



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Consent

F.1.

9/7/2023

Subject:

Acceptance, Re: Binding Development Plan with Norfolk Parkway, LLC (District 5)

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 July 13, 2023, the Board of County Commissioners approved an amendment to an existing BDP in a BU-2 (Retail, Warehousing, and Wholesale Commercial) zoning classification, as follows:

- Developer/Owner shall provide a 50-foot undisturbed vegetative buffer and maintain the existing vegetative buffer along the west and north boundaries of the Property. No improvements shall be allowed within the buffer.
- Developer/Owner shall limit the number of outdoor storage spaces to 350.
- Developer/Owner shall limit ingress and egress to Norfolk Parkway.
- The site shall be developed as a Boat and RV and Self-Storage mini-warehouse facility and related ancillary services and facilities.
- Any and all buildings and/or structures shall be limited to 25 feet in height.
- No sewage dump station shall be allowed, unless public sewer connection is obtained.
- Outdoor lighting is limited to 17 feet in height from grade to bottom of light fixture.
- Developer/Owner shall provide a traffic study detailing any required roadway improvements including, but not limited to, a westbound right turn lane, at the time of site plan submittal. If an improvement is warranted, and is approved by the City of West Melbourne, it shall be constructed accordingly.
- No residing or overnight stays within the stored vehicles shall be allowed.
- Developer/Owner shall comply with all applicable requirements of the FDEP Guidance for Disturbance and Use of Old Closed Landfills or Waste Disposal Areas in Florida.

The attached BDP includes these provisions.

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 12, 2023

MEMORANDUM

TO: Jennifer Jones, Zoning

RE: Item F.1., Binding Development Plan with Norfolk Parkway, LLC

The Board of County Commissioners, in regular session on September 7, 2023, executed Binding Development Plan (BDP) with Norfolk Parkway, LLC, for a portion of lands described in ORB 3277, Pages 924, of the Public Records of Brevard County, Florida, said lands lying in Section 13, Township 28S, Range 36E, and being more particularly describes as follows: Beginning at the SW corner of Tract ST-1, Sawgrass Lakes Phase One, according to the plat thereof, as recorded in Plat Book 60, pages 52-63 of the said public records, said point being the point of beginning; thence S89deg32'31"W, along the north right-of-way line of Norfolk Parkway, per said Sawgrass Lakes Phase One, a distance of 662.33 feet to the easterly line of said Sawgrass Lakes Phase One; thence N01deg30'06"E, along said east line, a distance of 662.19 feet to the east line of Parcel 1 of said ORB 3277, Page 924; thence S01deg29'41"W, along the east line of said Parcel 1 and the east line of Parcel 2 of ORB 3277, Page 924, a distance of 1,151.69 feet to the point of beginning. Enclosed is two certified copies of the BDP.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
RACHEL M. SADOFF, CLERK

Kimberly Powell, Clerk to the Board

hbs

Encls. (2)

Resolution 23Z00012

On motion by Commissioner Feltner, seconded by Commissioner Goodson, the following resolution was adopted by a unanimous vote:

WHEREAS, Norfolk Parkway, LLC, has requested an amendment to an existing BDP (Binding Development Plan) in a BU-2 (Retail, Warehousing, and Wholesale Commercial) zoning classification, on property described as Tax Parcel 758, as recorded in ORB 9335, Pages 2909 - 2910, of the Public Records of Brevard County, Florida. **Section 13, Township 28, Range 36.** (17.50 acres) Located on the north side of Norfolk Pkwy., approx. 1,200 ft. west of Minton Road. (Parcel 756 = 3545 Carriage Gate Dr. Unit Tower, Melbourne; Parcel 758 (part) = No assigned address. In the Melbourne 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 containing the following conditions: Developer/Owner shall provide a 50-foot undisturbed vegetative buffer and maintain the existing vegetative buffer along the west and north boundaries of the Property. No improvements shall be allowed within the buffer; Developer/Owner shall limit the number of outdoor storage spaces to 350; Developer/Owner shall limit ingress and egress to Norfolk Parkway; the site shall be developed as a Boat and RV and Self-Storage mini-warehouse facility and related ancillary services and facilities; any and all buildings and/or structures shall be limited to 25 feet in height; no sewage dump station shall be allowed, unless public sewer connection is obtained; outdoor lighting is limited to 17 feet in height from grade to bottom of light fixture; Developer/Owner shall provide a traffic study detailing any required roadway improvements including, but not limited to, a westbound right turn lane, at the time of site plan submittal. If an improvement is warranted, and is approved by the City of West Melbourne, it shall be constructed accordingly; no residing or overnight stays within the stored vehicles shall be allowed; Developer/Owner shall comply with all applicable requirements of the FDEP Guidance for Disturbance and Use of Old Closed Landfills or Waste Disposal Areas in Florida; 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 as recommended; now therefore,

BE IT RESOLVED by the Board of County Commissioners of Brevard County, Florida, that the requested amendment to an existing BDP, be approved with a BDP, recorded on 09/12/23, in ORB 9885, Pages 251 - 255, containing the following conditions: Developer/Owner shall provide a 50-foot undisturbed vegetative buffer and maintain the existing vegetative buffer along the west and north boundaries of the Property. No improvements shall be allowed within the buffer; Developer/Owner shall limit the number of outdoor storage spaces to 350; Developer/Owner shall limit ingress and egress to Norfolk Parkway; the site shall be developed as a Boat and RV and Self-Storage mini-warehouse facility and related ancillary services and facilities; any and all buildings and/or structures shall be limited to 25 feet in height; no sewage dump station shall be allowed, unless public sewer connection is obtained; outdoor lighting is limited to 17 feet in height from grade to bottom of light fixture; Developer/Owner shall provide a traffic study detailing any required roadway improvements including, but not limited to, a westbound right turn lane, at the time of site plan submittal. If an improvement is warranted, and is approved by the City of West Melbourne, it shall be constructed accordingly; no residing or overnight stays within the stored vehicles shall be allowed; Developer/Owner shall comply with all applicable requirements of the FDEP Guidance for Disturbance and Use of Old Closed Landfills or Waste Disposal Areas in Florida. 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 12, 2023.

BOARD OF COUNTY COMMISSIONERS
Brevard County, Florida

Rita Pritchett, Chair
Brevard County Commission

As approved by the Board on September 7, 2023.

ATTEST:

RACHEL SADOFF, CLERK

(SEAL)

Planning and Zoning Board Hearing – June 12, 2023
Board of County Commissioners Hearing – July 13, 2023

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

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 Norfolk Parkway, 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 a boat and RV and self storage facility 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 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. 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. Developer/Owner shall provide a 50 foot undisturbed vegetative buffer and maintain the existing vegetative buffer along the west and north boundaries of the Property. No improvements shall be allowed within the buffer.
4. The Developer/Owner shall limit the number of outdoor storage spaces to 350.
5. The Developer/Owner shall limit ingress and egress to Norfolk Parkway.
6. The site shall be developed as a Boat and RV and Self storage mini-warehouse facility and related ancillary services and facilities.
7. Any and all buildings and/or structures shall be limited to 25 feet in height.
8. No sewage dump station shall be allowed, unless public sewer connection is obtained.
9. Outdoor lighting is limited to 17 feet in height from grade to bottom of light fixture.
10. The Developer/Owner shall provide a traffic study detailing any required roadway improvements including, but not limited to a westbound right turn lane, at the time of site plan submittal. If an improvement is warranted, and is approved by the City of West Melbourne, it shall be constructed accordingly.
11. No residing or overnight stays within the stored vehicles shall be allowed.
12. The Developer/Owner shall comply with all applicable requirements of the FDEP Guidance for Disturbance and Use of Old Closed Landfills or Waste Disposal Areas in Florida.
13. 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 prior to issuance of an approved development order.
14. 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.
15. 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

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subject Property, and shall be subject to the above referenced conditions as approved by the Board of County Commissioners on July 13, 2023. In the event the subject Property is annexed into a municipality and rezoned, this Agreement shall be null and void.

16. 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.
17. 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 16 above.
18. Severability clause. If any provision of this BDP is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall continue in full force and effect without being impaired or invalidated in any way.

[The remainder of this page left intentionally blank]

JB

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 SEP 07 2023

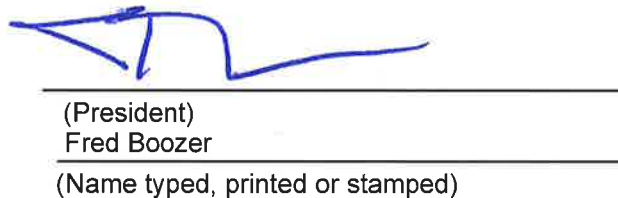
(Please note: You must have two witnesses and a notary for each signature required. The notary may serve as one witness.)

WITNESSES:

Carol Grove
(Witness Name typed or printed)

129 W. Hibiscus Blvd
Melbourne, FL 32901
(Address)

Tamy Costa
(Witness Name typed or printed)


(President)
Fred Boozer
(Name typed, printed or stamped)

STATE OF Florida §
COUNTY OF Brevard §

The foregoing instrument was acknowledged before me, by means of ☒ physical presence or
☐ online notarization, this 21st day of July, 2023, by
Fred Boozer, President of Norfolk Parkway LLC, who is
personally known to me or who has produced _____ as identification.

My commission expires
SEAL 10-17-23
Commission No.: HH 332439

Wanda Kessler
Notary Public
(Name typed, printed or stamped)

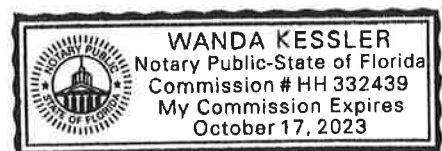


Exhibit "A"

A portion of the lands described in ORB 3277, Pages 924, of the Public Records of Brevard County, Florida, said lands lying in Section 13, Township 28S, Range 36E, and being more particularly described as follows: Beginning at the SW corner of Tract ST-1, Sawgrass Lakes Phase One, according to the plat thereof, as recorded in Plat Book 60, Pages 52 – 63 of the said public records, said point being the point of beginning; thence S89deg32'31"W, along the north right-of-way line of Norfolk Parkway, per said Sawgrass Lakes Phase One, a distance of 662.33 ft. to the easterly line of said Sawgrass Lakes Phase One; thence N01deg30'06"E, along said east line, a distance of 662.19 ft. to the east line of Parcel 1 of said ORB 3277, Page 924; thence S01deg29'41"W, along the east line of said Parcel 1 and the east line of Parcel 2 of ORB 3277, Page 924, a distance of 1,151.69 ft. to the point of beginning.

RACHEL M. SADOFF
CLERK OF THE CIRCUIT COURT & COMPTROLLER
BREVARD COUNTY, FLORIDA



POST OFFICE BOX 2767
TITUSVILLE, FLORIDA 32781-2767
(321) 637-2006
WWW.BREVARDCLERK.US

Transaction #: 3482611
Receipt #: 63292498
Cashier Date: 09/12/2023 03:16:47 PM
Cashier Branch: Titusville - Six Story

Print Date:
09/12/2023 03:16:51 PM

CUSTOMER INFORMATION

MBV ENGINEERING INC
1835 20TH ST
VERO BEACH, FL 32960-3569

TRANSACTION INFORMATION

Date Received: 09/12/2023
Source Code: Titusville - Six Story
Return Code: Mail (U.S. Postal Service)
Trans Type: Recording

PAYMENT SUMMARY

Total Fees: \$44.00
Total Payments: \$44.00
Balance Due: \$0.00

1 Payments

CHECK #4070 \$44.00

1 Recorded Items

AGREEMENT

BK/PG: 9885/251 CFN: 2023194807 Date: 09/12/2023 03:16:46 PM

From: To:

Recording @ 1st=\$10 Add'l=\$8.50 ea.

5

\$44.00

1 Miscellaneous Items

AGENT TRANSMITTAL



September 12, 2023

MEMORANDUM

TO: Recording

RE: Item F.1., Binding Development Plan with Norfolk Parkway, LLC

The Board of County Commissioners, in regular session on September 7, 2023, approved and accepted a Binding Development Plan with Norfolk Parkway, LLC. Enclosed are original Binding Development Plan Agreement and Check No. 4070 for \$44.00.

Please record the Agreement in the Public Records and return the recorded instrument to this office.

Your continued cooperation is always appreciated.

Sincerely,
BOARD OF COUNTY COMMISSIONERS
RACHEL M. SADOFF, CLERK

A handwritten signature in blue ink, which appears to read "Kimberly Powell", is written over the typed name.

Kimberly Powell, Clerk to the Board

/hbs

Encls. (2)

STATE OF FLORIDA
COUNTY OF BREVARD

Fred Boozer Jr. of Norfolk Parkway, LLC
_____, after being duly sworn, deposes and says:

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

(Insert legal description of property here)

There are no mortgages on the above described property

Dated this 19th day of April, 2022.

JB

Signature

STATE OF FLORIDA
COUNTY OF BREVARD

The foregoing instrument was sworn to before me this 19th day of April 2022 by
Fred Boozer Jr., who is personally known to me or who has
produced _____ as identification, and who did take an oath.

Notary Public:

Wanda Walker

State of Florida at Large

My Commission Expires: 10-17-2023

(SEAL)

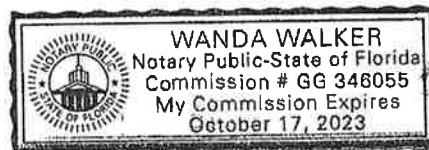


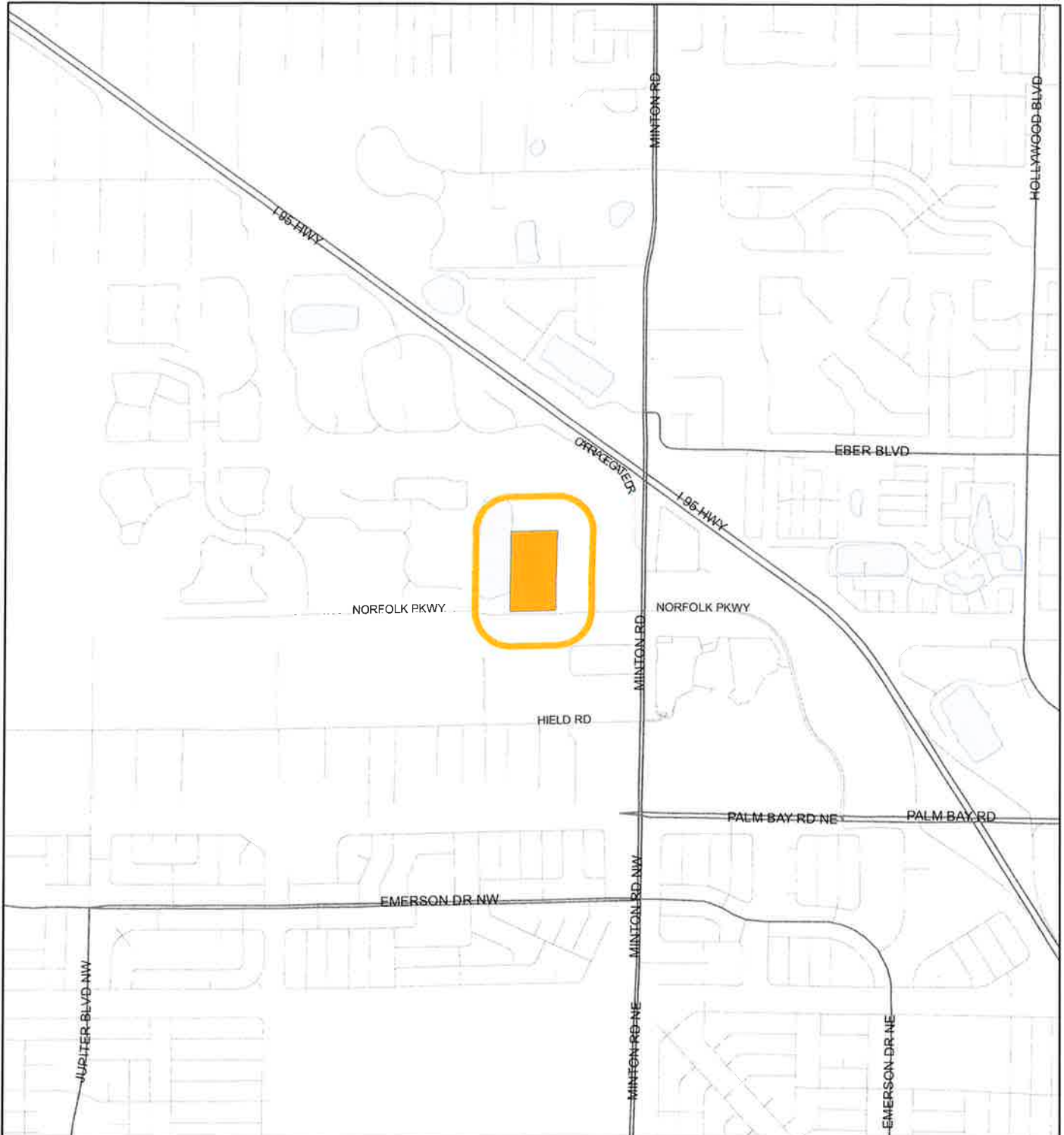
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LOCATION MAP

NORFOLK PARKWAY LLC

23Z00012



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.

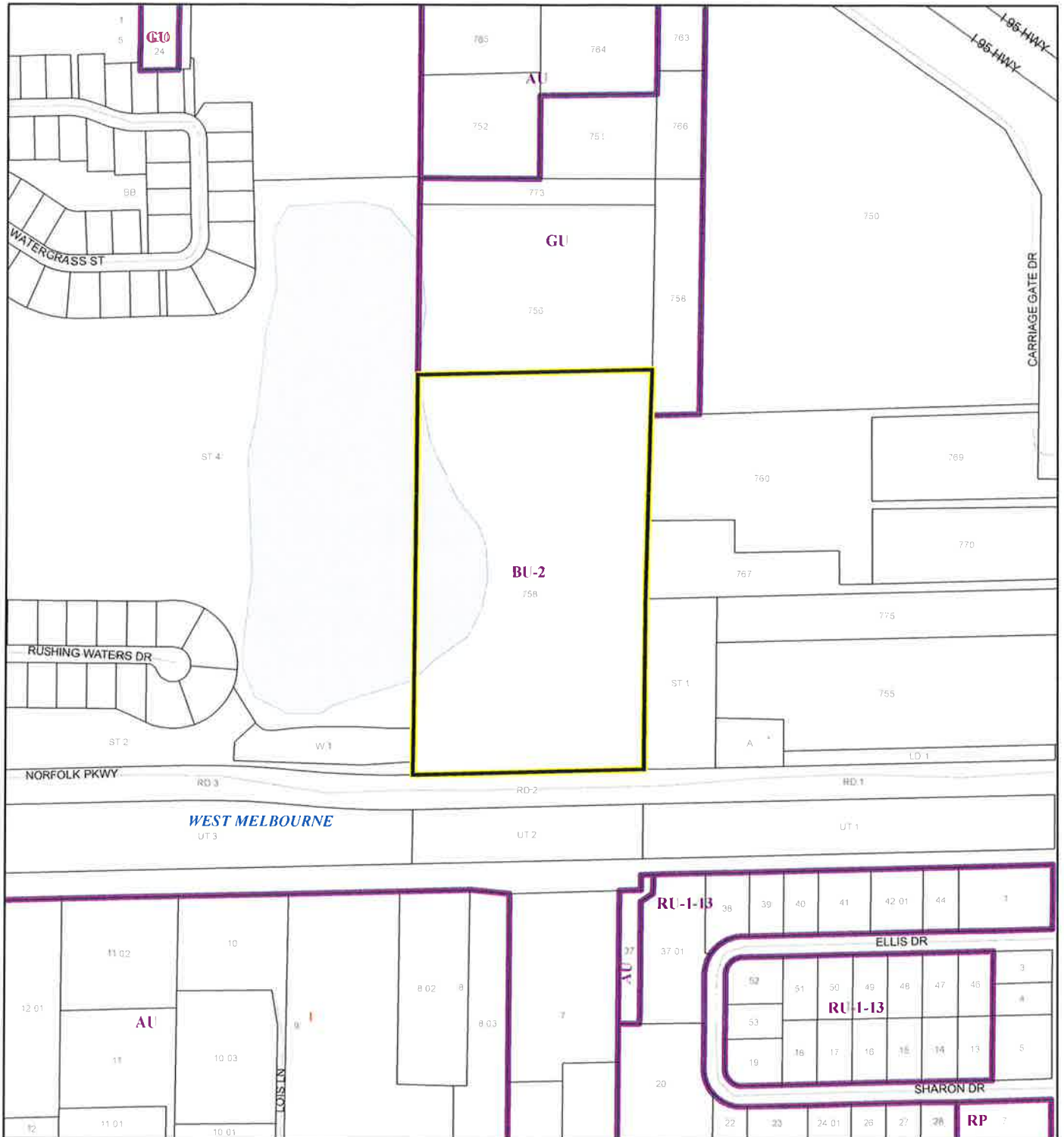
Produced by BoCC - GIS Date: 3/15/2023

Buffer
Subject Property

ZONING MAP

NORFOLK PARKWAY LLC

23Z00012



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: 3/1/2023

- Subject Property
- Parcels
- Zoning

Dr. (6729 Colonnade Ave., Unit 108, Melbourne) (Tax Account 2627467) (District 4)

P&Z Recommendation: Minneboo/Thomas – Approved. The vote was unanimous.

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

- 16. (23Z00012) Norfolk Parkway, LLC** (Bruce Moia) requests an amendment to an existing BDP (Binding Development Plan) in a BU-2 (Retail, Warehousing, and Wholesale Commercial) zoning classification. The property is 17.50 acres, located on the north side of Norfolk Pkwy., approx. 1,200 ft. west of Minton Road. (Parcel 756 = 3545 Carriage Gate Dr. Unit Tower, Melbourne; Parcel 758 (part) = No assigned address. In the Melbourne area.) (Tax Account 2802676) (District 5)

P&Z Recommendation: Hopengarten/Hodgers – Approved. The vote was unanimous.

BCC ACTION: Steele/Tobia – Approved as recommended, with a BDP. The vote was 4:1, with Goodson voting nay. 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.

- 17. (23Z00019) Redfish Water Disposal, LLC** (James Morris Smith) requests removal of an existing BDP (Binding Development Plan) in a PIP (Planned Industrial Park) zoning classification. The property is 2.79 acres, located on the southeast corner of Broadway Blvd. and Industrial Dr. (No assigned address. In the Cocoa area) (Tax Account 2311419) (District 1)

P&Z Recommendation: Hopengarten/Glover – Denied. The vote passed 9:1, with Hodgers voting nay.

BCC ACTION: Feltner/Tobia – Denied as recommended. The vote was unanimous.

- Item G.12. **Afficap Cocoa, LLC.** Tobia/Feltner. Approved the request for a change of zoning classification from AU to RU-2-10. (23Z00028). Commissioner Steele was absent from the vote.
- Item G.13. **Alan B. Macintyre Living Trust.** Goodson/Steele, nay Feltner. Denied the request for a change of zoning classification from BU-1 to BU-2. (23Z00032)
- Item G.14. **Norfolk Parkway, LLC.** Steele/Tobia. Approved the request for amendment to an existing BDP to BU-2 zoning classification. (23Z00012)
- Item G.15. **Charles Steven Douglas and Debra Kay Douglas, Trustees; and Sandra J. Douglas.** Tobia/Feltner. Tabled to the August 3, 2023, Board of County Commissioners (BoCC) meeting. (23Z00023)
- Item G.16. **Mehran Ghaeenezadeh.** Withdrawn by the applicant. Letter received June 30, 2023. (23Z00007)
- Item G.17. **Legacy West Melbourne, LLC.** Steele/Tobia. Approved the request for a change of zoning classification from AU to RU-2-15. The property is 2.76 acres, located on the west side of John Rodes Blvd., approx. 600 sq ft. south of Fortune Place. (23Z00025)
- Item G.18. **Redfish Water Disposal, LLC.** Feltner/Tobia, Denied the request for removal of an existing BDP in a PIP zoning classification. (23Z00019)
- Item G.19. **Mina St, LLC.** Steele/Goodson, Denied the request for a change of zoning classification from RU-1-13 to RU-2-10. The property is 0.21 acres, located on the north side of South Court, approx. 600 ft. west of N. Highway A1A. (23Z00026)
- Item G.20. **Samir and Ilham Itani Revocable Living Trust.** Feltner/Tobia. Tabled to the August 14, 2023, Planning and Zoning (P&Z) meeting and the September 7, 2023, Board of County Commissioners (BoCC) meeting. (23Z00031)