

Meeting Date
October 6, 2015



AGENDA	
Section	UNFINISHED BUSINESS
Item No.	V.A.

AGENDA REPORT
BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS

SUBJECT:	Binding Development Plan, Re: Linda E. Spain, Trustee (District 2) FISCAL IMPACT: NONE
DEPT/OFFICE:	Planning & Development Department

Requested Action:
It is requested that the Board approve, and the Chairman sign, the subject Binding Development Plan.

Summary Explanation & Background:

A Binding Development Plan (BDP) is a voluntary agreement by a 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 approval of the zoning application by the Board. Following staff and legal review, a BDP is routinely presented to the Board in recordable form as a Consent agenda item in order to finalize the zoning action.

On August 6, 2015, the Board of County Commissioners approved a change of classification from SEU (Suburban Estate Use) to AU (Agricultural Residential), on property located on the west side of N. Tropical Trail, approx. 460 ft. south of Indianola Dr. (2105 N. Tropical Trail, Merritt Island), subject to a Binding Development Plan as follows:

- No commercial retail operation on the property. Wholesale of commodities may be allowed but may not include on premise signage advertising hours of operation and products. Wholesale transactions will allow no more than two transactions per day on the property.
- No structures for the large scale commercial packing, processing, and sale of commodities raised on the premises will be constructed on the property.
- No more than six (6) livestock animals at one time (horses, cows, pigs, goats, etc.)

Staff Contact: Jennifer Jones
Clerk to the Board instruction: After recordation, forward two certified copies to the Planning and Development Department
Exhibits Attached: Binding Development Plan, with exhibits, and check for recording

Contract /Agreement (If attached): Reviewed by County Attorney		Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>	PR <input type="checkbox"/>
County Manager		Department Director / Extension Robin M. Sobrino, AICP, Director Planning & Development Dept. Ext. 56363				
Stockton Whitten						



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

Telephone: (321) 637-2001
Fax: (321) 264-6972

October 7, 2015

MEMORANDUM

TO: Recording

RE: Item V.A., Binding Development Plan Agreement with Linda E. and David W. Spain, Trustees

The Board of County Commissioners, in regular session on October 6, 2015, executed Binding Development Plan Agreement with Linda E. and David W. Spain, Trustees, for property located at 2105 N. Tropical Trail, Merritt Island. Enclosed are original Binding Development Plan Agreement and check number 2784 in the amount of \$52.50. **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
SCOTT ELLIS, CLERK

Tammy Etheridge, Deputy Clerk

/dt

Encls. (2)

BrevardClerk.US

Scott Ellis, Clerk of Court

700 South Park Avenue, Bldg. B
 P.O. Box 2767
 Titusville, FL 32781-2767
 (321) 637-2006

DBLIVE Transaction

#: 1592884

Receipt #: 61562136

Cashier Date: 10/8/2015

10:11:50 AM



Print Date:

10/8/2015 10:11:59 AM

Customer Information	Transaction Information	Payment Summary
() LINDA E. SPAIN TRUST 3901 N ATLANTIC AVE COCOA BEACH, FL 32931	Date Received: 10/08/2015 Source Code: Titusville - Six Story Q Code: Titusville - Six Story Return Code: Hand Carried Trans Type: Recording Agent Ref Num:	Total Fees \$52.50 Total Payments \$52.50

2 Payments		
CHECK 2784		\$52.50
OVERPAYMENT		
Check Overage under 10.00	1	\$8.50

1 Recorded Items		
(AG) AGREEMENT	BK/PG: 7468/2205 CFN: 2015198865 Date: 10/8/2015 10:11:49 AM From: To:	
Recording @ 1st=\$10 Add'l=\$8.50 ea.	5	\$44.00
Indexing @ 1st 4 Names Free, Add'l=\$1 ea.	2	\$0.00

0 Search Items		
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1 Miscellaneous Items		
(AGTR) AGENT TRANSMITTAL		

Prepared by: David W. Spain
Address: 25 West Point Drive
Cocoa Beach, Fl. 32921

RETURN: Clerk to the Board #27

BINDING DEVELOPMENT PLAN

THIS AGREEMENT, entered into this 6 day of October, 2015 between the BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, a political subdivision of the State of Florida (hereinafter referred to as "County") and **Linda E. Spain, Trustee**, (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 **AU (Agricultural)** zoning classification(s) and desires to develop the Property as **Single Family Residential with Agricultural uses in order to preserve the historic rural character of North Merritt Island and compatible with surrounding AU properties**, 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:

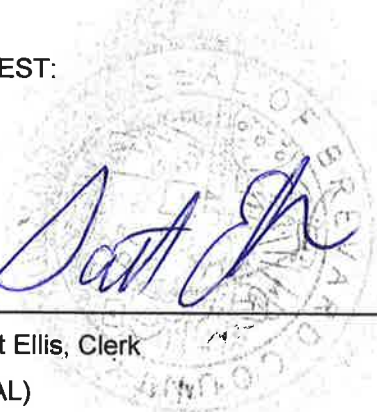
1. The County shall not be required or obligated in any way to construct or maintain or participate in any way in the construction or maintenance of the improvements. It is the intent of the parties that the Developer/Owner, its grantees, successors or assigns in interest or some other association and/or assigns satisfactory to the County shall be responsible for the maintenance of any improvements.
2. The Developer/Owner shall limit permitted Agriculture Commercial uses by the following:
 - i. No commercial retail operation on the property. Wholesale of commodities may be allowed but may not include on premise signage advertising hours of operation and products. Wholesale transactions will allow no more than two transactions per day on the property.
 - ii. No structures for the large scale commercial packing, processing, and sales of commodities raised on the premises will be constructed on the property.
 - iii. No more than 6 livestock animals at one time (horses, cows, pigs, goats etc.).

RETURN: Clerk to the Board #27

- 3. 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.
- 4. Developer/Owner, upon execution of this Agreement, shall pay to the County the cost of recording this Agreement in the Public Records of Brevard County, Florida.
- 5. 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 8/6/15. In the event the subject Property is annexed into a municipality and rezoned, this Agreement shall be null and void.
- 6. 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.
- 7. 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 6 above.

IN WITNESS THEREOF, the parties hereto have caused these presents to be signed all as of the date and year first written above.

ATTEST:



Scott Ellis

 Scott Ellis, Clerk
 (SEAL)

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

Robin Fisher

 Robin Fisher, Chairman
 As approved by the Board on 10-06-15

RETURN: Clerk to the Board #27

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

WITNESSES:

DEVELOPER/OWNER

[Signature]
Michelle L. Marchindale

[Signature]

(Witness Name typed or printed)

25 West Point Drive Cocoa Beach, FL32931

(Address)

[Signature]
Samuel John Knox

(Witness Name typed or printed)

Linda E. Spain Trustee

(President)

Trustee

(Name typed, printed or stamped)

STATE OF Florida §

COUNTY OF BREVARD §

The foregoing instrument was acknowledged before me this 17th day of September, 2015, by Linda Spain, President of Trustee, who is personally known to me or who has produced _____ as identification.

[Signature]

Notary Public

My commission expires

SEAL

Commission No.:

(Name typed, printed or stamped)



EXHIBIT "A"

A tract of land lying in Section 15, Township 24 South, Range 36 East, Brevard County, Florida, more particularly described as follows: Commencing at the northwest corner of the John Reed Property as described in Deed Book R, at Page 301, of the Public Records of said County, at a point on the East Bank of Indian River; thence East and Parallel to the South line of said Section, 1085 ft., more or less, to the County Road; thence Northerly along said County Road, to a point, 158 ft., measured perpendicularly from the course last run; thence Westerly and Parallel to the South line of said Section, 1,085 ft., more or less, to Indian River, thence Southerly along Indian River to the point of beginning, less and excepting the right-of-way used for North Tropical Trail.

RETURN: Clerk to the Board #27

RETURN: Clerk to the Board #27

RETURN: Clerk to the Board #27

JOINDER IN BINDING DEVELOPMENT PLAN

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 January 7, 2015, given Linda E. Spain and David W. Spain not personally but by as Trustees on behalf of Linda E. Spain Trust dtd 2/7/96 as mortgagor, in favor of the undersigned, Community Bank of the South, as mortgagee, recorded in Official Records Book 7284, page 2522, 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.

WITNESSES:

MORTGAGEE NAME/ADDRESS

Community Bank of the South

277 N. Sykes Creek Parkway
Merritt Island, FL 32953

(Address)

James K. Guldi

James K. Guldi

(Witness name typed or printed)

William T. Taylor

Authorized Agent Signature

William T. Taylor, President and Chief Executive Officer

(Name/title typed, printed or stamped)

Cathy Stewart

Cathy Stewart

(Witness name typed or printed)

STATE OF FLORIDA §

COUNTY OF BREVARD §

The foregoing instrument was acknowledged before me this 9th day of July, 2015, by William T. Taylor, who is personally known to me or who has produced _____ as identification.

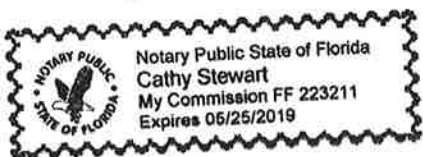
My commission expires 5/25/2019

Cathy Stewart

Notary Public
Cathy Stewart

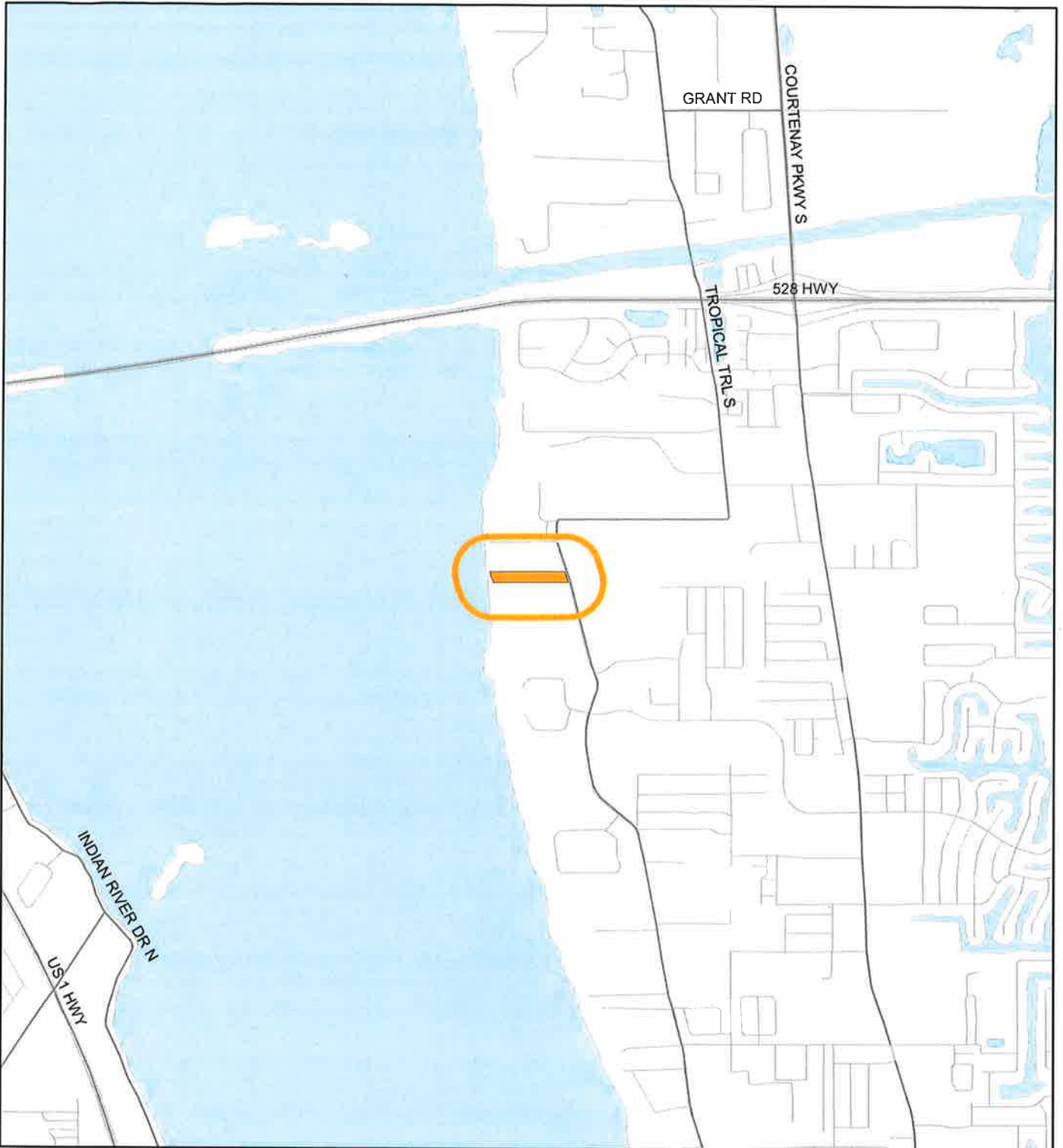
(Name typed, printed or stamped)

SEAL
Commission No.: FF 223211





LOCATION MAP

SPAIN, LINDA E TRUSTEE
15PZ00022



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

Buffer Distance: 500 feet

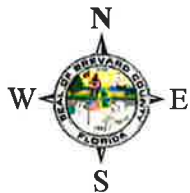
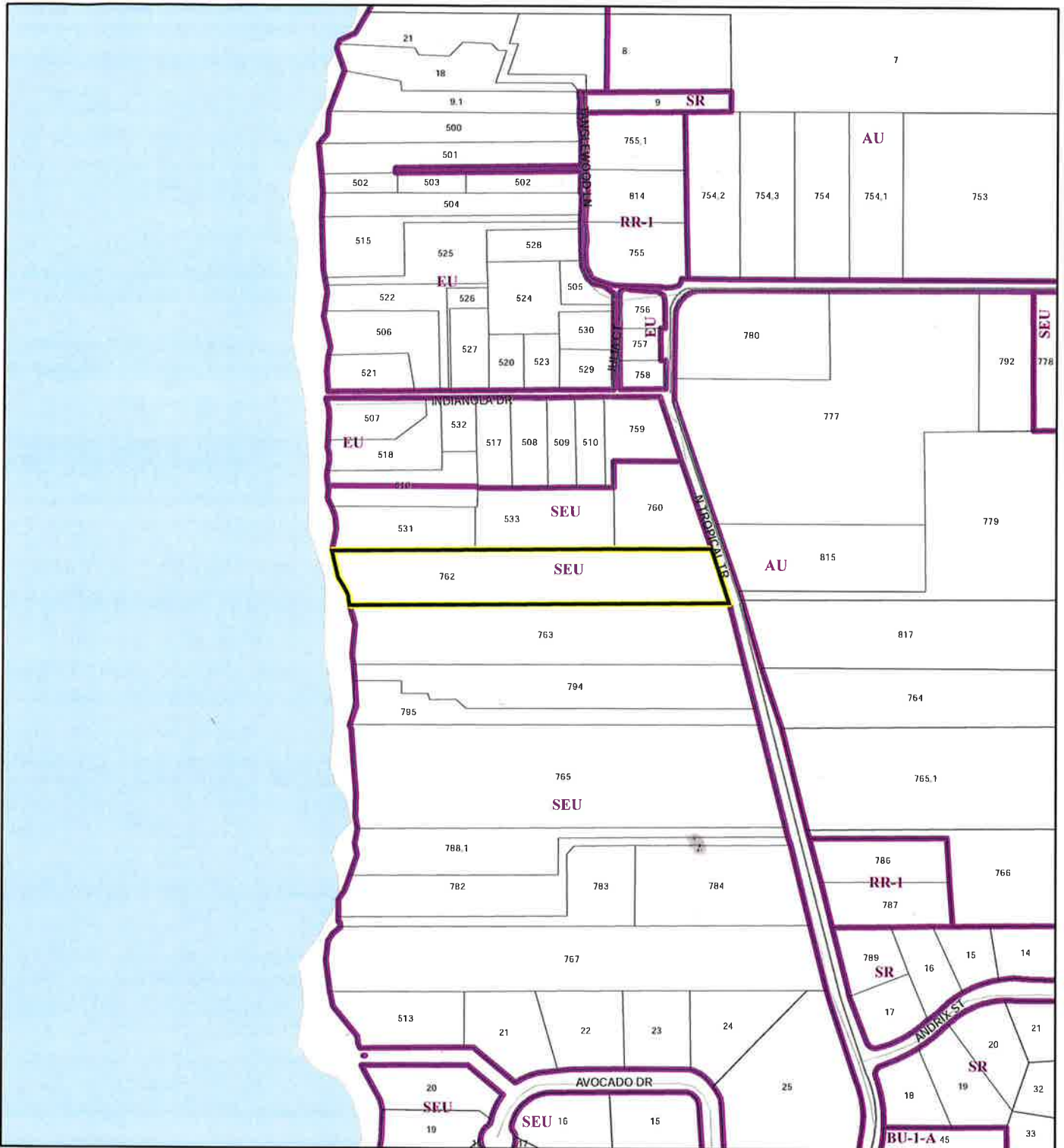
-  Buffer
-  Subject Property

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 herein.


Produced by the Brevard County Planning and Zoning Office - GIS Section Date: 4/22/2015

ZONING MAP

SPAIN, LINDA E TRUSTEE
15PZ00022



1:4,800 or 1 inch = 400 feet

 Subject Property

 Parcels

 Zoning

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 herein.

Produced by the Brevard County Planning and Zoning Office - GIS Section Date: 6/10/2015

DISTRICT 2

III.B.5. (15PZ00022) – LINDA E. SPAIN, TRUSTEE – (Lisa Frazier) - requests a change of classification from SEU to AU, on 4.08 acres, located on the west side of N. Tropical Trail, approx. 460 ft. south of Indianola Dr. (2105 N. Tropical Trail, Merritt Island)

P&Z Recommendation of 07/20/15: Thodey/Aydelotte – Approved with a BDP as follows: 1.) No commercial retail operation on the property. Wholesale of commodities may be allowed but may not include on premise signage advertising hours of operation and products. Wholesale transactions will allow no more than two transactions per day on the property. 2.) No structures for the large scale commercial packing, processing, and sales of commodities raised on the premises will be constructed on the property. 3.) No more than six (6) livestock animals at one time (horses, cows, pigs, goats, etc.) Vote was unanimous.

BCC ACTION: Barfield/Smith – APPROVED with a Binding Development Plan as follows: 1.) No commercial retail operation on the property. Wholesale of commodities may be allowed but may not include on premise signage advertising hours of operation and products. Wholesale transactions will allow no more than two transactions per day on the property. 2.) No structures for the large scale commercial packing, processing, and sales of commodities raised on the premises will be constructed on the property. 3.) No more than six (6) livestock animals at one time (horses, cows, pigs, goats, etc.) Vote was unanimous. BDP TO BE SCHEDULED AS A CONSENT ITEM ON A SUBSEQUENT BCC AGENDA, PER POLICY BCC-52. RESOLUTION NUMBER TO BE ASSIGNED UPON RECEIPT OF RECORDED BDP.

III.B.6. (15PZ00028) – 1322 CLEARLAKE LLC – (Scott Wideman and Mason Williams) – Requests removal of a BDP in a BU-2 zoning classification, on 1.21 acres, located on the east side of Clearlake Rd., between Melrose St. and Furnari St. (1322 Clearlake Rd., Cocoa)

P&Z Recommendation: Lawandales/McLellan – Approved with a BDP limited to BU-1 uses, except to allow a document shredding company. Vote was unanimous.

BCC ACTION: Infantini/Smith – APPROVED with a Binding Development Plan limited to BU-1 uses, except to allow a document shredding company. Vote was unanimous. BDP TO BE SCHEDULED AS A CONSENT ITEM ON A SUBSEQUENT BCC AGENDA, PER POLICY BCC-52. RESOLUTION NUMBER TO BE ASSIGNED UPON RECEIPT OF RECORDED BDP.

DISTRICT 3

III.B.7. (15PZ00029) – SEBASTIAN INLET MARINA, LLC – (T.P. Kennedy) – requests a CUP for Alcoholic Beverages (beer & wine only) in Conjunction with a Restaurant, in a BU-2 zoning classification, on 2.85 acres, located on the east side of U.S. 1, approx. 425 ft. south of Overlook Dr. (8685 U.S. Hwy 1, Micco)

P&Z Recommendation: Ron McLellan/Rochelle Lawandales – Approved. Vote was unanimous.

BCC ACTION: Infantini/Smith – APPROVED with the condition that parking is determined to be sufficient for uses on the site. Vote was unanimous. 15PZ00029.

PLANNING AND ZONING BOARD RECOMMENDATIONS OF JULY 6, 2015

- III.B.1. Calvin D. & Debra D. Baldwin. Anderson/Barfield, approved as recommended; and adopted Ordinance No. 15-21, Small Scale Plan Amendment (15S.06)
- III.B.2. Darrell & Traci Freeman, and Kathleen Holcomb. Anderson/Smith, approved as recommended.
- III.B.3. Swallowtail, LLC. Infantini/Smith, approved as recommended.
- III.B.4. Swallowtail, LLC. Anderson/Smith, approved as recommended; and adopted Ordinance No. 15-22, Small Scale Plan Amendment (15S.07)
- III.B.5. Linda E. Spain, Trustee. Barfield/Smith, approved as recommended with a BDP as follows: 1.) No commercial retail operation on the property. Wholesale of commodities may be allowed but may not include on premise signage advertising hours of operation and products. Wholesale transactions will allow no more than two transactions per day on the property. 2.) No structures for the large scale commercial packing, processing, and sales of commodities raised on the premises will be constructed on the property. 3.) No more than six (6) livestock animals at one time (horses, cows, pigs, goats, etc.)
- III.B.6. 1322 Clearlake LLC. Infantini/Smith, approved as recommended with a BDP limited to BU-1 uses, except to allow a document shredding company.
- III.B.7. Sebastian Inlet Marina, LLC. Infantini/Smith, approved with the condition that parking is determined to be sufficient for uses on the site.