

**Dana Blickley, CFA**  
**Brevard County Property Appraiser - MAP SEARCH**



This Instrument Prepared By  
And To Be Returned To:  
Kim Rezanka, Esquire  
DEAN MEAD  
7380 Murrell Road, Suite 200  
Melbourne, Florida 32940  
(321) 259-8900

BINDING DEVELOPMENT PLAN

THIS AGREEMENT, entered into this \_\_\_\_ day of \_\_\_\_\_, 2016, between the BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, a political subdivision of the State of Florida (hereinafter referred to as "County"), BBGL LAND, LLC (hereinafter referred to as "Developer") and IMPERIAL SOUTH, INC. ("Owner").

RECITALS

WHEREAS, 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 desires to develop the property as multi-family apartments and has requested the RU-2-15 zoning classification, pursuant to the Brevard County Code, Section 62-1157; and

WHEREAS, as part of its plan for development of the Property as apartments, Developer and Owner wish to mitigate potential 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 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.
2. The Developer/Owner shall provide ~~a six (6) foot high fence~~ a ten (10) foot wall long the eastern boundary of the Property, from the retention pond north along the adjacent property zoned IU and IU-1, as reflected on Exhibit "B", as well as along with Class "A" vegetative buffer on that boundary.
3. The Developer/Owner shall include in the apartment lease agreement a notification that the Property to the east is zoned industrial and may be used for asphalt and/or concrete production and mixing.

4. The Developer and Owner acknowledge that the property to the east is zoned IU and IU-1 ("adjacent property"), and agrees that it shall not object to any use of the adjacent property that is a permitted or conditional use, so long as the adjacent property is in compliance with all County Ordinances.

5. The Developer and 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. The Developer and Owner, upon execution of this Agreement, shall pay to the County the cost of recording this Agreement in 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 \_\_\_\_\_. 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.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

IN WITNESS THEREOF, the parties hereto have caused these presents to the 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, Florida 32940

\_\_\_\_\_  
Scott Ellis, Clerk  
(SEAL)

\_\_\_\_\_  
James Barfield, Chairperson  
As approved by the Board on \_\_\_\_\_

STATE OF FLORIDA )  
COUNTY OF BREVARD )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2016, by James Barfield, Chairperson of the Board of County Commissioners of Brevard County, Florida, 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)

WITNESSES:

BBGL LAND, LLC, Developer  
250 North Orange Avenue  
Suite 1500  
Orlando, FL 32801

\_\_\_\_\_  
\_\_\_\_\_  
(Witness Name typed or printed)

By: \_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
(Witness Name typed or printed)

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2016, by \_\_\_\_\_, as \_\_\_\_\_ for BBGL LAND, LLC, who is personally known to me or who has produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
Notary Public

My Commission Expires:

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

SEAL  
Commission No.: \_\_\_\_\_

WITNESSES:

IMPERIAL SOUTH, INC., Owner  
C/o Imperial Sterling, Ltd.  
287 Bowman Avenue, 2nd Floor  
Purchase, NY 10577-2598

\_\_\_\_\_  
\_\_\_\_\_  
(Witness Name typed or printed)

\_\_\_\_\_  
By: \_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_  
(Witness Name typed or printed)

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2016, by \_\_\_\_\_, as \_\_\_\_\_ for IMPERIAL SOUTH, INC., who is personally known to me or who has produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
Notary Public

My Commission Expires:

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

SEAL  
Commission No.: \_\_\_\_\_

Exhibit A  
Legal Description of the Land

COMMENCE AT THE NORTHWEST CORNER OF SECTION 19, TOWNSHIP 26 SOUTH, RANGE 37 EAST, BREVARD COUNTY, FLORIDA; THENCE PROCEED SOUTH 89 DEGREES 16 MINUTES 29 SECONDS EAST ALONG THE NORTH LINE OF SAID SECTION A DISTANCE OF 379.90 FEET TO THE WESTERLY RIGHT-OF-WAY LINE OF FLORIDA EAST COAST RAILROAD (100' RIGHT-OF-WAY) AND THE POINT OF BEGINNING; THENCE PROCEED SOUTH 18 DEGREES 50 MINUTES 32 SECONDS EAST ALONG SAID RIGHT-OF-WAY LINE A DISTANCE OF 2394.19 FEET TO THE SOUTHEAST CORNER OF THAT PARCEL AS DESCRIBED IN OFFICIAL RECORDS BOOK 2555, PAGE 443 OF SAID COUNTY; THENCE PROCEED NORTH 87 DEGREES 34 MINUTES 44 SECONDS WEST ALONG THE SOUTH LINE OF SAID PARCEL A DISTANCE OF 474.46 FEET TO THE SOUTHEAST CORNER OF THAT PARCEL AS DESCRIBED IN OFFICIAL RECORDS BOOK 2852, PAGE 109 OF SAID COUNTY; THENCE PROCEED NORTH 01 DEGREE 01 MINUTE 08 SECONDS WEST ALONG THE EAST LINE OF SAID PARCEL A DISTANCE OF 450.00 FEET; THENCE PROCEED SOUTH 87 DEGREES 34 MINUTES 44 SECONDS EAST A DISTANCE OF 22.19 FEET; THENCE PROCEED NORTH 02 DEGREES 25 MINUTES 15 SECONDS EAST A DISTANCE OF 40.00 FEET TO THE NORTHEAST CORNER OF A ROAD RIGHT-OF-WAY AS DESCRIBED IN OFFICIAL RECORDS BOOK 3116, PAGE 3884 OF SAID COUNTY; THENCE PROCEED NORTH 87 DEGREES 34 MINUTES 44 SECONDS WEST ALONG THE NORTH LINE OF SAID RIGHT-OF-WAY A DISTANCE OF 347.17 FEET TO THE SOUTHEAST CORNER OF THAT PARCEL AS DESCRIBED IN OFFICIAL RECORDS BOOK 3493, PAGE 2697 OF SAID COUNTY; THENCE PROCEED NORTH 00 DEGREES 09 MINUTES 16 SECONDS WEST ALONG THE EAST LINE OF SAID PARCEL A DISTANCE OF 202.00 FEET TO THE NORTHEAST CORNER OF SAID PARCEL; THENCE PROCEED NORTH 87 DEGREES 34 MINUTES 44 SECONDS WEST ALONG THE NORTH LINE OF SAID PARCEL A DISTANCE OF 260.54 FEET TO THE EAST RIGHT-OF-WAY LINE OF WICKHAM ROAD (RIGHT-OF-WAY VARIES); THENCE PROCEED NORTH 00 DEGREES 09 MINUTES 16 SECONDS WEST ALONG SAID RIGHT-OF-WAY LINE A DISTANCE OF 659.45 FEET TO A POINT OF CURVATURE, SAID CURVE BEING CONCAVE WESTERLY AND HAVING A RADIUS OF 1006.60

FEET, A CENTRAL ANGLE OF 35 DEGREES 56 MINUTES 01 SECONDS AND A CHORD BEARING AND DISTANCE OF NORTH 18 DEGREES 07 MINUTES 17 SECONDS WEST, 621.00 FEET; THENCE PROCEED NORTHERLY ALONG THE ARC OF SAID CURVE A DISTANCE OF 631.30 FEET TO THE POINT OF TANGENCY; THENCE PROCEED NORTH 36 DEGREES 05 MINUTES 18 SECONDS WEST ALONG SAID RIGHT-OF-WAY LINE A DISTANCE OF 1365.34 FEET TO A POINT OF CURVATURE, SAID CURVE BEING CONCAVE EASTERLY AND HAVING A RADIUS OF 1382.40 FEET, A CENTRAL ANGLE OF 01 DEGREES 11 MINUTES 37 SECONDS AND A CHORD BEARING AND

DISTANCE OF NORTH 35 DEGREES 29 MINUTES 30 SECONDS WEST, 28.80 FEET; THENCE PROCEED NORTHERLY ALONG THE ARC OF SAID CURVE A DISTANCE OF 28.80 FEET; THENCE DEPARTING SAID RIGHT-OF-WAY LINE, PROCEED NORTH 80 DEGREES 32 MINUTES 04 SECONDS EAST A DISTANCE OF 977.85 FEET TO THE AFORESAID WEST RIGHT-OF-WAY LINE OF FLORIDA EAST COAST RAILROAD; THENCE PROCEED SOUTH 18 DEGREES 50 MINUTES 32 SECONDS EAST ALONG SAID RIGHT-OF-WAY LINE A DISTANCE OF 1065.12 FEET TO THE POINT OF BEGINNING.

Less and except:

Commence at the Southeast Corner of Section 13, Township 26 South, Range 36 East, Brevard County, Florida; thence run  $S88^{\circ}53'28''W$  along the South Line of said Section 13, a distance of 56.86 feet; thence run  $S53^{\circ}54'42''W$ , a distance of 207.50 feet to a point on the Easterly Right of Way Line of Wickham Road; thence run  $N36^{\circ}05'18''W$  along said Easterly Right of Way Line, a distance of 800.00 feet for the Point of Beginning; thence continue  $N36^{\circ}05'18''W$  along said Easterly Right of Way Line, a distance of 366.05 feet to the beginning of a curve, concave to the Northeast, having a radius of 1382.40 feet; thence continue Northwesterly along the arc of said curve and Easterly Right of Way Line through a central angle of  $01^{\circ}11'36''$ , an arc distance of 28.79 feet; thence run  $N80^{\circ}32'04''E$  along the South Line of those lands described in Official Records Book 6772, Pages 146 thru 162, Public Records of Brevard County, Florida, a distance of 585.81 feet; thence run  $S36^{\circ}05'18''E$ , a distance of 132.33 feet; thence run  $S53^{\circ}54'42''W$ , a distance of 524.00 feet to the Point of Beginning.

Less and except:

Commence at the Southeast Corner of Section 13, Township 26 South, Range 36 East, Brevard County, Florida; thence run  $S88^{\circ}53'28''W$  along the South Line of said Section 13, a distance of 56.86 feet for the Point of Beginning; thence run  $N53^{\circ}54'42''E$ , a distance of 432.09 feet to a point on the Westerly Right of Way Line of the Florida East Coast Railroad, a 100 foot wide Right of Way; thence run  $N18^{\circ}50'32''W$  along said Westerly Right of Way Line, a distance of 792.27 feet; thence run  $S80^{\circ}32'04''W$  along the South Line of those lands described in Official Records Book 6772, Pages 146 thru 162, Public Records of Brevard County, Florida, a distance of 392.04 feet; thence run  $S36^{\circ}05'18''E$ , a distance of 132.33 feet; thence run  $S53^{\circ}54'42''W$ , a distance of 524.00 feet to a point on the Easterly Right of Way Line of Wickham Road; thence run  $S36^{\circ}05'18''E$  along said Easterly Right of Way Line, a distance of 800.00 feet; thence run  $N53^{\circ}54'42''E$ , a distance of 207.50 feet to the Point of Beginning.



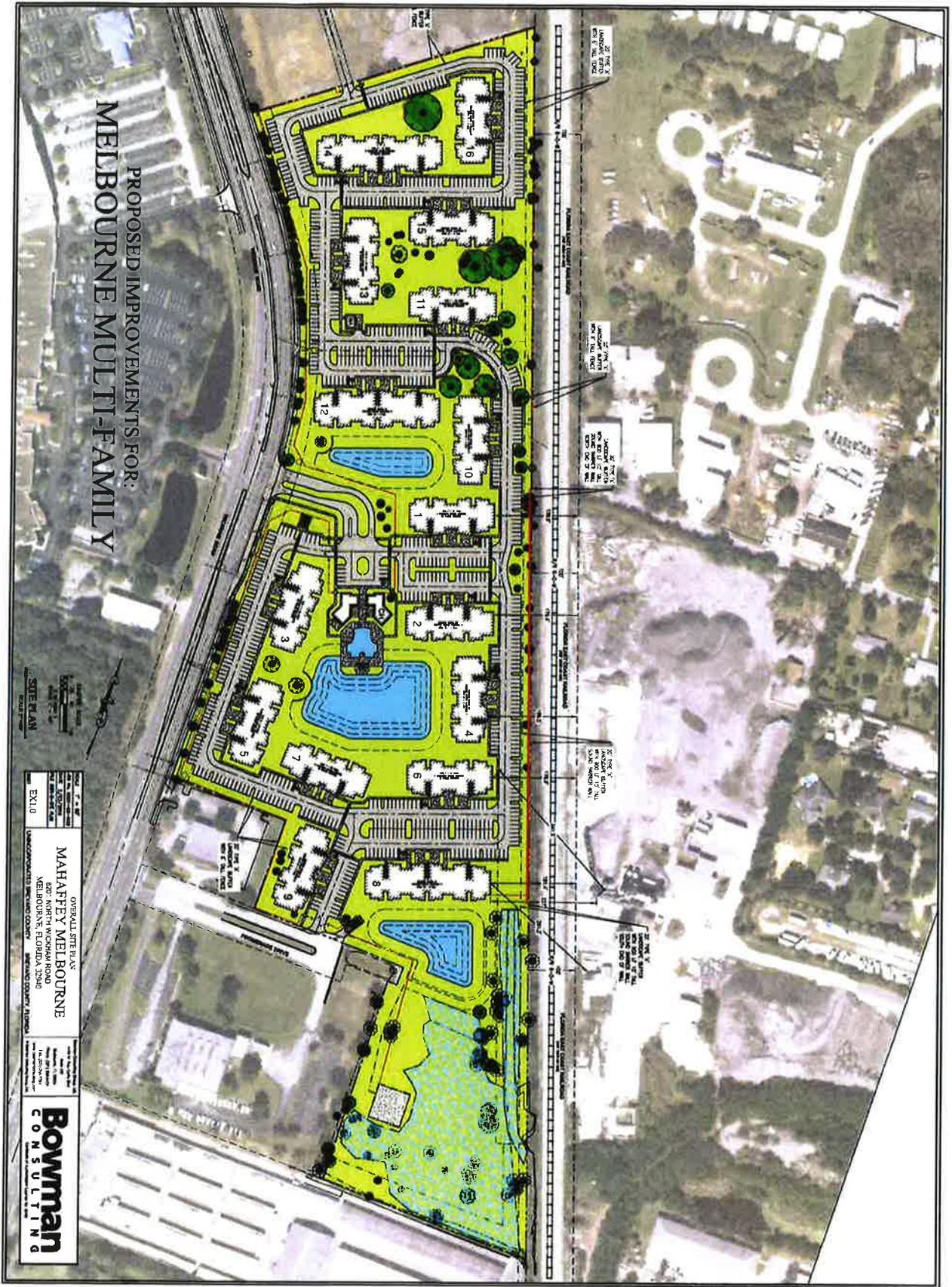


EXHIBIT "B"



**BOARD OF COUNTY COMMISSIONERS**

1/4 A, 2  
IMPERIAL SOUTH, INC

**Planning & Development Department**  
2725 Judge Fran Jamieson Way  
Building A, Room 114  
Viera, Florida 32940

**TO:** The Members of the Board of County Commissioners

**THRU:** Robin M. Sobrino, AICP, Director *RMS*  
Brevard County Zoning Official

**FROM:** Cindy Fox, Planning & Zoning Manager *CF*

**DATE:** March 3, 2016

**RE:** **PIP Zoning and Residential Uses**

This memo is submitted in consideration of whether or not a single-family residence is an allowable use in the PIP (Planned Industrial Park) Zoning Classification as requested by the Board on February 4, 2016.

**Question:**

**Does the PIP zoning classification allow single-family residences?**

**Short Answer:**

**No, only if they meet the permitted with conditions section of our code which states that those properties were owned prior to 2004 pursuant to section 62-1841.9 as discussed below.**

**A cursory review of the deeds for the property in question shows that ownership dates back to the 1980s and under this scenario, if it was the desire of the applicant, they could build single-family homes. However, if the property was sold, the ordinance states that "Any property owners who purchased PIP zoned property after October 19, 2004 cannot meet the condition pursuant to section 62-1849.9."**

**Analysis:**

This memo has been reviewed by the County Attorney's Office and their comments can be found in the summary section of this report. Additionally, this memo also discusses residential uses that may be considered residential in nature but operate as institutional and commercial uses, and the Future Land Use Element of the Comprehensive Plan, regarding "industrially designated" properties in the County and performance standards.

Ordinance Number 04-43 amended section 62-1542 and created Section 62-1841.9 which made single-family residences a "permitted with conditions" use in the PIP Zoning Classification. Section 62-1841.9 regarding "permitted with conditions uses in PIP" states that in the PIP zones, "property owners who purchased such property prior to October 19, 2004 are permitted to construct single-family residences."

Therefore, any property owners who purchased PIP zoned property after October 19, 2004 cannot meet this condition and would be precluded from having a single-family use on the property.

*Sec. 62-1841.9. Single family residence.* In the PBP and PIP zones, property owners who purchased such property prior to October 19, 2004 are permitted to construct single family residences. Such development must be consistent with all applicable regulations contained within this chapter. In addition, single family residences are permitted regardless of the date of ownership when the property within the PBP zone is deed restricted to allow only residential uses. Such deed restrictions must exist prior to October 19, 2004.

**Planned Industrial Zoning Regulations & Consistency Table**

The PIP zoning classification is governed by Sections 62-1255(a)(7)(b); 62-1255(b)(1)(d) 62-1255(2) Exhibit A, "Establishment of Zoning Classifications and Consistency with Comprehensive Plan"; 62-1540, "Industrial Uses Permitted with Conditions and Conditional Uses"; Section 62-1542, "Planned Industrial Park, PIP"; and Section 62-1841.9, Single-Family Residence.

Section 62-1255(2) as evidenced by **Exhibit A** (below), the Comprehensive Plan Consistency table depicts where the various zoning classifications can be considered based upon the geographic delineation of future land uses on the future land use map and locational criteria defined in the policies of the future land use element of the 1988 county comprehensive plan. **This table shows that any residential development is not contemplated within the Planned Industrial Park Future Land Use Designation.** Therefore, the desire of the applicant to develop the site with multi-family apartments requires a Large Scale Comprehensive Plan Change from a Planned Industrial Future Land Use Designation to a Residential Future Land Use Designation.

**EXHIBIT A. CONSISTENCY OF ZONING CLASSIFICATIONS WITH FUTURE LAND USE MAP SERIES**

Zoning Classifications	Land Use Designations																
	Ag ric	Res 1:2. 5	Res 1	Res 2	Res 4	Res 6	Res 10	Res 15	Res 30	NC	CC	PI	H/ L	PUB	REC	PR CON	PUB CON
GU, PA, AGR, RRMH-5, PUD, RPUD, RVP					Y							Y*	N				N
AU, REU, RRMH-2.5	N				Y							Y*	N				N
ARR, RR-1, SEU, RRMH-1	N				Y							Y*	N				N
SR, TR-2		N			Y							Y*	N				N
EU, EU-1, EU-2, RU-1-13, RU-1-11, TR-1, RA-2-4, RU-2-4			N			Y						Y*	N				N
RU-1-7, RU-1-9, TR-1-A, TR-3, TRC-1, RU-2-6, RA-2-6				N			Y					Y*	N				N
RU-2-8, RA-2-8 RA-2-10, RU-2-10				N			Y					Y*	N				N
RU-2-12, RU-2-15				N			Y					Y*	N				N
RU-2-30					N			Y				Y*	N				N
BU-1-A, IN					Y**							Y**	N				N

RP	N	Y**	Y	N	N
BU-1, TU-1, TU-2		N	N Y	N	N
BU-2		N	N Y	Y**	N
PBP		N	N Y	Y	N
PIP		N	N	Y	N
IU, IU-1		N	N	N Y	N
EA, GML		Y	Y	Y	Y

**Other Uses in PIP as stated in BU-1 and BU-2**

Section 62-1542, governing the PIP zoning Classification, lists the permitted uses within the zoning classification and states that “all BU-1 and BU-2 uses” can be considered in the PIP zoning classification.

An examination of both the BU-1 and the BU-2 Zoning Classifications to identify “residential uses”, found *Assisted Living facilities, Boarding Houses, Bed and Breakfast Inns, foster homes, group homes* which require a single-family structure designed to operate as a group home (with a maximum of 14 total residents for a group home Level II), *hospitals, resort dwellings* which are also single-family residential structures, and *nursing homes*. It is important to note that all of these activities are considered either commercial or institutional uses in our code and they are commercially licensed and taxed as commercial establishments and transient in character. Assisted Living facilities are permitted with conditions in the BU-2 zoning classification.

**Application of PIP setbacks to Single-family Residential Development**

Applicable setbacks in the PIP zoning classification for single-family residential development are not the standard setbacks found in any residential zoning classification. The PIP zoning classification requires that the front setback 50 feet from the street right-of-way (as compared to the typical 20 feet), 50 feet from the side yards (as compared to the typical 7.5 feet) and no structures or truck parking within 25 feet from the rear (typically 20 feet from the rear).

Additionally, in the higher intensity industrial zoning classifications, the setbacks in both IU and IU-1 are 100 feet from residentially designated property. If this subject property were to develop as single-family homes, the total number of residences would be significantly less than those proposed as multi-family units in a traditional multi-family zoning classification such as RU-2-15.

**Performance Standards**

Performance standards are found in Sections 62-2251 through 62-2272 of the Zoning Regulations and address all residential, commercial and industrial uses. These standards address a series of potential nuisances or possible source of pollution or other public health and safety concerns. Historically, the County has applied the performance standards in conformance with the code. Of note, is that in Section 62-2252, regarding the applicability of the performance standards, it states that “if any existing use of a building or other structure is extended, enlarged or reconstructed, the performance standards for the district involved shall apply with respect to such extended, enlarged or reconstructed portions of such

use of the building or other structure. Existing premises accommodating changes in use, as defined in section 62-2801, shall be subject to compliance with all requirements..." of the performance standards.

### **Summary**

It is evident by the ordinance approved in 2004 and the structure of the Zoning Regulations and Comprehensive Plan Future Land Use Element, that single-family uses are not permitted uses within the PIP Zoning classification unless the property was under same owner since 2004. A cursory review of the deeds for the property in question shows that ownership dates back to the 1980s and under this scenario, if it was the desire of the applicant, they could build single-family homes. However, if the property was sold, the ordinance states that "Any property owners who purchased PIP zoned property after October 19, 2004 cannot meet the condition pursuant to section 62-1849.9.

There are several uses listed in the BU-1 and BU-2 zoning classifications that give the appearance of being residential uses and appear to be permitted in the PIP zoning classification. However, it should be noted that some of the uses are considered institutional use in our Zoning code while others are commercial ventures. Most are licensed and taxed as commercial establishments and are transient in character, unlike a traditional single-family residential development.

The County Attorney's Office advises that the BCC should be aware that there is a potential for claims against the county by the asphalt plant owners if the performance standards are applied to the existing asphalt plant located in an IU-1 zoning classification, as a result of the new residential zoning and development on adjacent property. The Board may wish to consider providing direction to staff regarding the performance standards to avoid potential liability. The Board could find the code was not intended to apply to the existing asphalt business absent a change in use or an expansion of the existing business. This direction could reduce the potential litigation against the county by the asphalt plant if the residential use is approved.