



# Agenda Report

2725 Judge Fran Jamieson  
Way  
Viera, FL 32940

## Consent

F.7.

9/14/2021

### Subject:

Acceptance, Re: Binding Development Plan with North Pad, LLC (f.k.a. Cooltural Land, 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 May 27, 2021, the Board approved a change of zoning classification from BU-1 to BU-2, with a BDP to include a 20-foot vegetative buffer with no administrative waiver, on the entire north and east boundaries; to include a 25-foot use buffer on the entire north and east boundaries; to include an 8-foot opaque PVC or wood fence, from finished floor elevation, or a 12-foot opaque PVC or wood fence, from filled grade, at the entirety of the north and east boundaries at the 25-foot use buffer location, not at the property edge; and to preclude the following uses as defined in Section 62-1483(1)(b): aquariums; auditoriums; automobile hire; automobile repairs (as defined in Section 62-1102); automobile washing; billiard rooms and electronic arcades; bottling beverages; bowling alleys; cafeterias; child or adult day care centers; colleges and universities; commercial schools offering instruction in dramatic, musical, or other cultural activity, including martial arts; conservatories; convenience stores, with or without gasoline sales; dancing halls and academies; dry cleaning and laundry pickup stations; dry cleaning plants; dyeing and carpet cleaning; fertilizer stores; foster homes; fraternities and sororities; funeral homes and mortuaries; furriers; group homes, levels I and II; hospitals; ice plants; kindergartens; laundries; nursing homes; paint and body shops; parking lots (commercial); pawn shops; pet kennels; pet shops; resort dwellings; sale of alcoholic beverages, package only; seafood processing plants; sharpening and grinding shops; television and broadcasting stations; theaters; tobacco stores; and welding repair. The following uses as defined in Section 62-1483(1)(c) are also precluded: assisted living facility; automobile and motorcycle repair (major) and paint and body work; automobile tires and mufflers (new) (sales and service); boat service; cemeteries and mausoleums; commercial entertainment

and amusement enterprises; crematoriums; engine sales and service; farm machinery sales and services; garage or mechanical service; gasoline service stations; manufacturing, compounding, processing, packaging, storage, treatment or assembly of certain products; motorcycle sales and service; railroad; motor truck and water freight and passenger stations; recovered materials processing facility; service station for automotive vehicles and U-Haul service; substations and transmission facilities; tourist efficiencies and hotels and motels; and treatment and recovery facilities.

**Clerk to the Board Instructions:**

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

## Resolution 21Z00009

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

**WHEREAS, North Pad, LLC (f.k.a. Cooltural Land, LLC)** have requested a change of zoning classification from BU-1 (General Retail Commercial) to BU-2 (Retail, Warehousing, and Wholesale Commercial), on property described as Tax Parcel 5, as recorded in ORB 8116, Pages 487 – 488, if the Public Records of Brevard County, Florida. **Section 27, Township 23, Range 36.** (1.02 acres) Located on the east side of N. Courtenay Pkwy., approx. 700 ft. south of Crisafulli Rd. (No assigned address. In the Merritt Island area.); and

**WHEREAS,** a public hearing of the North Merritt Island Dependent Special District Board was advertised and held, as required by law, and after hearing all interested parties and considering the adjacent areas, the North Merritt Island Dependent Special District Board recommended that the application be denied; and


**WHEREAS,** the Board, after considering said application and North Merritt Island Dependent Special District 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 (Binding Development Plan) to include a 20-foot Vegetative Buffer with no administrative waiver, on the entire North and East Boundaries; to include a 25-foot Use Buffer on the entire North and East Boundaries; to include an 8-foot opaque PVC or wood fence, from finished floor elevation, or a 12-foot opaque PVC or wood fence, from filled grade, at the entirety of the North and East Boundaries at the 25-foot Use Buffer location, not at the property edge; to preclude the following uses, as defined in Section 62- 1483(1)(b): aquariums, auditoriums, automobile hire, automobile repairs (as defined in Section 62-1102), automobile washing, billiard rooms and electronic arcades, bottling beverages, blowing alleys, cafeterias, child or adult day care centers, colleges and universities, commercial schools offering instruction in dramatic, musical, or other cultural activity, including martial arts, conservatories, convenience stores, with or without gasoline sales, dancing halls and academies, dry cleaning and laundry pickup stations, dry cleaning plants, dyeing and carpet cleaning, fertilizer stores, foster homes, fraternities and sororities, funeral homes and mortuaries, furriers, group homes, levels I and II, hospitals, ice plants, kindergartens, laundries, nursing homes, paint and body shops, parking lots (commercial), pawn shops, pet kennels, pet shops, resort dwellings, sale of alcoholic beverages, package only, seafood processing plants, sharpening and grinding shops, television and broadcasting stations, theaters, tobacco stores, welding repair; and to preclude the following uses, as defined in Section 62- 1483(1)(c): assisted living facility, automobile and motorcycle repair (major) and paint and body work, automobile tires and mufflers (new) (sales and service), cemeteries and mausoleums, commercial entertainment and amusement enterprises, crematoriums, engine sales and service, farm machinery sales and services, garage or mechanical service, gasoline service stations, manufacturing, compounding, processing, packaging, storage, treatment or assembly of certain products, motorcycle sales and service, railroad, motor truck and water freight and passenger stations, recovered materials processing facility, service station for automotive vehicles and U-Haul service, substations, and transmission facilities, tourist efficiencies and hotels and motels, treatment and recovery facility; 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 to BU-2, be approved with a BDP, recorded on September 15, 2021, in ORB 9258, Pages 568 - 574, to include a 20-foot Vegetative Buffer with no administrative waiver, on the entire North and East Boundaries; to include a 25-foot Use Buffer on the entire North and East Boundaries; to include an 8-foot opaque PVC or wood fence, from finished floor elevation, or a 12-foot opaque PVC or wood fence, from filled grade, at the entirety of the North and

East Boundaries at the 25- foot Use Buffer location, not at the property edge; to preclude the following uses, as defined in Section 62- 1483(1)(b): aquariums, auditoriums, automobile hire, automobile repairs (as defined in Section 62-1102), automobile washing, billiard rooms and electronic arcades, bottling beverages, blowing alleys, cafeterias , child or adult day care centers, colleges and universities, commercial schools offering instruction in dramatic, musical, or other cultural activity, including martial arts, conservatories, convenience stores, with or without gasoline sales, dancing halls and academies, dry cleaning and laundry pickup stations, dry cleaning plants, dyeing and carpet cleaning, fertilizer stores, foster homes, fraternities and sororities, funeral homes and mortuaries, furriers, group homes, levels I and II, hospitals, ice plants, kindergartens, laundries, nursing homes, paint and body shops, parking lots (commercial), pawn shops, pet kennels, pet shops, resort dwellings, sale of alcoholic beverages, package only, seafood processing plants, sharpening and grinding shops, television and broadcasting stations, theaters, tobacco stores, welding repair; and to preclude the following uses, as defined in Section 62- 1483(1)(c): assisted living facility, automobile and motorcycle repair (major) and paint and body work, automobile tires and mufflers (new) (sales and service), cemeteries and mausoleums, commercial entertainment and amusement enterprises, crematoriums, engine sales and service, farm machinery sales and services, garage or mechanical service, gasoline service stations, manufacturing, compounding, processing, packaging, storage, treatment or assembly of certain products, motorcycle sales and service, railroad, motor truck and water freight and passenger stations, recovered materials processing facility, service station for automotive vehicles and U-Haul service, substations, and transmission facilities, tourist efficiencies and hotels and motels, treatment and recovery facility. 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 September 15, 2021.

BOARD OF COUNTY COMMISSIONERS  
Brevard County, Florida



Rita Pritchett, Chair  
Brevard County Commission  
As approved by the Board on September 14,

2021.

ATTEST:



RACHEL M. SADOFF, CLERK

(SEAL)

NMI Hearing – May 13, 2021  
P&Z Hearing - May 17, 2021  
BCC Zoning Hearing - May 27, 2021

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.



September 15, 2021

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

**TO:** Jennifer Jones, Zoning

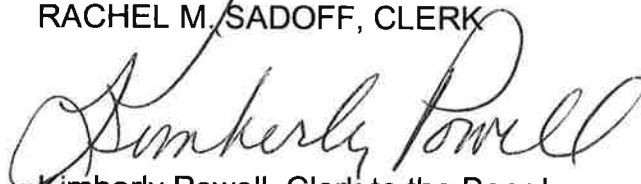
**RE:** Item F.7., Binding Development Plan Agreement with North Pad, LLC

The Board of County Commissioners, in regular session on September 14, 2021, executed Binding Development Plan with North Pad, LLC. Said Plan was recorded in OR/BK 9258/568. 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)

Prepared by: MBV Engineering, Inc.  
Address: 1250 W. Eau Gallie Blvd., Melbourne, FL 32935

### **BINDING DEVELOPMENT PLAN**

THIS AGREEMENT, entered into this 9th day of September, 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 North Pad, 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 contractor trades, warehouse, and storage, 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. Recitals. The above recitals are true and correct and are incorporated into this Agreement by this 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 be prohibited from the BU-2 uses shown on Exhibit B."
4. The Developer/Owner shall provide a twenty (20) foot wide vegetative buffer with no administrative waiver on the entire North and East property lines and a twenty-five (25) foot use buffer on the entire North and East property lines of the subject property and install an opaque PVC, metal or wood fence along the 25' use buffer line and not at the property line. The fence height shall be either eight (8) feet above the building finished floor or twelve (12) feet from filled grade.
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 as described herein 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 May 27, 2021. 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.

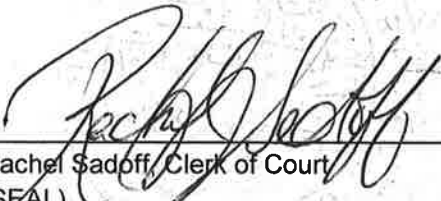


10. Severability clause. If any provision of this BDP is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provision shall continue in full force and effect without being impaired or invalidated in any way.

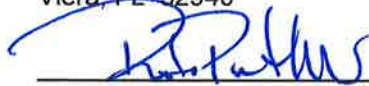
**The remainder of this page is left blank intentionally**

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 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 9/14/21

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


WITNESSES:

  
Dana Kovacs  
(Witness Name typed or printed)

North Pad, LLC  
as DEVELOPER/OWNER

1615 MERCURY ST  
MERRITT ISLAND, FL 32953  
(Address)


  
Makenzie Kline  
(Witness Name typed or printed)

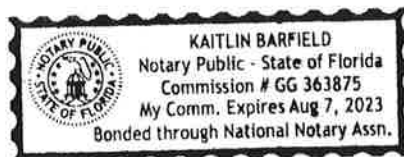
  
(President)  
THOMAS R. JONES  
(Name typed, printed or stamped)

STATE OF Florida §  
COUNTY OF Brevard §

The foregoing instrument was acknowledged before me, by means of X physical presence or  
\_\_\_\_\_ online notarization, this 9 day of September, 2021, by  
North Pad, LLC (Thomas R. Jones), President of North Pad, LLC, who is  
personally known to me or who has produced Driver's License as identification.

My commission expires  
SEAL  
Commission No.:

  
\_\_\_\_\_  
Notary Public  
(Name typed, printed or stamped)



## **Exhibit A**

### **LEGAL DESCRIPTION:**

BEGIN AT THE NORTHEAST CORNER OF SECTION 27, TOWNSHIP 23 SOUTH, RANGE 36 EAST, BREVARD COUNTY, FLORIDA. THENCE RUN SOUTH 00 DEGREES 46'22" WEST ALONG THE EAST LINE OF SECTION

27, A DISTANCE OF 285 FEET TO THE POINT OF BEGINNING. FROM SAID POINT OF BEGINNING CONTINUE SOUTH 00 DEGREES 46'22" WEST ALONG THE EAST LINE OF SECTION 27 A DISTANCE OF 227.88 FEET TO A POINT; THENCE FOR A SECOND COURSE RUN NORTH 89 DEGREES 30'51" WEST PARALLEL TO THE NORTH LINE OF SECTION 27 A DISTANCE OF 191.87 FEET MORE OR LESS TO THE EASTERLY RIGHT OF WAY OF SAID ROAD (COURTENY PARKWAY) OR STATE ROAD 3; THENCE FOR A THIRD COURSE RUN NORTH 01 DEGREES 04'40" WEST ALONG THE EASTERLY RIGHT OF WAY OF SAID ROAD, A DISTANCE OF 227.88 FEET; THENCE FOR A FOURTH COURSE RUN SOUTH 89 DEGREES 30'51" EAST, A DISTANCE OF 199.29 FEET TO THE POINT OF BEGINNING.

## EXHIBIT "B"

### BDP PRECLUDED USES NORMALLY PERMITTED UNDER BU-2:

From Sec. 62-1483 (1) b.:

- Aquariums
- Auditoriums
- Automobile hire
- Automobile repairs (as defined in Section 62-1102)
- Automobile washing
- Billiard rooms and electronic arcades
- Bottling beverages
- Bowling alleys
- Cafeterias
- Child or adult day care centers
- Colleges and universities
- Commercial schools offering instruction in dramatic, musical or other cultural activity, including martial arts
- Conservatories
- Convenience stores, with or without gasoline sales
- Dancing halls and academies
- Dry cleaning and laundry pickup stations
- Dry cleaning plants
- Dyeing and carpet cleaning
- Fertilizer stores
- Foster homes
- Fraternities and sororities
- Funeral homes and mortuaries
- Furriers
- Group homes, levels I and II
- Hospitals
- Ice plants
- Kindergartens
- Laundries
- Nursing homes
- Paint and body shops
- Parking lots (commercial)
- Pawn shops
- Pet kennels
- Pet shops
- Resort dwellings

BDP PRECLUDED USES NORMALLY PERMITTED UNDER BU-2 (continued):

From Sec. 62-1483 (1) b. (continued):

Sale of alcoholic beverages, package only  
Seafood processing plants (would not be allowed anyway due to contiguous residential property to the east)  
Sharpening and grinding shops  
Television and broadcasting stations  
Theaters  
Tobacco stores  
Welding repairs

From Sec. 62-1483 (1) c.:

Assisted living facility  
Automobile and motorcycle repair (major) and paint and body work  
Automobile tires and mufflers (new) (sales and service)  
~~Boat sales and service~~  
Cemetaries and mausoleums  
Commercial entertainment and amusement enterprises  
Crematoriums  
Engine sales and service  
Farm machinery sales and services  
Garage or mechanical service  
Gasoline service stations  
Manufacturing, compounding, processing, packaging, storage, treatment or assembly of certain products  
Motorcycle sales and service  
Railroad, motor truck and water freight and passenger stations  
Recovered materials processing facility  
Service station for automotive vehicles and U-haul service  
Substations, and transmission facilities  
Tourist efficiencies and hotels and motels  
Treatment and recovery facility

STATE OF FLORIDA  
COUNTY OF BREVARD

Thomas Rilea Jones, after being duly sworn, deposes and says:

The undersigned is the owner of the real property described as follows:

Begin at the Northeast corner of Section 27, Township 23 South, Range 36 East, Brevard County, Florida, Thence run South 00 degrees 46 minutes 22 seconds West along the East line of Section 27, a distance of 285 feet to the Point of Beginning. From said Point of Beginning continue South 00 degrees 46 minutes 22 seconds West along the East line of Section 27 a distance of 227.88 feet to a point; Thence for a second course run North 89 degrees 30 minutes 51 seconds West parallel to the North line of said Section 27 a distance of 191.87 feet more or less to the Easterly right of way of said road (Courtenay Parkway) or State Road 3; Thence for a third course run North 01 degrees 04 minutes 40 seconds West along the Easterly right of way of said road, a distance of 227.88 feet, Thence for a fourth course run South 89 degrees 30 minutes 51 seconds East, a distance of 199.29 feet to the Point of Beginning.

Parcel ID Number: 23-36-27-00-5

There are no mortgages on the above described property.

Dated this 9 day of Sept, 2021.

Signature



STATE OF FLORIDA  
COUNTY OF BREVARD

The foregoing instrument was sworn to before me this 9th day of September, 2021, by Thomas Rilea Jones, who is personally known to me or who has produced Florida Driver's License # J520836533310 as identification, and who did take an oath.

Notary Public:   
State of Florida at Large  
My Commission Expires:

(SEAL)