

**F. Consent Agenda - Planning and Development
ITEM 2.**



**AGENDA REPORT
March 26, 2019**

**Acceptance, Re: Binding Development Plan - Flamingo Land Company, Inc.
(18PZ00072) (District 1)**

SUBJECT:

Acceptance, Re: Binding Development Plan - Flamingo Land Company, Inc. (18PZ00072)
(District 1)

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 February 7, 2019, the Board approved a rezoning request from IU (Industrial Use) to RU-1-7 (Single-Family 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 density to 4 units per acre and may be further restricted by any changes to the Comprehensive Plan or the Land Development Regulations.
- Developer/Owner shall make a sanitary sewer connection to the City of Cocoa sanitary sewer system. The connection shall include a new sanitary sewer lift station, gravity collection system, and a forcemain to serve the development. All dwelling units constructed on the property shall be connected to sanitary sewer prior to issuance of a Certificate of Occupancy.

Staff contact: Jennifer Jones
321-633-2069 ext 52653

CLERK TO THE BOARD INSTRUCTIONS:

Upon recordation, please return two certified copies of the Binding Development Plan to Planning and Development.

ATTACHMENTS:

Description

- ▢ **BDP Package**



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

March 27, 2019

M E M O R A N D U M

TO: Jennifer Jones, Zoning

RE: Item F.2., Binding Development Plan Agreement with Flamingo Land Company, Inc.

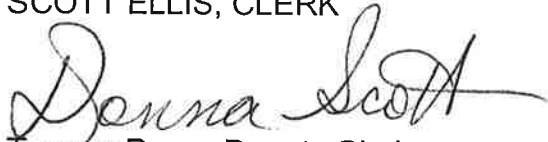
The Board of County Commissioners, in regular session on March 26, 2019, executed Binding Development Plan with Flamingo Land Company, Inc.

Said Plan was recorded in OR BK/PG 8399/2660. 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

for 
Tammy Rowe, Deputy Clerk

/dt

Encls. (2)

cc: Contracts Administration

Prepared by: Susan Moore

Address: 2185 W. King St., Cocoa, FL 32926

CFN 2019062868, OR BK 8399 PAGE 2660,
Recorded 03/28/2019 at 01:38 PM, Scott Ellis, Clerk of
Courts, Brevard County
Pgs:5

BINDING DEVELOPMENT PLAN

THIS AGREEMENT, entered into this 26 day of March, 2019 between the BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, a political subdivision of the State of Florida (hereinafter referred to as "County") and Flamingo Land Company, 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 RU-1-7 zoning classification and desires to develop the Property as a single family subdivision, 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 density to 4 units per acre and may be further restricted by any changes to the Comprehensive Plan or the Land Development Regulations.

3. As part of its plan of development, Developer/Owner shall make a sanitary sewer connection to the City of Cocoa sanitary sewer system. The connection shall include a new sanitary sewer lift station, gravity collection system and forcemain to serve the development. All dwelling units constructed on the property described in Exhibit "A" shall be connected to sanitary sewer prior to issuance of a certificate of occupancy.

4. 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.

5. 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.

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 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 February 7, 2019. . 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 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 it may be amended.

8. 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:

BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA

2725 Judge Fran Jamieson Way

Viera, FL 32940



Scott Ellis, Clerk

(SEAL)



Kristine Isnardi, Chairman

As approved by the Board on March 26, 2019

WITNESSES:

DEVELOPER/OWNER

Dennis R. Johnson

FLAMINGO LAND COMPANY, INC

Dennis R. Johnson

2185 W. King St., Cocoa, FL 32926

(Witness Name typed or printed)

2623 N. INDIAN RIVER DR.
COCOA, FL 32902

James Moore

Susan Moore

JAMES MOORE

Susan Moore, president

(Witness Name typed or printed)

1675 S. FISKE H232
ROCKLEDGE, FL 32955

STATE OF FLORIDA §

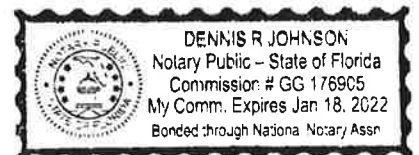
COUNTY OF BREVARD §

The foregoing instrument was acknowledged before me this 18 day of FEBRUARY
2019, by Susan Moore, President of Flamingo Land Company, Inc. _____,
who is personally known to me or who has produced _____ as identification.

Dennis R. Johnson
My commission expires 4/18/22 Notary Public

SEAL

Dennis R. Johnson



Commission No.:

(Name typed, printed or stamped)

GG176905

EXHIBIT "A"

LEGAL DESCRIPTION

All that part of Government Lot 3 in Section 31, Township 23 South, Range 36 East, that lies West of a line that is 37 feet West of and parallel to the centerline of Florida East Coast Railway right of way (main track), less road rights of way for Morris Avenue, Fox Place, Devoe Avenue, and Canaveral Groves Boulevard.

STATEMENT OF NO MORTGAGES OR LIENS

Feb. 12, 2019

Brevard County Zoning Dept.
2725 Judge Fran Jamieson Way
Viera, FL 32940

Dear Sir:

By this letter I certify to the Board of County Commissioners that there are no mortgages or liens on the property described in Exhibit A attached, for which we are seeking recording a Binding Development Plan.

DEVELOPER/OWNER

FLAMINGO LAND COMPANY, INC
2185 W. King St., Cocoa, FL 32926

Susan Moore

Susan Moore, president

STATE OF FLORIDA §

COUNTY OF BREVARD §

The foregoing instrument was acknowledged before me this 18 day of February 2019, by Susan Moore, President of Flamingo Land Company, Inc., _____, who is personally known to me or who has produced ✓ as identification.

Dennis R. Johnson
Notary Public

My commission expires 1/18/22

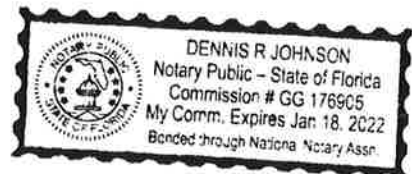
SEAL

Dennis R. Johnson

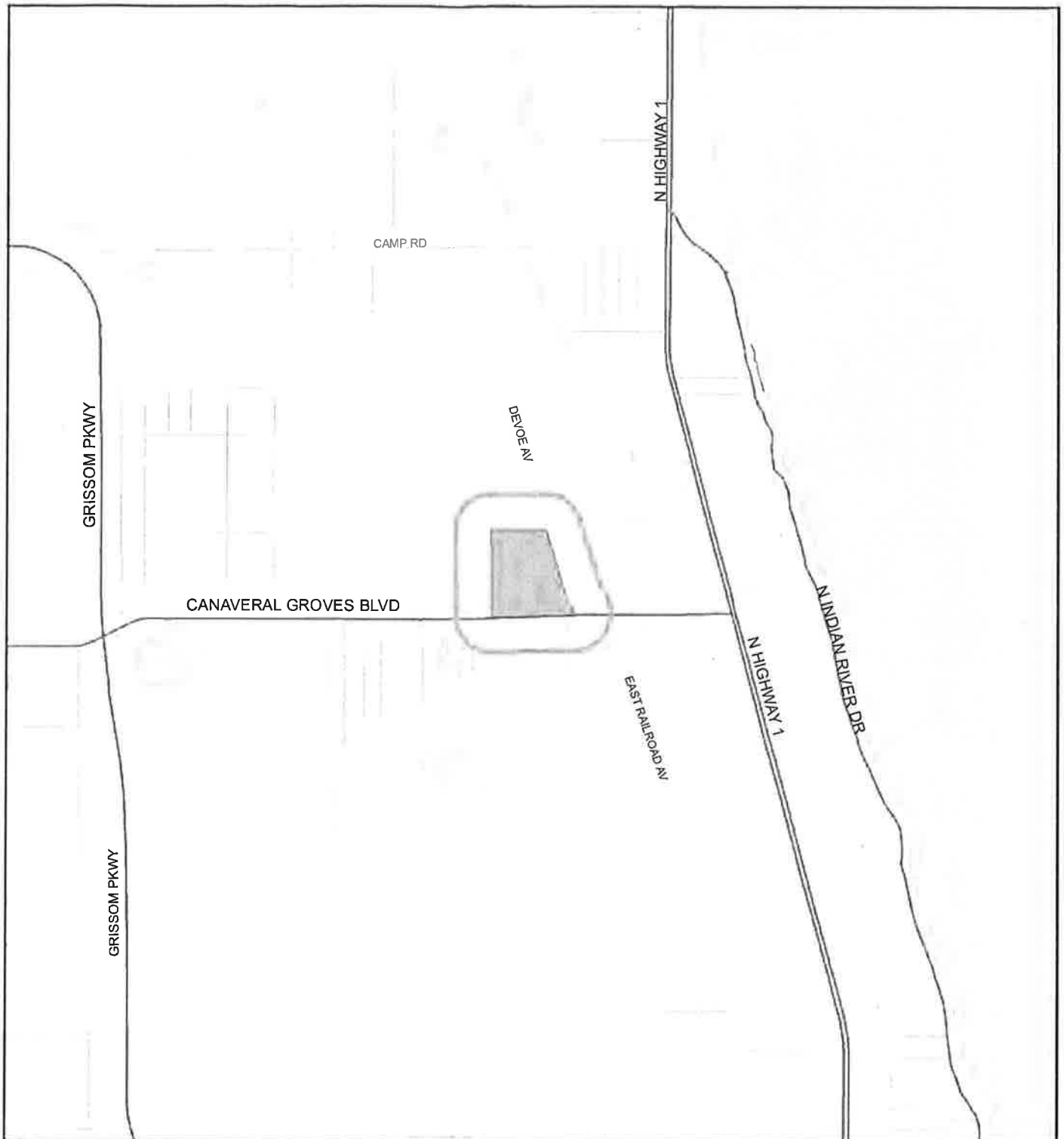
Commission :

GG176905

(Name typed, printed or stamped)



LOCATION MAP
FLAMINGO LAND COMPANY, INC.
18PZ00072



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.

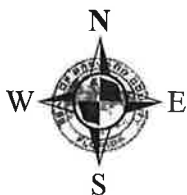
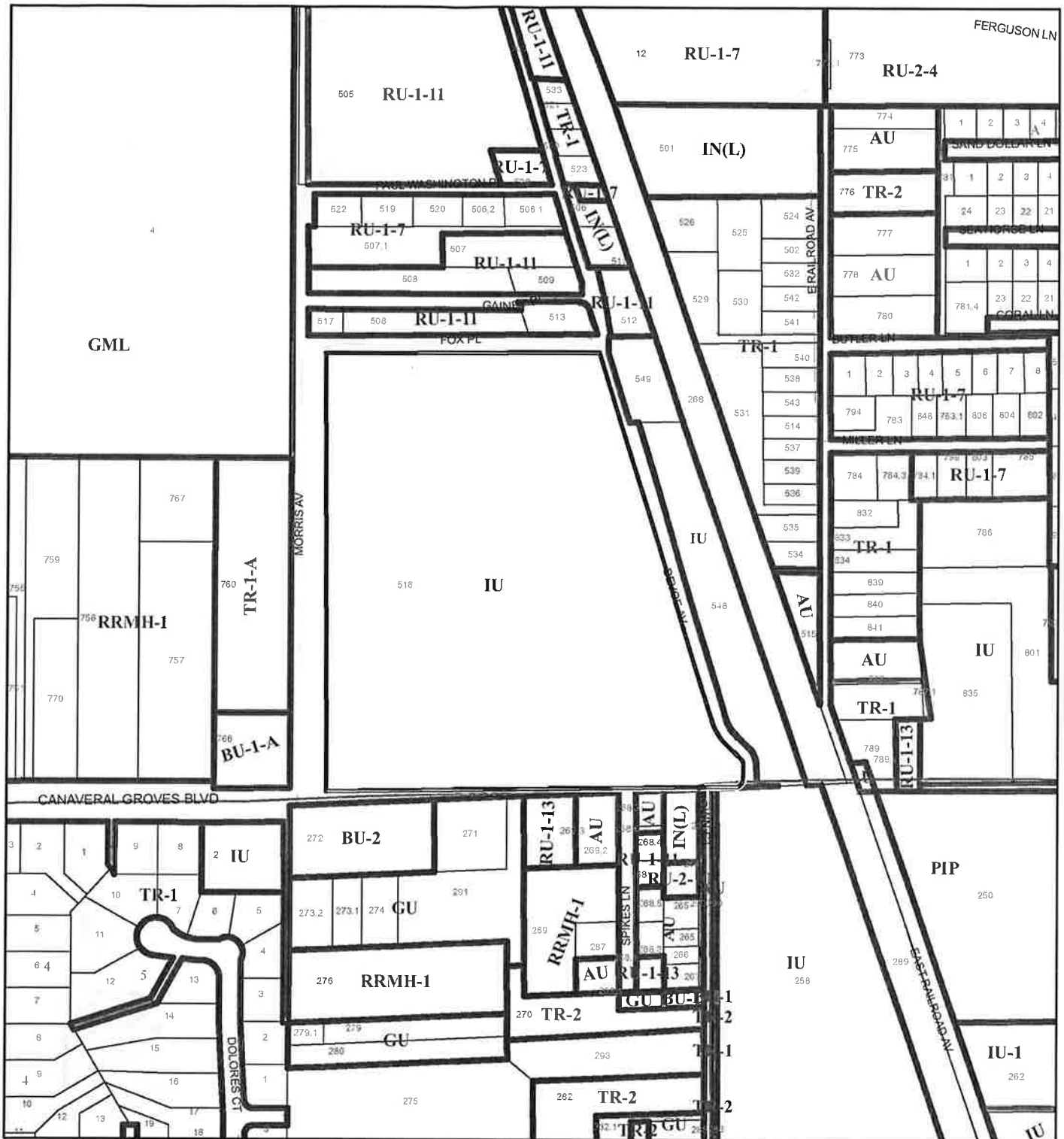
Produced by BoCC - GIS Date: 6/15/2018

— Buffer
■ Subject Property

ZONING MAP

FLAMINGO LAND COMPANY, INC.

18PZ00072



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: 6/15/2018

- Subject Property
- Parcels
- Zoning

H. PUBLIC HEARINGS

Planning and Zoning Board
Monday, January 28, 2019, at 3:00 p.m.

and

Brevard County Board of County Commissioners
Thursday, February 7, 2019, at 5:00 p.m.

Both at the

Brevard County Government Center
2725 Judge Fran Jamieson Way, Building C, First Floor, Viera, Florida

The Board of County Commissioners may approve or deny the requested classification, or may approve a classification of lesser intensity than that requested.

1. **Flamingo Land Company, Inc.** – (Rick Kern) requests a change of zoning classification from IU (Industrial Use) to RU-1-7 (Single-Family Residential). The property is 27.99 acres, located on the north side of Canaveral Groves Boulevard, between Morris Avenue and Devoe Avenue. (No assigned address. In the Cocoa area.) (18PZ00072) (District 1)

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

Board of County Commissioners Action:

2. **Happy Landings Homes, Inc.** (Kevin Lee) requests an amendment to an existing BDP (Binding Development Plan), in an IN(H) (Institutional Use – High-Intensity) zoning classification. The property is 5.33 acres, located on the southwest corner of U.S. Highway 1 and Otter Creek Lane, on the east side of Old Dixie Highway. (5925 Old Dixie Highway) (18PZ00088) (District 4)

Planning and Zoning Board Recommendation: Filiberto/Bartcher - Denied. The vote was 5:2, with Wadsworth and Langston voting nay.

Board of County Commissioners Action:

3. **Martin Family Trust; Joseph P. Martin and Sarah Martin; Craig A. Sater and Jennifer Martin-Sater** (Jennifer Martin-Sater & Craig Sater) request a change of zoning classification from BU-1 (General Retail Commercial) to BU-2 (Retail, Warehousing, and Wholesale Commercial). The property is 1.39 acres, located on the west side of U.S. Highway 1, approximately 600 feet south of Cross Road. (3645 North U.S. Highway 1, Cocoa) (18PZ00117) (District 1) This item was tabled from the January 7, 2019, Planning and Zoning meeting.

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

Board of County Commissioners Action:

PLANNING AND ZONING BOARD RECOMMENDATIONS

- Item H.1. Flamingo Land Company, Inc. Pritchett/Lober. Approved as recommended; and adopted Ordinance No. 19-03, adopting the 2018-2.1 Large Scale Comprehensive Plan Amendment to change the Future Land Use designation from IND (Industrial) to RES 4 (Residential 4).
- Item H.2. Flamingo Land Company, Inc. Pritchett/Lober. Approved as recommended with a Binding Development Plan limiting residential development to 4 units per acre, and requiring all dwelling units constructed on the property to be connected to sanitary sewer.
- Item H.3. LTM of Florida Holding, LLC. Pritchett/Lober. Tabled to April 4, 2019.
- Item H.4. Alberto and Biviana Roman. Lober/Pritchett. Tabled to March 7, 2019. Tobia voting nay.
- Item H.5. Mertin Family Trust; Joseph P. and Sarah Martin; and Craig A. and Jennifer Martin-Sater. Pritchett/Lober. Approved as recommended.
- Item H.6. Sylvia Properties, Inc. Lober/Pritchett. Approved with a Binding Development Plan limiting BU-2 to the northern one acre, with TU-2 remaining on the four acres; that no additional metal buildings be constructed on the property; and that the use be limited to the current business of Stone & Surface Designers, Inc.
- Item H.7. Peggy and Dale Townsend. Lober/Pritchett. Approved as recommended.
- Item H.8. CP Venture Five-AMC, LLC. Smith/Lober. Approved as recommended.
- Item H.9. Market Street Viera Senior Real Estate, LLC. Smith/Pritchett. Approved as recommended.
- Item H.10. Clark A. and Patricia A. Simms. Lober/Smith. Tabled to March 7, 2019.
- Item H.11. Nestle Larracas and Tony Andrade De La Torre. Withdrawn.
- Item H.12. Nestle Larracas and Tony Andrade De La Torre. Withdrawn.
- Item H.13. Gregory D. Taylor and Rachael J. Fitzpatrick. Smith/Isnardi. Approved as recommended. Pritchett and Lober voted nay.
- Item H.14. James. M. and Joanne M. Thomas. Pritchett/Lober. Tabled to March 7, 2019.
- Item H.15. Happy Landings Homes, Inc. Smith/Lober. Approved with amendment to existing Binding Development Plan as follows: Striking Paragraphs 3(h),

"If not already in compliance on the day the treatment and recovery facility is approved for operation by agencies with jurisdiction, the Developer shall comply with the bathroom, bedroom, and centralized cooking/dining facility requirements in Section 62-1826(3) of the Brevard County Code within one (1) year after receiving such approval"; 3(i), "The Developer represents that there is adequate parking currently used and available upon cleared land located within the 5.33-acre property to meet the requirements of Section 62-1826(5) of the Brevard County Code"; 3(j), "With the exception of the compliance required by subparagraphs (d) and (h) above, the Developer is currently in compliance with, and shall maintain compliance with, all other standards set forth in Section 62-1826 throughout its utilization of the property"; Retaining all other conditions, and adding conditions of, 1.) The northern driveway shall be the main ingress/egress; 2.) Developer/Owner shall install an eight-foot privacy fence along Old Dixie Highway on the west portion of the property; 3.) The Binding Development Plan shall refer to Developer/Owner; 4.) The County shall install a Stop Sign if required; and 5.) The septic system shall be modified to meet the current standards.

RESOLUTION NO. 18PZ00072

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

WHEREAS, FLAMINGO LAND COMPANY, INC. have requested a change of zoning classification from IU (Industrial Use) to RU-1-7 (Single-Family Residential) on property described as Tax Parcel 516, as recorded in ORB 5544, Page 1922, of the Public Records of Brevard County, Florida. Section 31, Township 23, Range 36. (27.99 acres) Located on the north side of Canaveral Groves Blvd., between Morris Ave. and Devoe Ave. (No assigned address. In the Cocoa area.)

WHEREAS, a public hearing of the Brevard County Planning & 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 & Zoning Board recommended that the application be approved with a BDP (Binding Development Plan) limited to 4 units per acre, and requiring all units to be connected to sanitary sewer; and

WHEREAS, the Board, after considering said application and the Brevard County Planning & 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 change of zoning classification from IU to RU-1-7, be approved with a BDP, recorded in ORB 8399, Pages 2660 – 2664, dated February 14, 2019, limited to 4 units per acre and requiring all units to be connected to sanitary sewer. The Planning & 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 March 28, 2019.

BOARD OF COUNTY COMMISSIONERS
Brevard County, Florida



by Kristine Isnardi, Chair
Brevard County Commission

As approved by Brevard County Commission on
March 26, 2019.

ATTEST:



SCOTT ELLIS, CLERK
(SEAL)

(P&Z Hearing – January 28, 2019)
(BCC Zoning Hearing – February 7, 2019)

Please note: A Conditional Use Permit will generally expire on the three year anniversary of its approval if the use is not established prior to that date. Conditional Use Permits for Towers and Antennas shall expire if a site plan for the tower is not submitted within one (1) 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.

Deborah Thomas

From: Jones, Jennifer <jennifer.jones@brevardfl.gov>
Sent: Tuesday, April 2, 2019 9:56 AM
To: Christine Mulligan-Willey; Deborah Thomas; Donna Scott; Kimberly Powell; Tammy Rowe
Subject: Zoning Resolution
Attachments: 2. 18PZ00072 Resolution.docx

Attached is a zoning resolution that was approved with a BDP on March 26th.

"Under Florida Law, email addresses are Public Records. If you do not want your e-mail address released in response to public record requests, do not send electronic mail to this entity. Instead, contact this office by phone or in writing."