

**F. Consent Agenda - Planning and Development
ITEM 3.**



**AGENDA REPORT
February 12, 2019**

**Acceptance, Re: Binding Development Plan - Anthony Lopes and Eugene
Lomando (18PZ00077) (District 3)**

SUBJECT:

Acceptance, Re: Binding Development Plan - Anthony Lopes and Eugene Lomando
(18PZ00077) (District 3)

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 18, 2018, the Board approved a rezoning request from BU-1 (General
Retail Commercial) and TR-3 (Mobile Home Park) to all BU-1, 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/Owners agree to provide such vegetative or other buffers as may be
required by Brevard County Land Development regulations.
- Developer/Owners agree to install an 8-foot opaque fence where shown on the
concept plan or, alternatively, an 8-foot wall where a wall is required by applicable
County Code regulations.
- Developer/Owners agree to provide landscaping on its property which will avoid the
use of plants that drop excessive leaves or palm branches on the Summit Cove

access drive.

- Developer/Owners agree to limit access to the hotel site to U.S. 1, and further agree to comply with any requirement for the construction of turn lanes on U.S. 1 serving the hotel site if those turn lanes are required by FDOT or County regulations.
- Developer/Owners agree that any change of use from a hotel to a facility allowing stays of over 90 days, or apartments, will require a revision to the Binding Development Plan.
- Developer/Owners agree that any gasoline station or retail package liquor store use developed on the property shall be confined to the easternmost 200 feet of the properties described in Exhibit A of the BDP.

Staff Contact: Jennifer Jones, ext. 52653

CLERK TO THE BOARD INSTRUCTIONS:

Please return two certified copies of the Binding Development Plan to Planning and Development.

ATTACHMENTS:

Description

- **BDP Package**

H. PUBLIC HEARINGS

Planning and Zoning Board/Local Planning Agency

Monday, August 6, 2018 at 3:00 p.m.

and

Brevard County Board of County Commissioners

Thursday, September 6, 2018 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. **Anthony Lopes and Eugene R. Lomando** (Scott Knox) request a Small Scale Comprehensive Plan Amendment (18S.06) to change the Future Land Use designation from Community Commercial (CC), Neighborhood Commercial (NC), and Residential 2 (RES 2), to all CC. The property is 1.97 acres, located on the west side of U.S. Highway 1, approximately 655 feet south of Garretts Road. (8480 & 8490 U.S. Highway 1, Micco) (18PZ00076) (District 3)

Local Planning Agency Recommendation: Moia/Wadsworth – Approved. The vote was unanimous.

This item was automatically tabled by the applicant to the October 4, 2018, County Commission meeting. (Letter received 08/14/18)

Board of County Commissioners Action of 10/04/18: Tobia/Barfield – Tabled to the December 6, 2018, County Commission meeting. The vote was unanimous.

Board of County Commissioners Action of 12/06/18: Pritchett/Lober – Tabled to the December 18, 2018, Regular County Commission meeting. The vote was unanimous.

2. **Anthony Lopes and Eugene R. Lomando** (Scott Knox) request a change of zoning classification from General Retail Commercial (BU-1) and Mobile Home Park (TR-3), to all BU-1. The property is 1.97 acres, located on the west side of U.S. Highway 1, approximately 655 feet south of Garretts Road. (8480 & 8490 U.S. Highway 1, Micco) (18PZ00077) (District 3)

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

This item was automatically tabled by the applicant to the October 4, 2018, County Commission meeting. (Letter received 08/14/18)

Board of County Commissioners Action of 10/04/18: Tobia/Barfield – Tabled to the December 6, 2018, County Commission meeting. The vote was unanimous.

Board of County Commissioners Action of 12/06/18: Pritchett/Lober – Tabled to the December 18, 2018, Regular County Commission meeting. The vote was unanimous

3. **Eva McMillan, Trustee** (Clayton Bennett) requests a Small Scale Comprehensive Plan Amendment (18S.07) to change the Future Land Use designation from Private Conservation (PRIV CON) to Residential 1 (RES 1). The property is 0.30 acres, located on the west side of Highway A1A, approximately 0.83 mile south of Budris Road. (8344 Highway A1A, Melbourne Beach) (18PZ00063) (District 3)



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 13, 2019

MEMORANDUM

TO: Jennifer Jones, Zoning

RE: Item F.3., Binding Development Plan Agreement with Anthony Lopes and Eugene Lomando

The Board of County Commissioners, in regular session on February 12, 2019, executed Binding Development Plan with Anthony Lopes and Eugene Lomando. The property is 1.97 acres, located on the west side of U.S. Highway 1, approximately 655 feet south of Garretts Road, Micco. Said Plan was recorded in OR/BK 8368/422. 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



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

December 19, 2018

MEMORANDUM

TO: Tad Calkins, Planning and Development Director Attn: Erin Sterk

RE: Item H.5., Public Hearing for Anthony Lopes and Eugene R. Lomando Request for Zoning Classification from BU-1 and TR-3, to All BU-1

The Board of County Commissioners, in regular session on December 18, 2018, conducted the public hearing and approved request by Anthony Lopes and Eugene R. Lomando for a change of zoning classification from BU-1 and TR-3 to all BU-1; and approved changing the language in the Binding Development Plan to reflect eliminating gas stations and liquor stores in the back of said property.

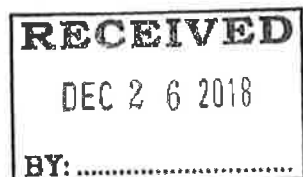
Your continued cooperation is greatly appreciated.

Sincerely yours,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

for: Danna Scott
Tammy Rowe, Deputy Clerk
/ds

cc: County Attorney



Prepared by: Scott L. Knox, Esq.
Address: 1990 W. New Haven Ave
Melbourne, FL 32904

BINDING DEVELOPMENT PLAN

THIS BINDING DEVELOPMENT PLAN AGREEMENT, entered this 12 day of Feb., 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 Anthony Lopes and Eugene Lomando (referred to as "Developer/Owners")

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 a BU-1 zoning classification for the property as well as Community Commercial Land Use designation allowing the commercial development of the property which may include the development of a hotel; and

WHEREAS, as part of its plan for development of the Property, Developer/Owners wish to mitigate potential 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. 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/Owners, 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. Upon receipt of Community Commercial Land Use and BU-1 Zoning, should the Owners decide to develop the property as a hotel site, the Developer/Owners agree to the following conditions:
 - a. the Developer/Owners agree to construct the hotel in substantially the same configuration and location shown on the Concept Plan attached hereto as Exhibit B and in conformance to County regulations. Where the Concept Plan conflicts with County code, the code will apply. Nothing herein constitutes a waiver to code requirements or a vesting of rights;
 - b. The height of the hotel shall not exceed three stories;
 - c. The maximum number of hotel rooms shall not exceed 70 rooms;
 - d. The Developer/Owners agree to apply for any site plan approval required by County regulations.

e. The Developer/Owners agree to provide such vegetative or other buffers as may be required by Brevard County Land Development regulations

f. The Developer/Owners agree to install an 8-foot opaque fence where shown on the concept plan or, alternatively, an 8-foot wall where a wall is required by applicable county code regulations.

g. The Developer/Owners agree to provide landscaping on its property which will avoid the use of plants that drop excessive leaves or palm branches on the Summit Cove access drive. In addition, at least 45 days before filing an application for site plan approval for a hotel and with Summit Cove Condominium Association (COA) consent, the Developer/Owner shall offer to deliver the Summit Cove Association the landscaping plants shown on Exhibit C for use by the COA on Association property. At the time or before the submittal of a hotel site plan, the Developer/Owner shall present to the County either (1) a delivery receipt or invoice indicating either COA consent to the delivery or the actual delivery of the plants to an COA board member or officer at COA property or (2) a delivered email or receipt for delivery of a certified letter addressed to the COA President, Vice-President or other officer listed in the online corporate records kept by the Florida Secretary of State, division of corporations (hereafter called "the state's online corporate records") showing that the offer was made. If the COA refuses to consent to the delivery of the plants or does not respond to the offer within the 45-day period this BDP condition shall be deemed null and void.

h. At least forty-five (45) days prior to the submittal of a hotel site plan, the Developer/Owners will offer the COA, through its President, Vice-President or other officer shown in the state's online corporate records, to file a permit application with Brevard County for the installation of the type of gate system set forth in Exhibit D, attached hereto provided the consent of the COA is received within that 45 day period. If that COA consent is given within forty-five (45) days of receipt of the Developer/Owner offer, the Developer/Owner shall install a county-permitted gate system on the access drive toward the front of the Summit Cove landscaped median (currently in existence), along with a turnaround similar those used in gated communities and associated paving in that turnaround area. Developer agrees that the gate system will be designed with a length adequate to allow appropriate turning movements by a truck with a landscape trailer. The gate turnaround template or design submitted with by the Developer/Owner with the application for site plan approval shall be designed to substantially conform to applicable design standards approved by the County for gated residential communities in the portion of the Viera Development of Regional Impact located west of I-95. The gate system shall include entry cards/controls for 84 units. In the event engineering finds the Summit Cove does not have the space for a gate system, the Developer/Owner agreement to install a gate system shall terminate and this condition shall be void.

At the time of submittal of a hotel site plan for approval, the Developer/Owner shall present to the County a gate system/turnaround template and either (1) a delivered email or receipt for a certified letter

delivered to the COA offering to install a county-approved gate system, if no COA consent has been received, or (2) an email or other writing from the COA consenting to the installation of the gate system on the COA-owned access drive to Summit Cove. If the COA refuses to consent to approve installation of a county-approved gate system or does not respond to the offer within the 45-day period, this BDP condition shall be deemed null and void.

i. The Developer/Owners agree to limit access to the hotel site to U.S. Highway 1. The Developer/Owners further agree to comply with any requirement for the construction of turn lanes on U.S. 1 serving the hotel site if those turn lanes are required by the Florida Department of Transportation or County regulations.

j. The Developer/Owners agree that any change of use from a hotel to a facility allowing stays of over 90 days or apartments will require a revision to the Binding Development Plan following procedures established in the Brevard County Code of Ordinances.

k. The Developer/Owners agree to comply with all environmental and endangered species regulations applicable to the hotel site.

3. The Developer /Owner agrees that any gasoline station or retail package liquor store use developed on the property shall be confined to the easternmost 200 feet of the properties described in Exhibit A, as that easternmost area of the property is outlined in red on Exhibit E, which area had existing BU-1 zoning prior to December 18, 2018.

4. The Developers/Owners shall comply with all regulations and ordinances of Brevard County, Florida. The Developer/Owners further agree that the County shall have the authority to enforce the provisions of this Binding Development Plan, including the conditions set forth in section 2 above.

5. Subject to the restriction set forth in paragraph 3, nothing in this Binding Development Plan shall prevent the Developer/Owners from developing the property for other uses permitted under BU-1 zoning should they decide not to proceed with the development of a hotel on the property.

6. This Agreement constitutes Developer's/Owners' agreement to meet the foregoing additional standards or restrictions in developing the Property.

7. This agreement provides no vested rights against future changes to the Comprehensive Plan or land development regulations as they may apply to this Property.

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

9. 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

be subject to the above referenced conditions as approved by the Board of County Commissioners on December 18, 2018.


10. In the event the subject Property is annexed into a municipality and rezoned, this Agreement shall be null and void.

11. 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.

12. Conditions precedent. All mandatory conditions set forth in this Agreement mitigate the potential for incompatibility and must be satisfied before Developer/Owners may implement the approved use(s), unless stated otherwise in this BDP, provided the inability to obtain the consent required in 2g and 2h above, where applied for in good faith and denied shall not require implementation of the landscaping on Summit Cove Condominium Association property required in 2g or the installation of the gate system required in 2h. 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 ¹¹~~10~~ 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 Jamieson Way
Viera, FL 32940


BY: 

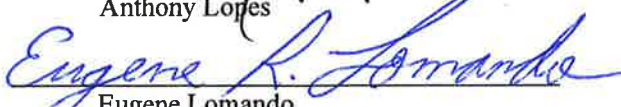
Kristine Isnardi, Chair
(As approved by the Board on 2/12/2019)

WITNESSES 1:



(Witness Name typed or printed) (Address)
11379 Arlington Blvd
SPANISH HAVEN, AL 36527

DEVELOPER/OWNERS


Anthony Lopes


Eugene Lomando

(SECOND WITNESS AND ACKNOWLEDGEMENTS ON NEXT PAGE 5)

WITNESS 2:


(Witness Name typed or printed) (Name typed, printed or stamped)
Jill R. Serfaty

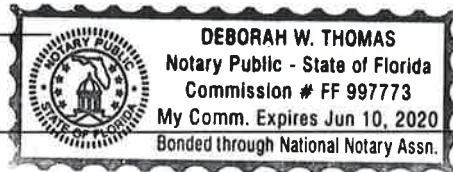
ACKNOWLEDGEMENT OF KRISTINE ISNARDI, CHAIR

STATE OF FLORIDA §
COUNTY OF BREVARD §

The foregoing instrument was acknowledged before me this 12 day of FEB., 2019,
by Kristine Isnardi, Chair of the Brevard County Board of County Commissioners who is personally
known to me or who produced a Florida Driver's License as identification.

DEBORAH W. THOMAS
Notary Public (Name typed, printed or stamped)

My commission expires SEAL _____
Commission No.:



ACKNOWLEDGEMENT OF ANTHONY LOPES

STATE OF Tennessee
COUNTY OF BREVARD §
WILLIAMSON my @

The foregoing instrument was acknowledged before me this 2nd day of January, 2019,
by Anthony Lopes who is personally known to me or who produced a Florida Driver's License as
identification.

Julie Hatcher
Notary Public (Name typed, printed or stamped)

My commission expires SEAL _____
Commission No.: 8/1/22



ACKNOWLEDGEMENT OF EUGENE LOMANDO

STATE OF FLORIDA
COUNTY OF BREVARD §
miami dade

The foregoing instrument was acknowledged before me this 3 day of January, 2019,
Eugene Lomando who is personally known to me or who produced a Florida Driver's License as
identification.


Notary Public (Name typed, printed or stamped)

My commission expires SEAL _____
Commission No.:

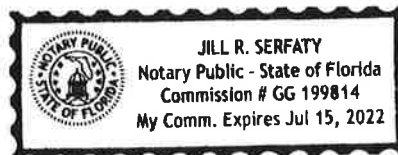


Exhibit A: Legal Description

Begin at a Point being the Northwest corner of Government Lot 3, Section 14, Township 30 South, Range 38 East, and run thence South $0^{\circ}20'00''$ West a distance of 42.04 feet along the West line of said Government Lot 3 to a point; thence South $89^{\circ}25'30''$ East a distance of 999.06 feet parallel to the North line of said Government Lot 3, to an intersection with the Westerly right-of-way of State Road 25 (U.S. No. 1); thence North $24^{\circ}31'30''$ West along said West right of way a distance of 117.28 feet to the true point of beginning; thence run North $89^{\circ}25'30''$ West parallel to the North line of said Government Lot 3, a distance of 459.79 feet; thence North $0^{\circ}34'30''$ East a distance of 90.56 feet; thence South $89^{\circ}25'30''$ East a distance of 417.37 feet to the West right of way of U.S. No. 1; thence South $24^{\circ}31'30''$ East along said right of way a distance of 100.0 feet to the true point of beginning. All of said lands lying and being in Brevard County, Florida.

AND

Begin at a point being the Northwest corner of Government Lot 3, Section 14, Township 30 South, Range 38 East and run thence South 0 degrees 20 minutes 00 seconds West 42.04 feet along the West line of said Government Lot 3 to a Point. Thence South 89 degrees 25 minutes 30 seconds East 999.06 feet parallel to the North line of said Government Lot 3 to an intersection with the Westerly right of way of State Road 5 (U.S. #1); thence, North 24 degrees 31 minutes 30 seconds West along said West right of way a distance of 117.28 feet to the True Point of Beginning; thence, North 89 degrees 25 minutes 30 seconds West parallel to the North line of said Government Lot 3, 502.21 feet (Distance of 26.39 feet as measured perpendicular to said North line) to the West line of said Government Lot 3; thence, North 0 degrees 34 minutes 30 seconds East 90.56 feet; thence, South 89 degrees 25 minutes 30 seconds East a distance of 459.79 feet to the West right of way of U.S. #1; thence South 24 degrees 31 minutes 30 seconds East, along said right of way a distance of 100.00 feet to the True Point of Beginning. All of said land lying and being in Brevard County, Florida.

UNSUITABLE FOR
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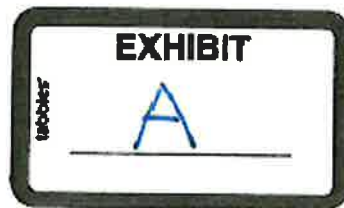




EXHIBIT C

LIST OF PLANTS

Five (5) trees at least 10 feet high

Ten (10) trees at least 7 feet high

Twenty-five (25) shrubs of the same type to be used by the Developer on the hotel site.

EXHIBIT D

GATE SYSTEM

Gates with motors and a minimum boom arm length sufficient to provide a barrier for one lane of ingress and one lane of egress traffic on the Summit Cove access drive. Gate arms will be equipped with controls to allow remote operation by Summit Cove residents.

The gate shall resemble the gate shown below and the gate/turnaround system shall conform to the design criteria set forth in the BDP.



EXHIBIT E

