



# Agenda Report

2725 Judge Fran Jamieson  
Way  
Viera, FL 32940

## Consent

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F.4.

7/6/2021

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### Subject:

Acceptance, Re: Binding Development Plan with Robert Van Horn and Gerald K. Houck. (District 2)

### Fiscal Impact:

None

### Dept/Office:

Planning & 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 April 15, 2021, the Board approved a rezoning request from RU-1-9 (Single-Family Residential) to BU-2 (Retail, Warehousing, and Wholesale Commercial), with a BDP. The conditions of the BDP include, but are not limited to, the following:

- Owners agree to the BU-2 zoning designation with the following uses eliminated:
  - Aquariums, Auditoriums
  - Billiard Rooms and Electronic Arcades
  - Bottling Beverages
  - Bowling Alleys
  - Cafeterias
  - Dancing Halls and Academies
  - Fraternities and Sororities
  - Hospitals
  - Commercial Parking
  - Pet Kennels
  - Seafood Processing Plants
  - Theaters



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

July 7, 2021

**MEMORANDUM**

TO: Jennifer Jones, Zoning

RE: Item F.4., Binding Development Plan (BDP) Agreement with Robert Van Horn and Gerald K. Houck

The Board of County Commissioners, in regular session on July 6, 2021, executed Binding Development Plan with Robert Van Horn and Gerald K. Houck. Said Plan was reorded in BK/PG 9183/614. 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

*Donna Scott*  
for: Kimberly Powell, Clerk to the Board

Encls. (2)



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July 7, 2021

MEMORANDUM

TO: Recording

RE: Item F.4., Binding Development Plan (BDP) Agreement with Robert Van Horn and Gerald K. Houck

The Board of County Commissioners, in regular session on July 6, 2021, executed Binding Development Plan with Robert Van Horn and Gerald K. Houck, for property located at 605 Oleander Drive, Merritt Island. Enclosed are the original BDP, and Check No. 2686 for \$35.50. **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  
RACHEL M. SADOFF, CLERK

A handwritten signature in cursive script, appearing to read "Kimberly Powell", is written over the typed name.

Kimberly Powell, Clerk to the Board

Encls. (2)

**Prepared by: Owners**

**Address: 605 Oleander, Merritt Island, Florida 32952**

### **BINDING DEVELOPMENT PLAN**

**THIS AGREEMENT, entered into this 11th day of May, 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 Robert Van Horn and Gerald K. Houck, (hereinafter referred to as "Owners").**

### **RECITALS**

**WHEREAS, Owners own 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, Owners have requested the BU-2 zoning classification and desire to develop the Property as a use to be determined, and pursuant to the Brevard County Code, Section 62-1157; and**

**WHEREAS, as part of its plan for development of the Property, Owners wish 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 Owners, 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. Owners agree to the BU-2 zoning designation with the following uses prohibited on the property: Aquariums, Auditoriums, Billiard Rooms and Electronic arcades, Bottling Beverages, Bowling Alleys, Cafeterias, Dancing halls and Academies, Fraternities and Sororities, Hospitals, Commercial Parking, Pet Kennels, Seafood Processing Plants, and Theaters.**
- 4. Owners shall comply with all regulations and ordinances of Brevard County, Florida. This Agreement constitutes Owner's agreement to meet 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. Owners, 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 April 15, 2021. In the event the subject Property is annexed into a municipality and 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. Condition's precedent. All mandatory conditions set forth in this Agreement mitigate the potential for incompatibility and shall be satisfied before Owners 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.

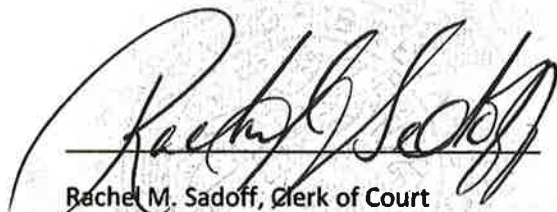
IN WITNESS THEREOF, the parties hereto have caused these presents to be signed all as of the date and year first written above.

ATTEST:

BOARD OF COUNTY COMMISSIONERS

OF BREVARD COUNTY, FLORIDA

2725 Judge Fran Jamieson Way Viera, FL 32940



Rachel M. Sadoff, Clerk of Court

(SEAL)



Rita Pritchett, Chair

As approved by the Board on 07/06/21 .

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

WITNESSES:

\_\_\_\_\_

\_\_\_\_\_

(Witness Name typed or printed)

Robert Van Horn and Gerald Houck as

OWNERS:

\_\_\_\_\_

Robert Van Horn

8911 Lake Drive, unit 503, Cape Canaveral FL 32920

\_\_\_\_\_

Gerald K. Houck

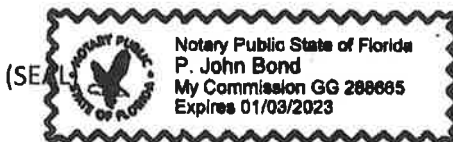
STATE OF FLORIDA §

COUNTY OF BREVARD §

The foregoing instrument was acknowledged before me, by means of physical presence, this 26th day of April, 2021 by Robert Van Horn and Gerald Houck, Owners, who are personally known to me.

\_\_\_\_\_

Notary Public



**Exhibit A**  
**Legal Description**

**Lots 18, 19, and 20, Block 2, San Lin Manor, according to the map or plat thereof, as recorded in Plat Book 10, Page 69, of the Public Records of Brevard County, Florida.**

**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 #: 2911602  
Receipt #: 62771423  
Cashier Date: 07/08/2021 02:25:47 PM  
Cashier Branch: Titusville - Six Story

Print Date:  
07/08/2021 02:25:51 PM

| CUSTOMER INFORMATION  | TRANSACTION INFORMATION |                        | PAYMENT SUMMARY |         |
|---|-------------------------|------------------------|-----------------|---------|
| ROBERT VAN HORN<br>8911 LAKE DR APT 503<br>CAPE CANAVERAL, FL 32920 | Date Received:          | 07/08/2021             | Total Fees:     | \$35.50 |
|   | Source Code:            | Titusville - Six Story | Total Payments: | \$35.50 |
|   | Return Code:            | Hand Carried           | Balance Due:    | \$0.00  |
|   | Trans Type:             | Recording              |                 |         |
|   |                         |                        |                 |         |

1 Payments

|                    |         |
|--------------------|---------|
| <b>CHECK #2686</b> | \$35.50 |
|--------------------|---------|

1 Recorded Items

|                                       |  |
|---------------------------------------|--|
| <b>AGREEMENT</b>                      | BK/PG: 9183/614 CFN: 2021177001 Date: 07/08/2021 02:25:46 PM |
| From: Tα                              |  |
| Recording @ 1st=\$10 Add'l=\$8.50 ea. | 4 \$35.50  |

1 Miscellaneous Items

**AGENT TRANSMITTAL**

Prepared by: Owners

Address: 605 Oleander, Merritt Island, Florida 32952

Subject: Statement regarding mortgage

**BINDING DEVELOPMENT PLAN**

This notarized statement is intended to notify the Planning and Zoning Manager and the County Attorney's Office that there is no mortgage on the subject property for this BDP. We the owners, Robert Van Horn and Gerald Houck own this property clear of any loans or mortgage.

Robert Van Horn and Gerald Houck


as DEVELOPER/OWNERS

WITNESSES:



LESLIE DAVIS

(Witness Name typed or printed)



Mary Van Horn

(Witness Name typed or printed)



Robert VAN HORN

8911 Lake Drive, unit 503, Cape Canaveral FL 32920



GERALD HOUCK

(Name typed, printed or stamped)

STATE OF Florida §

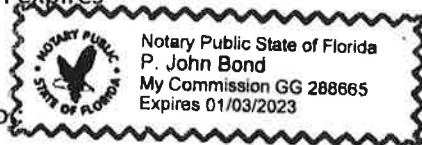
COUNTY OF Brevard §

The foregoing instrument was acknowledged before me, by means of physical presence, this 4th day of May, 2021 by Robert Van Horn and Gerald Houck, Owners who are personally known to me.

My commission expires

SEAL

Commission No.





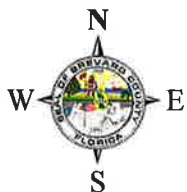
Notary Public

(Name typed, printed or stamped)

# LOCATION MAP

VAN HORN, ROBERT AND HOUCK, GERALD K.

21Z00004





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

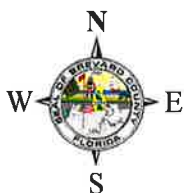
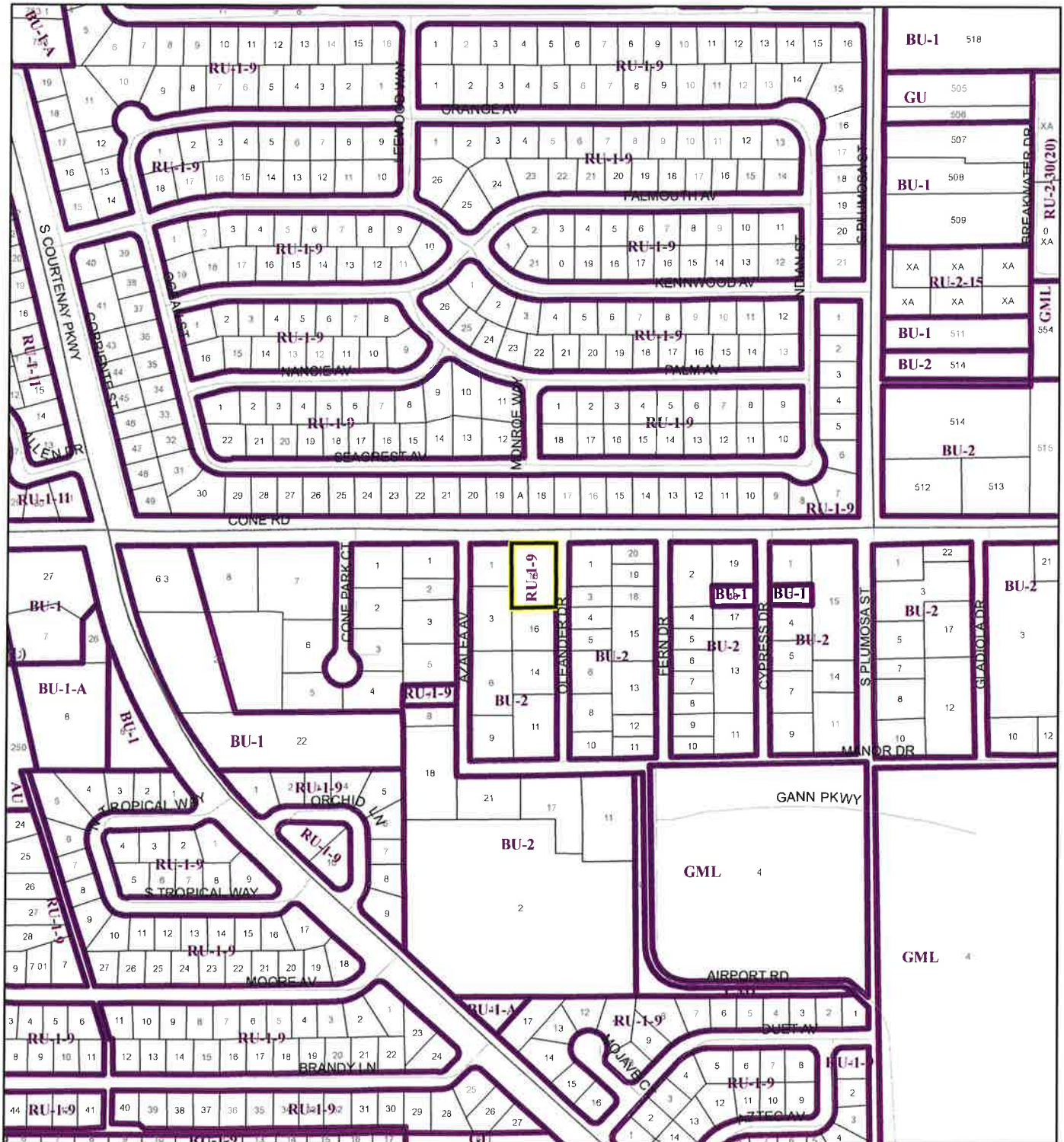
Buffer Distance: 500 feet

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: 1/22/2021

-  Buffer
-  Subject Property

21Z00004



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: 1/22/2021

**Subject Property**

Parcels

## Zoning

**Resolution 21Z00004**

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

**WHEREAS, Robert Van Horn and Gerald K. Houck** have requested a change of zoning classification from RU-1-9 (Single-Family Residential) to BU-2 (Retail, Warehousing, and Wholesale Commercial), on property described as Lots 18, 19, and 20, Block 2, San Lin Manor, according to the map or plat thereof, as recorded in Plat Book 10, Page 69, of the Public Records of Brevard County, Florida. **Section 02, Township 25, Range 36.** (0.53 acres) Located on the northwest corner of Cone Rd. and Oleander Dr. (605 Oleander Dr., Merritt Island); 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; 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 (Binding Development Plan) prohibiting the following BU-2 uses on the property: aquariums, auditoriums, billiard rooms and electronic arcades, bottling beverages, bowling alleys, cafeterias, dancing halls and academies, fraternities and sororities, hospitals, commercial parking, pet kennels, seafood processing plants, and theaters; now therefore,

**BE IT RESOLVED** by the Board of County Commissioners of Brevard County, Florida, that the requested change of zoning classification from RU-1-9 to BU-2 be approved with a BDP, recorded in ORB 9183, Pages 614 - 617, dated 07/08/2021, prohibiting the following uses on the property: aquariums, auditoriums, billiard rooms and electronic arcades, bottling beverages, bowling alleys, cafeterias, dancing halls and academies, fraternities and sororities, hospitals, commercial parking, pet kennels, seafood processing plants, and theaters. 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 July 8, 2021.

BOARD OF COUNTY COMMISSIONERS  
Brevard County, Florida

Rita Pritchett, Chair  
Brevard County Commission

As approved by the Board on July 6, 2021.

ATTEST:

RACHEL M. SADOFF, CLERK

(SEAL)

Planning and Zoning Board Hearing – March 8, 2021

Board of County Commissioners Zoning Hearing - April 15, 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.**

**Planning and Zoning Board Recommendation:** Moia/Buchanan – Approved. The vote was unanimous.

**Board of County Commissioners Action:** Lober/Smith - Approved as recommended, and adopted Ordinance No. 21-08. The vote was unanimous.

5. **ROBERT VAN HORN AND GERALD K. HOUCK** requests a change of zoning classification from RU-1-9 (Single-Family Residential) to BU-2 (Retail, Warehousing, and Wholesale Commercial). The property is 0.53 acres, located on the northwest corner of Cone Rd. and Oleander Dr. (605 Oleander Dr., Merritt Island) (21Z00004) (Tax Account 2501307) (District 2)

**Planning and Zoning Board Recommendation:** Moia/Buchanan – Approved. The vote was unanimous.

**Board of County Commissioners Action:** Lober/Smith - Approved with a BDP (Binding Development Plan) prohibiting the following BU-2 uses: aquariums, auditoriums, billiard rooms and electronic arcades, bottling beverages, bowling alleys, cafeterias, dancing halls and academies, fraternities and sororities, hospitals, commercial parking, pet kennels, seafood processing plants, and theaters. The vote was unanimous. 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.

6. **5971 Cedar Lake Drive Revocable Land Trust and U.S. Highway No. 1 Commercial Land Trust** (Kim Rezanka) requests a change of zoning classification from RU-1-11 (Single-Family Residential), TR-2 (Single-Family Mobile Home), and BU-1 (General Retail Commercial) with a BDP (Binding Development Plan) to TR-1 (Single-Family Mobile Home) with a BDP limited to 200 units. The property is 58.04 +/- acres, located on the north side of Cedar Lake Dr., approx. 0.31 mile north of Broadway Blvd.; also located at the west end of Clearview Dr. (No assigned address. In the Cocoa area.) (20Z00036) (Tax Accounts 2310971, 2310861, and 2316173) (District 1)

**Port St. John Board Recommendation:** Rupe/Porter-Hyde – Denied. The vote was unanimous.

**Planning and Zoning Board Recommendation:** Filiberto/Buchanan – Approved with the additional BDP condition that the development be required to connect to sewer. The vote was unanimous. Bruce Moia abstained.

**Board of County Commissioners Action of 03/23/21:** Smith/Lober - Approved with a BDP as submitted 03/22/21 with the following conditions: Developer/Owner shall provide a 6-foot high opaque fence on the Property adjacent to any residentially zoned property; Developer/Owner shall limit density to a total of 150 units on the Property and may be further restricted by any changes to the Comprehensive Plan or the Land Development Regulations; vehicular access to Vineland Street from the Property is prohibited; Developer/Owner will not utilize septic tanks for homes developed on the Property; Developer/Owner will provide a 15-foot perimeter buffer tract along all property boundaries which shall be platted as a common tract, separate from individual lots; Developer/Owner shall limit access to Cedar Lake Drive to an emergency access for the benefit of Brevard County, with a locked gate, if required by Brevard County or due to

## **PLANNING AND ZONING BOARD RECOMMENDATIONS**

- Item H.1. All Space Storage. Smith/Lober. Approved changing zoning classification from BU-1 to BU-2 as recommended. (20Z00043).
- Item H.2. Kaydenlew, LLC. Smith/Lober. Approved changing zoning classification from BU-1 to BU-2 as recommended. (21Z00003).
- Item H.3. SDLD, LLC. Lober/Zonka. Approved changing zoning classification from AU to EU as recommended. (21Z00001).
- Item H.4. Robert Van Horn and Gerald K. Houck. Lober/Smith. Adopted Ordinance No. 21-08, setting forth the first Small Scale Plan Amendment of 2021, 21S.01, changing the Future Land Use designation from NC to CC. (21PZ00001).
- Item H.5. Robert Van Horn and Gerald K. Houck. Lober/Smith. Approved changing zoning classification from RU-1-9 to BU-2, with a Binding Development Plan excluding aquariums, auditoriums, billiard rooms and electronic arcades, bottling beverages, bowling alleys, cafeterias, dancing halls and academies, fraternities and sororities, hospitals, commercial parking, pet kennels, seafood processing plants, and theaters. (21Z00004).
- Item H.6. Scott W. and Debora A. Speer. Lober/Zonka. Approved changing zoning classification from RR-1 to AU, as recommended with a Binding Development Plan, limited to not conducting agritourism, and only allowing two donkeys and two pigs. (21Z00002).