong
Signature

Karen De Long
Print Name

Arlene Grant
Signature

ARLENE GRANT.
Print Name

STATE OF Florida

COUNTY OF Brevard

The foregoing instrument was acknowledged before me this 12 day of Oct, 20 21
by Alexander Berkovich, who is personally known to me or who has produced
FLDL as identification.

Karen DeLong
Notary Public Signature

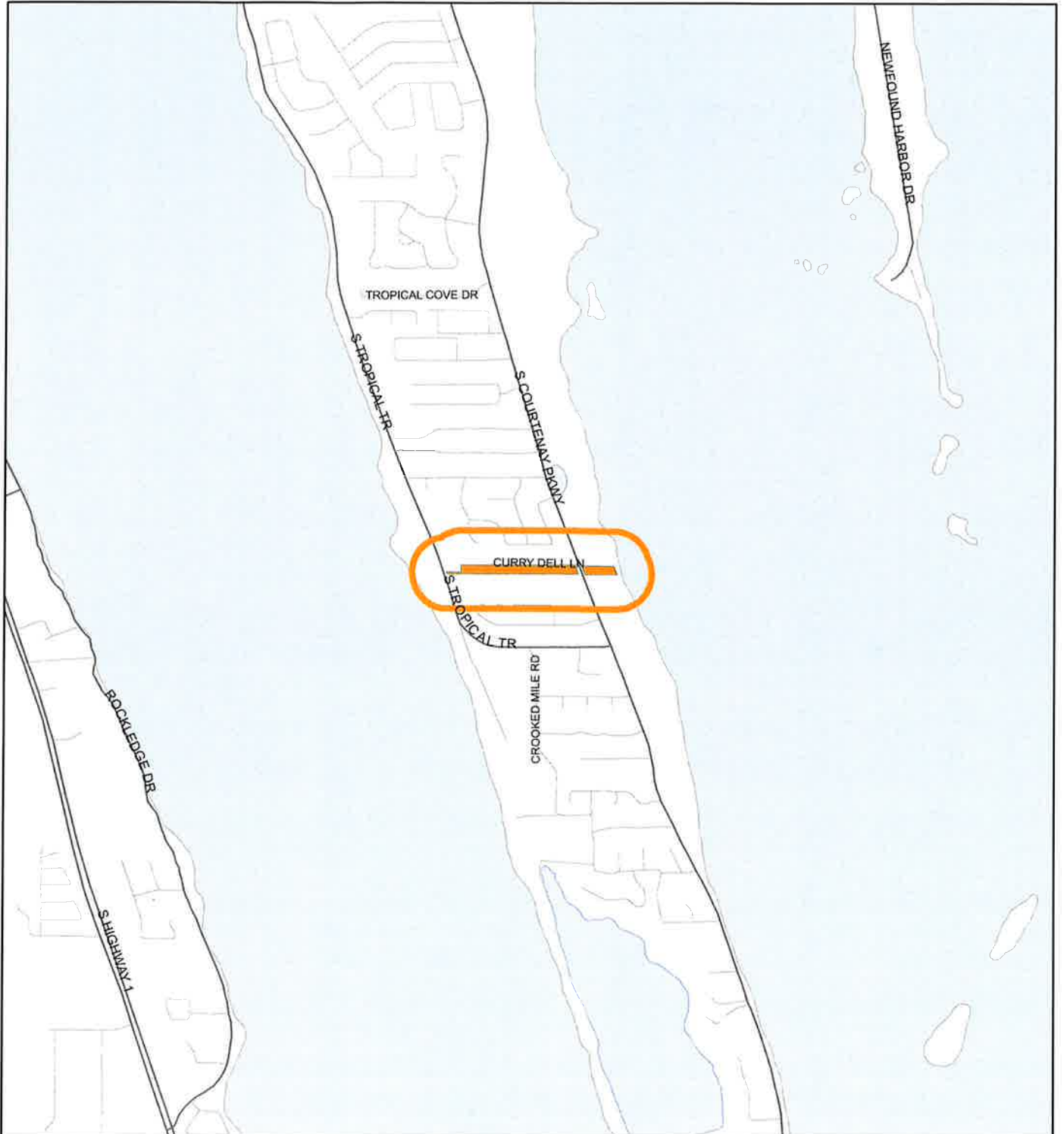
Karen DeLong
Name Printed

SEAL



LOCATION MAP

395 EAST, LLC
21Z00018



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

Buffer Distance: 500 feet

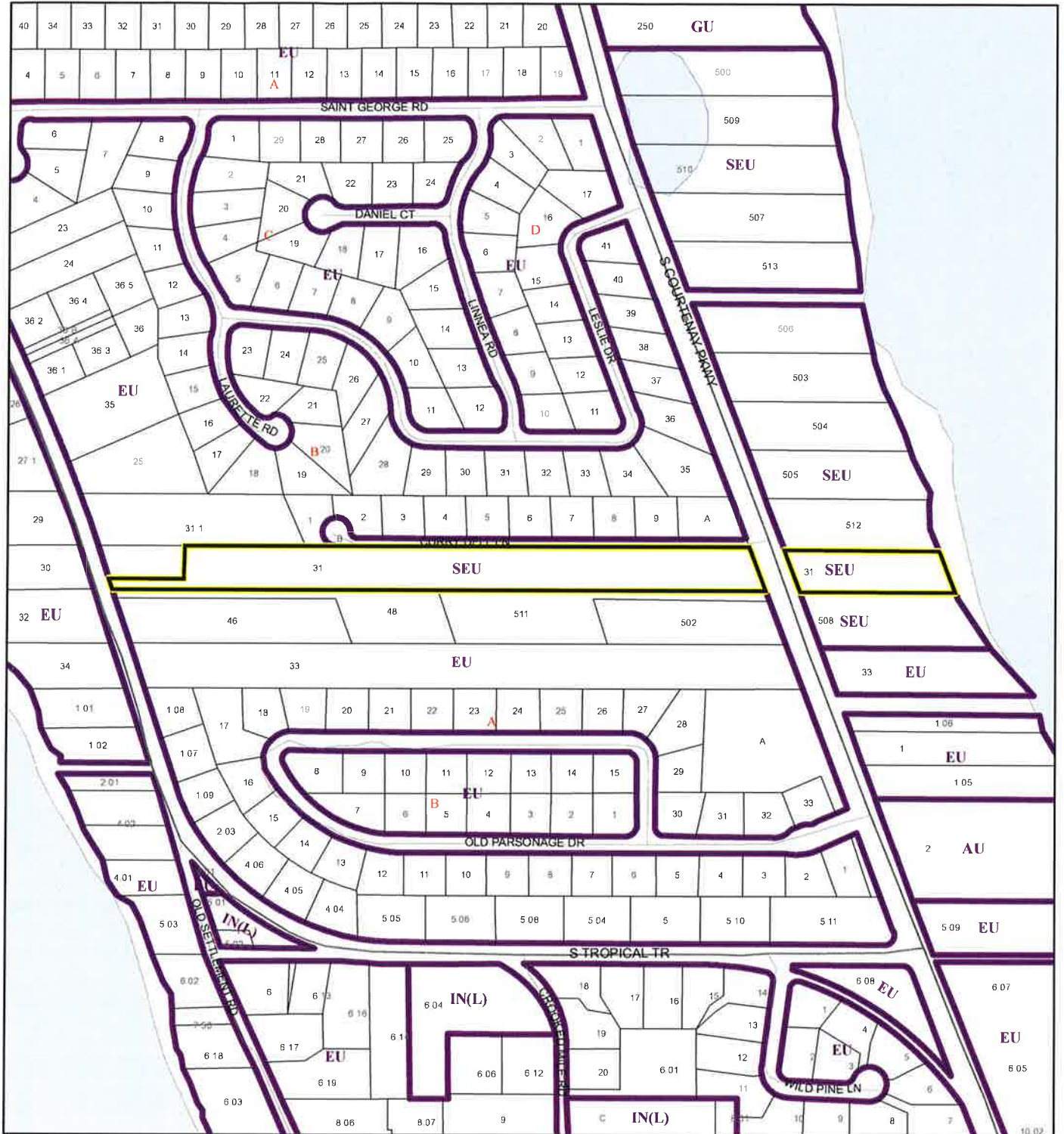
This map was compiled from recorded documents and does not reflect an actual survey. The Brevard County Board of County Commissioners does not assume responsibility for errors or omissions hereon.

Produced by BoCC - GIS Date: 5/10/2021

Buffer
Subject Property

ZONING MAP

395 EAST, LLC
21Z00018



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: 5/10/2021

- Subject Property
- Parcels
- Zoning

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).

was unanimous.

Board of County Commissioners Action: Lober/Smith - Tabled to the 11/04/21 BCC Zoning meeting. The vote was unanimous, with Commissioner Tobia absent.

5. **SCHWAB CONSTRUCTION GROUP, INC.** (Daniel Lee Schwab) requests a change of zoning classification from BU-1 (General Retail Commercial) to RU-2-15 (Medium Density Multi-Family Residential). The property is 0.94 acres, located on the southeast corner of Palmetto Ave. and Burnwood Dr. (141 Burnwood Dr. and 165 Palmetto Ave., Merritt Island) (21Z00015) (Tax Account 2426535) (District 2)

Planning and Zoning Board Recommendation: Bartcher/Buchanan - Approved. The vote was unanimous.

Board of County Commissioners Action: Lober/Smith - Approved as recommended. The vote was unanimous, with Commissioner Tobia absent.

6. **395 EAST, LLC** (Alex Berkovich) requests a change of zoning classification from SEU (Suburban Estate Use) to EU (Estate Use Residential). The property is 6.33 acres, located on the southwest corner of Curry Dell Lane and S. Courtenay Pkwy. (No assigned address. In the Merritt Island area.) (21Z00018) (Tax Account 2511450) (District 2)

Planning and Zoning Board Recommendation: Hodgers/Bartcher - Approved with a BDP limited to no more than four single-family residences; residences not to exceed two stories; no ingress/egress to Curry Dell Lane; utilization of the advanced septic systems; and a maximum height of structures not to exceed 35 feet. The vote was 5:1, with Filiberto voting nay.

Board of County Commissioners Action: Lober/Smith - 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. 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.

7. **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 Turtlemound Rd. (4090 Aurora Rd., Melbourne) (21PZ00030) (Tax Account 2702879) (District 5)

Planning and Zoning Board Recommendation: Filiberto/Buchanan - Tabled to the 07/26/21 LPA meeting due to lack of quorum. The vote was unanimous.