



Meeting Date
March 3, 2015

AGENDA	
Section	CONSENT
Item No.	II.A.4

AGENDA REPORT
BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS

SUBJECT:	Binding Development Plan, Re: Charles F. Possess (District 5)
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 February 5, 2015, the Board of County Commissioners approved a Small Scale Plan Amendment (14S.08) to change the Future Land Use from CC (Community Commercial), NC (Neighborhood Commercial) and Residential 4, to all CC, and a change of classification from RU-1-7 (Single-Family Residential) and BU-1 (General Retail Commercial) to all BU-1, on property located on the south side of New Haven Ave., approx. 315 ft. east of Commodore St. (3535 W. New Haven Ave., Melbourne), subject to a Binding Development Plan as follows:

- Developer/Owner, agrees that an adult entertainment use as defined by the County Codes shall be a prohibited use, and no such use shall be allowed on the Property.

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	Assistant County Manager	Department Director / Extension Robin M. Sobrino, AICP, Director Planning & Development Dept. Ext. 52069				
Stockton Whitten	Mel Scott, AICP					



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

March 5, 2015

MEMORANDUM

TO: Recording

RE: Item II.A.4., Binding Development Plan, Charles F. Possess

The Board of County Commissioners, in regular session on March 3, 2015, executed Binding Development Plan Agreement with Charles F. Possess for property that is described as being located on the south side of W. New Haven Ave., approx. 315 ft. east of Commodore St. (3535 W New Haven Ave., Melbourne.) Enclosed are original Binding Development Plan and Check Numbers 402660 in the amount of \$8.50 and 402038 in the amount of \$27.00. **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

Tammy Etheridge, Deputy Clerk

/jl

Encl. (2)



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

March 5, 2015

MEMORANDUM

TO: Jennifer Jones, Zoning

RE: Item II.A.4., Binding Development Plan Agreement with Charles F. Posess

The Board of County Commissioners, in regular session on March 3, 2015, executed Binding Development Plan Agreement with Charles F. Posess, for property located on the south side of W. New Haven Ave., approx. 315 ft. east of Commodore St. (3535 W. New Haven Ave., Melbourne.) Said Agreement was recorded in ORBK 7315 PGs 744 through 747. Enclosed for your necessary action is the certified copy of the recorded document.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

Tammy Etheridge, Deputy Clerk

/jl

Encl. (1)

cc: Contracts Administration

Prepared by: Philip F. Nohrr, Esq.
Address: Gray|Robinson, P.A.
P.O. Box 1870
Melbourne, FL 32902-1870

CFN 2015043906, OR BK 7315 PAGE 744,
Recorded 03/05/2015 at 10:21 AM, Scott Ellis, Clerk of Courts,
Brevard County
Pgs:4

BINDING DEVELOPMENT PLAN

THIS AGREEMENT, entered into this 3rd day of March, 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 **CHARLES F. POSESS**, a Florida resident (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 County rezone the Property from RU-1-7 to BU-1, pursuant to the Brevard County Code, Section 62-1157; and

WHEREAS, as part of any future plans for development of the Property, Developer/Owner wishes to mitigate negative impact on abutting landowners and affected facilities and; and

WHEREAS, the County is authorized to regulate development of the Property,

NOW THEREFORE, the parties agree as follows:

1. The Developer/Owner agrees that an adult entertainment use as defined by the County Codes shall be a prohibited use, and no such use shall be allowed on the Property.

2. 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.

3. 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 February 5, 2015.

4. Violation of this Agreement will also constitute a violation of the Zoning Classification and this Agreement may be enforced by Section 1.7 and 62-5, Code of Ordinances of Brevard County, Florida, as may be amended.


5. 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 4 above.

6. 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.

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

Scott Ellis, Clerk
(SEAL)

[Signature]

Print Name: Robin Fisher
Print Title: Chairman
As approved by the Board on 3-3-15

WITNESSES:

DEVELOPER/OWNER
CHARLES F. POSESS

[Signature]

Nicole Ottaviani

(Witness Name typed or printed)

Charles Possess

Print Name: CHARLES F. POSESS
Address: 2375 NW 43RD STREET
BOCA RATON, FL 33431

[Signature]

Lisa Strauss

(Witness Name typed or printed)

EXHIBIT 'A'

STATE OF FLORIDA
COUNTY OF PALM BEACH

CHARLES F. POSESS, after being duly sworn, deposes and says:

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

PARCEL ONE

All of Lots 252, 253, 254, 255, 256, 257, 283, 284, 285, 286, 287 and 288, and a portion of Lots 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 258 and 282, and a portion of the West one-half of vacated Sagamore Street and a portion of the East one-half of vacated Evergreen Street all as shown on Plat of Pine Grove Re-Subdivision, according to the Plat thereof as recorded in Plat Book 4, page 32 of the Public Records of Brevard County, Florida and being more particularly described as follows:

Begin at the intersection of the South right-of-way line of New Haven Avenue (State Road No. 500 a 114 foot wide right-of-way), with the East line of said Plat of Pine Grove; thence S 00°05' 37" E along the East line of said Plat, a distance of 455.00 feet; thence West 329.26 feet to the intersection with the centerline of vacated Evergreen Street; thence N 00°07'23" W along said centerline 455.00 feet to the intersection with the said South right-of-way line of New Haven Avenue; thence East along said South right-of-way line 329.59 feet to the Point of Beginning.

There are no mortgages on the above described property

Dated this 19 day of January 2015

Charles F. Possess

Signature CHARLES F. POSSESS

STATE OF FLORIDA
COUNTY OF BREVARD

The foregoing instrument was sworn to before me this 19th day of January, 2015, by

Charles F. Possess who is personally known to me or who has produced _____ as identification, and who did take an oath.

Notary Public:

Lisa Strauss

State of Florida at Large
My Commission Expires:
(SEAL)



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

#: 1477115

Receipt #: 61448387

Cashier Date: 03/05/2015

10:21:34 AM



Print Date:
 03/05/2015 10:21:37 AM

Customer Information	Transaction Information	Payment Summary
() GRAY ROBINSON ATTORNEY AT LAW PO BOX 3068 ORLANDO, FL 32802	Date Received: 03/05/2015 Source Code: Titusville - Six Story Q Code: Titusville - Six Story Return Code: Hand Carried Trans Type: Recording Agent Ref Num:	Total Fees \$35.50 Total Payments \$35.50

2 Payments	
CHECK 402660	\$8.50
CHECK 402038	\$27.00

1 Recorded Items		
(AG) AGREEMENT	BK/PG: 7315/744 CFN:2015043906 Date: 03/05/2015 10:21:33 AM From: To:	
Recording @ 1st=\$10 Add'l=\$8.50 ea.	4	\$35.50
Indexing @ 1st 4 Names Free, Add'l=\$1 ea.	2	\$0.00

0 Search Items

1 Miscellaneous Items
(AGTR) AGENT TRANSMITTAL



BOARD OF COUNTY COMMISSIONERS

Inter-Office Memo

TO: Diane Byrum, County Attorney's Office
FROM: Jennifer Jones, Special Projects Coordinator II
SUBJ: Binding Development Plan for Charles F. Possess
DATE: February 9, 2015

Attached for review is the binding development plan for Binding Development Plan for Charles F. Possess. The property is described as being located on the south side of W. New Haven Ave., approx. 315 ft. east of Commodore St. (3535 W. New Haven Ave., Melbourne). The zoning request was approved, with the BDP, by the Board of County Commissioners on February 5, 2015.

Please have this BDP reviewed and return it to me with approval and/or comments by Monday, March 2, 2015.

Thank you.

/jj
attachment

APPROVED  _____

DENIED _____

COMMENTS _____


Include date of BOCC meeting in
#3.

DISTRICT 5

III.B.5. (14PZ-00107) – CHARLES F. POSESS – (Philip Nohrr) – requests a Small Scale Plan Amendment (14S.08) to change the Future Land Use from CC, NC, and Residential 4, to all CC, and a change of classification from RU-1-7 and BU-1 to all BU-1 on the north 455 ft., on 3.44 acres, located on the south side of New Haven Ave., approx. 315 ft. east of Commodore St. (3535 W. New Haven Ave., Melbourne)

LPA Recommendation: Lawandales/Moia – Approved. Vote was unanimous.

P&Z Recommendation: Lawandales/Moia – Approved with a BDP excluding adult entertainment uses. Vote was unanimous.

BCC ACTION: Anderson/Smith – APPROVED with a BDP excluding adult entertainment uses. 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. (14PZ-00108) – MOHAMMAD H. MALIK – (Jose Cardoso) – requests a CUP for Alcoholic Beverages (beer & wine only) for On-Premises Consumption in Conjunction with a Restaurant, in a TU-2 zoning classification, on the north 180 ft., on 1.1 acres, located on the south side of W. New Haven Ave., approx. .13 mile east of Coastal Lane. (4455 W. New Haven Ave., Melbourne)

P&Z Recommendation: Moia/McLellan – Approved. Vote was unanimous.

BCC ACTION: Anderson/Infantini – APPROVED. Vote was unanimous. 14PZ-00108.

DISTRICT 3

THE FOLLOWING ITEM WAS TABLED FROM THE 11/10/14 P&Z MEETING AND THE 12/04/14 BCC MEETING

III.B.7. (14PZ-00092) – JASON A. AND STACI S. WALDEN – request a change of classification from GU (General Use) to AU (Agricultural Residential) on property described as Tax Parcel 761, as recorded in ORB 6940, Page 1101, Public Records, Brevard County, Florida. **Section 17, Township 28, Range 37.** (8.48 acres) Located on the south side of Eber Blvd., approx. 0.23 mile west of Dairy Rd. (No assigned address. In the W. Melbourne area.)

P&Z Recommendation: Moia/McLellan – Approved. Vote was unanimous.

BCC ACTION: Smith/Anderson – APPROVED. Vote was unanimous. 14PZ-00092.

DISTRICT 4

THE FOLLOWING ITEM WAS TABLED FROM THE 11/24/14 LPA (P&Z) MEETING AND THE 12/04/14 BCC MEETING

III.B.8. (14PZ-00082) – EAGLE PROPERTIES OF VIERA, LLC – (Jake Wise, P.E.) – requests a change of classification from PIP to PUD and removal of existing BCP's, on 45.37 acres +/-, located on the south side of Viera Blvd., approx. 0.15 mile west of U.S. Hwy 1. (No assigned address. In the Viera area)

P&Z Recommendation: Lawandales/McLellan – Tabled to the 02/09/15 P&Z meeting. Vote was unanimous.

BCC ACTION: Barfield/Infantini – TABLED to the 03/05/15 BCC Zoning meeting. Vote was unanimous.

PLANNING AND ZONING BOARD TABLED ITEM FROM DECEMBER 4, 2014

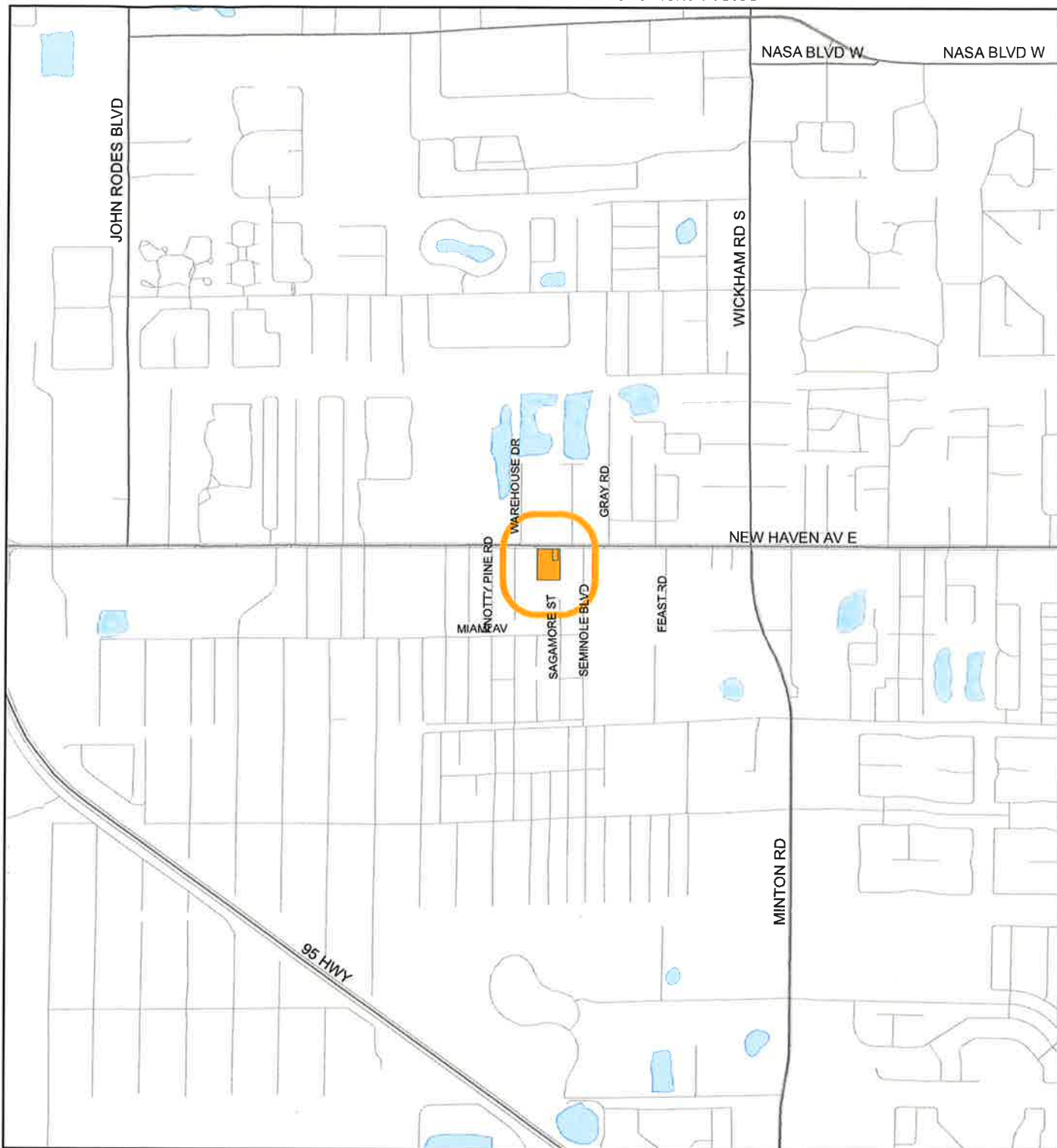
- III.A.1 Mortgage Investment Fund I, LLC. Infantini/Barfield, denied with no special events permits allowed until becoming compliant with the letter received from Natural Resources Management Department.

PLANNING AND ZONING BOARD RECOMMENDATIONS OF JANUARY 5, 2015

- III.B.1. Dee Smith. Anderson/Infantini, approved as recommended.
- III.B.2. Shanti Gotami and Xem Thi Nguyen. Anderson/Barfield, approved as recommended.
- III.B.3. Brad A. Lange. Infantini/Anderson, approved as recommended.
- III.B.4. John D. Haley. Infantini/Anderson, approved as recommended.
- III.B.5. Charles F. Possess. Anderson/Smith, approved as recommended.
- III.B.6. Mohammad H. Malik. Anderson/Infantini, approved as recommended.
- III.B.7. Jason A. and Staci S. Walden. Smith/Anderson, approved as recommended.
- III.B.8. Eagle Properties of Viera, LLC. Barfield/Infantini, tabled to March 5, 2015 Zoning meeting.



LOCATION MAP

POSESS, CHARLES F TRUSTEE
14PZ-00107 and Small Scale Amendment 14S.08



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 hereon.

ZONING MAP

POSESS, CHARLES F TRUSTEE
14PZ-00107 and Small Scale Amendment 14S.08



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.