

**F. Consent Agenda - Planning and Development
ITEM 7.**



**AGENDA REPORT
February 26, 2019**

**Acceptance, Re: Binding Development Plan - W. K. & R. Groves, Inc.
(17PZ00158) (District 2)**

SUBJECT:

Acceptance, Re: Binding Development Plan - W. K. & R. Groves, Inc. (17PZ00158)
(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 authorize the Chair to sign, the Binding Development Plan.

SUMMARY EXPLANATION and BACKGROUND:

On December 6, 2018, the Board approved a rezoning request from AU (Agricultural Residential) to SR (Suburban Residential), with a BDP (Binding Development Plan). The BDP 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 approval of the rezoning request by the Board. Following staff and legal review, a BDP is presented to the Board in recordable form as a Consent Agenda Item in order to finalize the zoning action.

The limitations in the attached BDP include, but are not limited to, the following:

- Developer/Owner shall limit the project to 110 units and may be further restricted by any changes to the Comprehensive Plan or the Land Development Regulations.
- Developer/Owner shall extend the sewer line from the nearest connection point to the project. If the Developer/Owner does not install sewer to the property, it shall limit the number of units to 50, which shall be serviced by septic systems capable of reducing the total nitrogen (TN) in effluent by 65% or greater.
- Developer/Owner shall complete a topographical survey prior to subdivision submittal. The topographical survey shall be submitted as part of the initial subdivision review.

Staff Contact: Jennifer Jones, ext. 52653

CLERK TO THE BOARD INSTRUCTIONS:

Please return two certified copies of the BDP upon recordation.

ATTACHMENTS:

Description

- ▯ **Binding Development Plan**



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

Telephone: (321) 637-2001

Fax: (321) 264-6972

Tammy.Rowe@brevardclerk.us

February 27, 2019

M E M O R A N D U M

TO: Jennifer Jones, Zoning

RE: Item F.7., Binding Development Plan Agreement with W.K. & R. Groves, Inc.

The Board of County Commissioners, in regular session on February 26, 2019, executed Binding Development Plan with W.K. & R. Groves, Inc. See attached Exhibit A for description of Binding Development properties.

Said Plan was recorded in OR Bk/Page 8378/378. Enclosed for your necessary action are two certified copies of the recorded document.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

Tammy Rowe, Deputy Clerk

/dt

Encls. (2)

cc: Contracts Administration

Prepared by: Charles B. Genoni
Beachland Managers, LLC
4760 N. US1 #201
Melbourne FL 32935

**BINDING
DEVELOPMENT PLAN**

THIS AGREEMENT, entered into this 26 day of Feb., 2019 between the BOARD OF COMMISSIONERS OF BREVARD COUNTY, FLORIDA, a political subdivision of the State of Florida (hereinafter referred to as "County") and W K & R Groves, Inc., a Florida Corporation (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 SR zoning classification(s) and desire to develop the Property as a Single Family Subdivision, 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 the project to 110 units and may be further restricted by any changes to the comprehensive plan or the Land Development Regulations.
3. Developer/Owner shall extend the Sewer line from the nearest connection point to the project. If the Developer/Owner does not install Sewer to the Property, it shall limit the number of units to 50 which shall be serviced by septic systems capable of reducing the total nitrogen (TN)

in effluent by 65% or greater.

4. Developer/Owner shall complete a topographical survey prior to site plan submittal. The topographical survey shall be submitted as part of the initial site plan review.

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 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. Developer/Owner, upon execution of this Agreement, shall pay to the Clerk of Courts the cost of recording this Agreement in the Public Records of Brevard County, Florida.

7. This Agreement shall be binding and shall insure 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 12/6, 2018. 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.

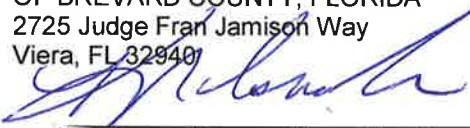
9. Conditions precedent. All mandatory conditions set forth in this Agreement mitigate the potential for incompatibility and must be satisfied before Developer/Owner may implement the approved use(s), unless stated otherwise. The failure to timely comply with any mandatory condition is a violation of this Agreement, constitutes a violation of the Zoning Classification and is subject to enforcement action as described in Paragraph 8 above.

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

ATTEST:


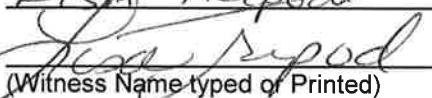

Scott Ellis, Clerk
(SEAL)

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


Kristine Isnardi, Chair
As approved by the Board on Feb. 26, 2019


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

WITNESSES:

GARY TRIPODI

(Witness Name typed or printed)
Lisa Tripod

(Witness Name typed or Printed)

DEVELOPER/OWNER

W K & R Groves, Inc.


1915 SW 16th Ave Boynton Beach FL 33426
4989 Palm Way
Lake Worth Fl
As President 33463
Marie McKessy Mantell

STATE OF Florida
COUNTY OF Palm Beach

The foregoing instrument was acknowledged before me this 5th day of Jan, 2019
by Marie McKessy Mantell as president of WK + R Groves, Inc
who is personally known or produced _____ as identification.

My commission expires 7-21-2020
Commission no. GG 004951
SEAL


Notary Public
(Name typed, printed or stamped)



LISA TRIPODI
MY COMMISSION # GG 004951
EXPIRES: July 21, 2020
Bonded Thru Budget Notary Services

Prepared by and return to:
Dale A. Dettmer, Esq.
304 South Harbor City Boulevard
Suite 201
Melbourne, FL 32901

TRUST CERTIFICATION

BEFORE ME, the undersigned authority, personally appeared **MARIE MCKESSY** ("Affiant"), being by me first duly sworn, deposes and says:

1. Affiant's maiden name was Marie McKessy. Following her marriage, Affiant was known as Marie F. Mantell a/k/a Marie Mantell. Affiant's maiden name was restored following her dissolution of marriage. Affiant is one and the same person as Marie F. McKessy, Marie F. Mantell and Marie Mantell.

2. Affiant is the child of Marie L. Willis who passed away on August 26, 2016, a copy of the death certificate being attached hereto as Exhibit "A"

3. Marie L. Willis established and served as trustee of the Marie L. Willis Revocable Trust dated April 7, 1997, as amended on October 12, 2005 and further amended on November 22, 2005 (the "Trust"), copies of relevant pages of the Trust being attached hereto as Exhibit "B."

4. The Trust became irrevocable upon the death of Marie L. Willis.

5. Affiant serves as trustee of the Trust.

6. The Trust is the owner of all of the issued and outstanding shares of stock of W. K. & R. Groves, Inc., a dissolved Florida corporation.

7. The Trust currently exists and has not been revoked, modified or amended in any manner that would cause the representations contained in this instrument to be incorrect.

8. Affiant's address is 4989 Palm Way, Lake Worth, FL 33463.

9. Affiant further states that Affiant is familiar with the nature of an oath and with penalties as provided by the laws of the State of Florida for falsely swearing to statements made in an instrument of this nature.

IN WITNESS WHEREOF, Affiant has executed this instrument this 2 day of FEB, 2019.

AFFIANT



Marie McKessy

Exhibit "A"

Legal Description:

Begin at the Southwest corner of the Southwest $\frac{1}{4}$ of the Southeast $\frac{1}{4}$, Section 24, Township 23 South, Range 36 East, Brevard County, Florida; thence run N. $0^{\circ}46'15''$ E, along the West lines of the Southeast $\frac{1}{4}$ and the Northeast $\frac{1}{4}$ of said Section 24, a distance of 3897.81 ft., to a point; thence run N. $88^{\circ}26'15''$ East, a distance of 2000.24 ft., to a point on the East line of the West $\frac{1}{2}$ of the Southeast $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ of said Section 24; thence run S $0^{\circ}36'53''$ W., along said East line of West $\frac{1}{2}$ of Southeast $\frac{1}{4}$ of Northeast $\frac{1}{4}$ of said Section 24, a distance of 1300.61 ft., to a point on the East-West Center Line of said Section 24; thence run S. $0^{\circ}31'38''$ West, along the East line of the West $\frac{1}{2}$, East $\frac{1}{2}$, Southeast $\frac{1}{4}$, Section 24, a distance of 2669.25 feet to a point on the South line of Section 24; thence run N. $89^{\circ}29'49''$ West along said South line, Section 24, a distance of 2013.48 ft., to a point of Beginning. (Containing 181.10 Acres, more or less)

Less and Except

Commence at the Southwest corner of the Southwest $\frac{1}{4}$ of the Southeast $\frac{1}{4}$, Section 24, Township 23 South, Range 36 East, Brevard County, Florida: Thence run North $0^{\circ}46'15''$ East along the West line of the Southeast $\frac{1}{4}$ of said Section 24 a distance of 25.00 feet to the point of Beginning of the following herein described parcel: thence continue North $0^{\circ}46'15''$ E along said West line of the Southeast $\frac{1}{4}$ a distance of 1,835.29 feet; thence run South $89^{\circ}29'49''$ E parallel with the South line of the Southeast $\frac{1}{4}$ a distance of 1678.77 feet; thence run South $0^{\circ}46'15''$ West parallel with the West line of the Southeast $\frac{1}{4}$ a distance of 1835.29 feet; thence run North $89^{\circ}29'49''$ West parallel with the South line of the Southeast $\frac{1}{4}$ a distance of 1678.77 feet to the point of beginning and being subject to any and all easements, deed restrictions and rights-of-way of record.

Also Described as

Legal Description:

PARCEL ID 23-36-24-00-750 TA# 2316619 105.05 ACRES
W $\frac{3}{4}$ OF SE $\frac{1}{4}$ & W $\frac{3}{4}$ OF S $\frac{1}{2}$ OF NE $\frac{1}{4}$ AS DESC IN ORB 1204 PG 358, EXC S 2000
FT OF W 1300 FT ORB 2838 PG 2885

PARCEL ID 23-36-24-00-752 TA# 2316620 1.00 ACRES
E 210 FT OF W 1938.48 FT OF N 210 FT OF S 255 FT OF SE $\frac{1}{4}$

PARCEL ID 23-36-24-00-754 TA# 2316622 4.92 ACRES
2000 FT OF W 1300 FT OF SE $\frac{1}{4}$ EXC ORB 2838 PG 2885

INCUMBENCY CERTIFICATE

I, **MARIE MCKESSY**, Secretary of **W. K. & R. GROVES, INC.**, (the "Company"), a dissolved Florida corporation, do hereby certify that the following named individuals are the duly elected incumbents of the respect offices of the Company set out at the left of their respective names:

<u>Title</u>	<u>Name</u>
President	Marie McKessy
Vice President	Marie McKessy
Secretary/Treasurer	Marie McKessy

and that Marie McKessy is the sole director of the Company.

IN WITNESS WHEREOF, I have executed this instrument this 14 day of January, 2019.

W. K. & R. GROVES, INC., a Florida corporation

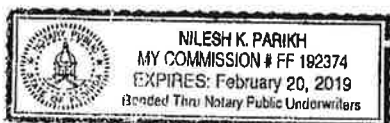
By: *Marie McKessy*
Marie McKessy, Secretary

STATE OF FLORIDA
COUNTY OF PALM ~~BAY~~ Beach

The foregoing instrument was acknowledged before me this 14 day of January, 2019 by **MARIE MCKESSY**, Secretary of **W. K. & R., Groves, Inc.**, a dissolved Florida corporation, who () is personally known to me or who (X) has provided a Florida driver's license as identification.

Nilesh K. Parikh
Notary Public

My Commission expires: 02/20/19



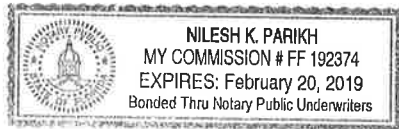
STATE OF FLORIDA
COUNTY OF PALM BEACH

SWORN TO AND SUBSCRIBED before me this 2 day of Feb., 2019, by **Marie McKessy**, () who is personally known to me or (x) who has produced a Florida driver's license as identification.

Nilesh K. Parikh

Notary Public

My Commission Expires: 02/20/19



STATE OF FLORIDA
COUNTY OF BREVARD

Marie McKessy Mantell as President of W K & R after being duly sworn, deposes and says:

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

PARCEL ID 23-36-24-00-750 TA# 2316619 105.05 ACRES
W 3/4 OF SE 1/4 & W 3/4 OF S 1/2 OF NE 1/4 AS DESC IN ORB 1204 PG 358, EXC S 2000 FT
OF W 1300 FT ORB 2838 PG 2885

PARCEL ID 23-36-24-00-752 TA# 2316620 1.00 ACRES
E 210 FT OF W 1938.48 FT OF N 210 FT OF S 255 FT OF SE 1/4

PARCEL ID 23-36-24-00-754 TA# 2316622 4.92 ACRES
2000 FT OF W 1300 FT OF SE 1/4 EXC ORB 2838 PG 2885

There are no mortgages on the above described property

Dated this 5th day of January 2019

Marie McKessy Mantell
Signature

STATE OF FLORIDA
COUNTY OF BREVARD

The foregoing instrument was sworn to before me this 5th day of Jan 2019, by
Marie McKessy Mantell, who is personally known to me or who has
produced _____ as identification, and who did take an oath.

Notary Public:

Lisa Tripodi
State of Florida at Large
My Commission Expires:

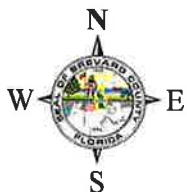
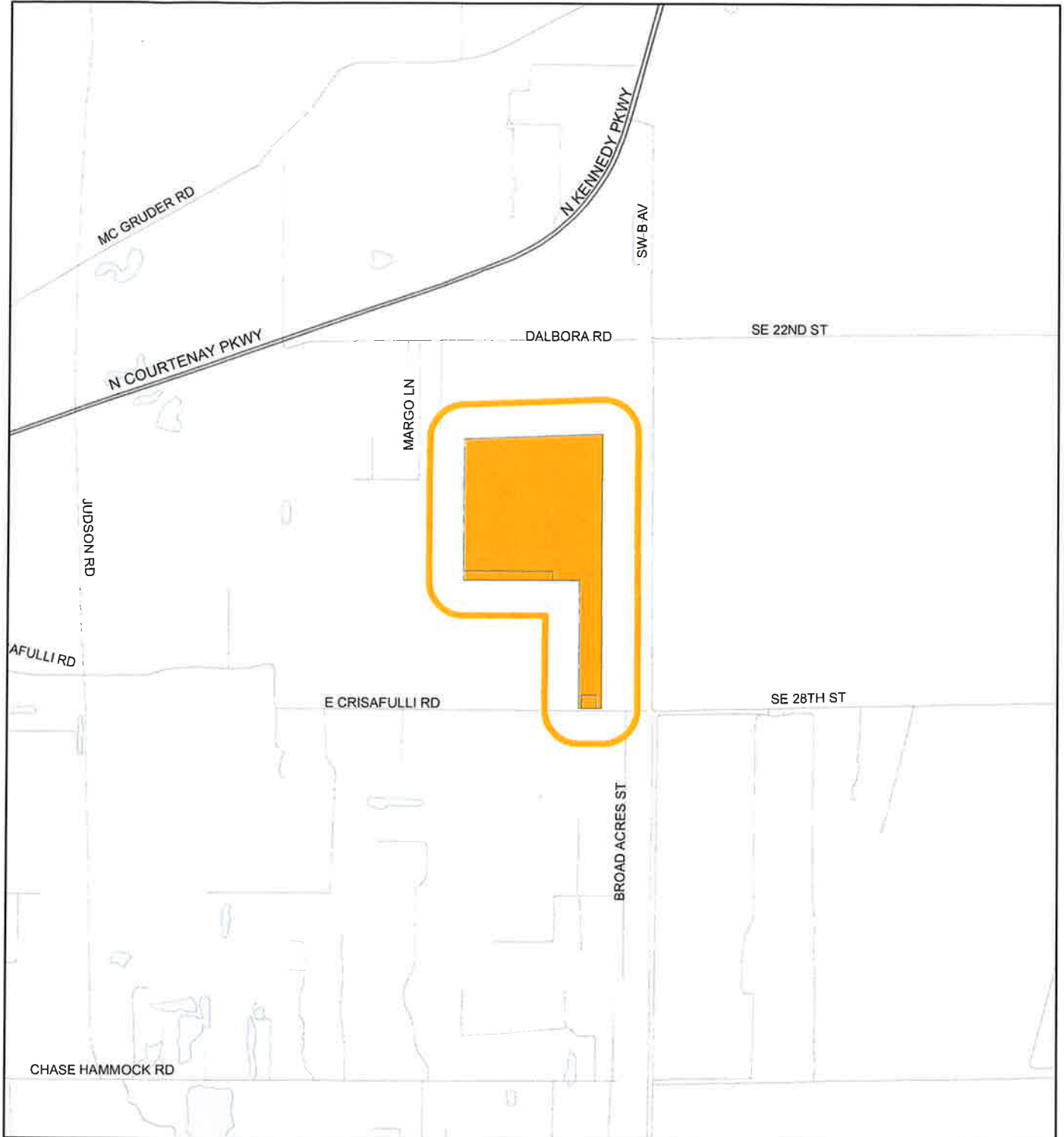
(SEAL)



LISA TRIPODI
MY COMMISSION # GG 004951
EXPIRES: July 21, 2020
Bonded Thru Budget Notary Services

LOCATION MAP

W.K. & R. GROVES
17PZ00158



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.

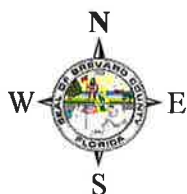
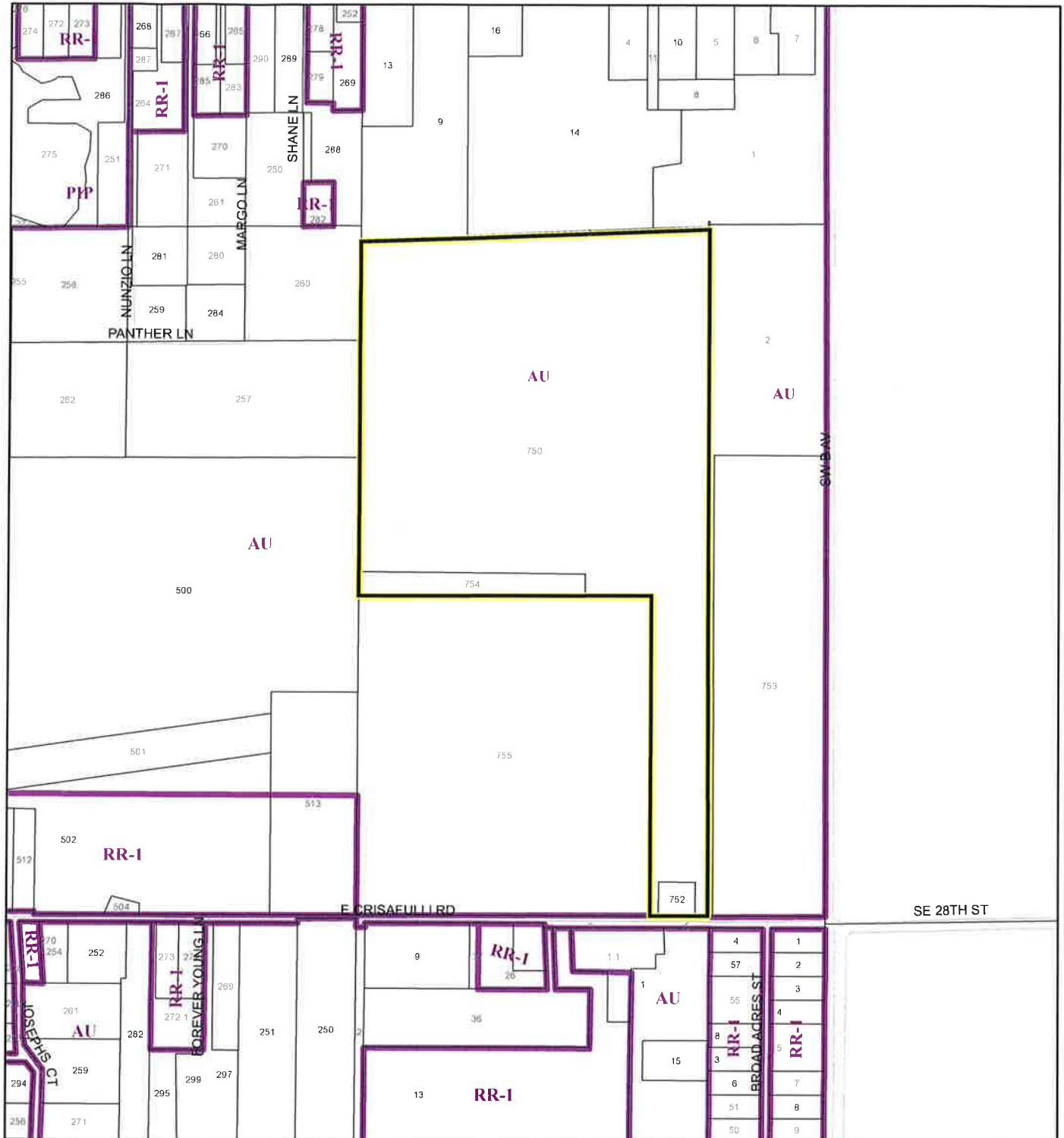
Produced by BoCC - GIS Date: 8/30/2018

Buffer
Subject Property

ZONING MAP

W.K. & R. GROVES

17PZ00158



1:9,600 or 1 inch = 800 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: 8/30/2018

- Subject Property
- Parcels
- Zoning

H. PUBLIC HEARINGS

North Merritt Island Dependent Special District Board

Thursday, November 8, 2018, at 6:00 p.m.

Merritt Island Service Complex

2575 North Courtenay Parkway, Second Floor, Merritt Island, Florida

Planning and Zoning Board

Monday, November 19, 2018, at 3:00 p.m. (Item 8 only)

Brevard County Government Center

2725 Judge Fran Jamieson Way, Building C, First Floor, Viera, Florida

Brevard County Board of County Commissioners

Thursday, December 6, 2018, at 5:00 p.m.

Brevard County Government Center

2725 Judge Fran Jamieson Way, Building C, First Floor, Viera, Florida

7. **Jessica R. and Stephen F. Paglialonga** request a change of zoning classification from AU (Agricultural Residential) and EU (Estate Use Residential) to all EU. The property is 1.33 acres, located on the north side of Gails Way, approximately 0.20 miles west of North Tropical Trail. (470 Gails Way, Merritt Island Area) (18PZ00102)

North Merritt Island Board Recommendation: Cook/Balke – Denied. The vote was 5:1, with Testa voting nay.

Board of County Commissioners Action: Lober/Smith – Approved. The vote was unanimous.

8. **W.K.&R. Groves, Inc.** (Chad Genoni) requests a change of zoning classification from AU (Agricultural Residential) to SR (Suburban Residential) with a BDP (Binding Development Plan). The property is 110.97 acres, located on the north side of East Crisafulli Road, approximately 320 feet west of Broad Acres Street (No assigned address. In the North Merritt Island Area) (17PZ00158)

North Merritt Island Board Recommendation: Lindhorst/Carbonneau – Denied. The vote was unanimous.

Planning and Zoning Board Recommendation: Moia/Wadsworth – Denied. The vote was unanimous.

Board of County Commissioners Action: Tobia/Smith – Approved with a Binding Development Plan as submitted, with the additional conditions of completion of a topographical survey to be completed prior to the Site Plan submittal, and to limit the total number of units to 50 if sewer connection is not available. The vote was 4:1, with Lober voting nay. The Binding Development Plan 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 Binding Development Plan.

PUBLIC COMMENT

PLANNING AND ZONING BOARD RECOMMENDATIONS

- Item H.1. Kimberly Colella-Angelillo. Pritchett/Tobia. Approved as recommended.
- Item H.2. Linda L. Moros. Pritchett/Smith. Approved as recommended.
- Item H.3. C&K, LLC. Smith/Pritchett. Approved as recommended.
- Item H.4. CLA Retail, LLC. Smith/Lober. Approved as recommended.
- Item H.5. James M. and Joanne M. Thomas. Pritchett/Smith. Tabled to February 7, 2019.
- Item H.6. Happy Landings Homes, Inc. Pritchett/Smith. Returned to Planning and Zoning.
- Item H.7. Jessica R. and Stephen F. Paglialonga. Lober/Smith. Approved.
- Item H.8. W.K.&R. Groves, Inc. Tobia/Smith. Approved with a Binding Development Plan as submitted, with the additional conditions of completion of a topographical survey be completed prior to the Site Plan submittal, and to limit the total number of units to 50 if sewer connection is not available. Lober voting nay.
- Item H.9. Suntree & Wickham Station, LLC. Smith/Pritchett. Approved as recommended.
- Item H.10. Anthony Lopes and Eugene R. Lomando. Pritchett/Lober. Tabled to December 18, 2018.
- Item H.11. Anthony Lopes and Eugene R. Lomando. Pritchett/Lober. Tabled to December 18, 2018.