




BOARD OF COUNTY COMMISSIONERS

## Inter-Office Memo

**TO:** Board of County Commissioners

**FROM:** Tad Calkins, Director – Planning & Development 

**CC:** Frank Abbate, County Manager  
John Denninghoff, P.E., Assistant County Manager

**DATE:** January 26, 2021

**SUBJECT:** **Addendum to Staff Comments, Re: Brevard Tower Communications Inc. Binding Development Plan Submittal (20PZ00015) for the February 4, 2021, Meeting Agenda**

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On January 25, 2021, the Applicant provided staff with draft BDP for the February 4, 2021, Board of County Commissioner's meeting in reference to the Brevard Tower Communications Inc. (20PZ00015) rezoning application from General Use (GU) to Retail, Warehousing and Wholesale Commercial (BU-2) with the removal of a CUP for a communication tower. A companion Large-Scale Comprehensive Plan Amendment (20PZ00072) has also been submitted changing the Future Land Use from Res 2 and Neighborhood Commercial (NC) to Community Commercial (CC). During the November 5, 2020 Board of County Commissioners (BOCC) (Transmittal hearing) meeting, the applicant stated that a BDP will be provided for the Board's consideration, to help mitigate off-site impacts. Both applications will be heard at the February 4, 2021, BOCC meeting. The proposed draft BDP conditions are as follows:

**Staff's responses are in bold.**

2. Developer/Owner shall provide a 50 foot undisturbed vegetative buffer along the west and north boundaries of the Property, in lieu of a 6-foot solid wall. No improvements shall be allowed within said buffer. **The code requires a 6-foot masonry wall and a vegetative buffer between residential and commercial uses. Brevard County Code, Sec. #62-1157(f) states, "Any restrictions stipulated in the binding development plan shall not be less restrictive than the requirements of existing codes and regulations". The BDP is not the mechanism to deviate from the code requirements, the applicant will need to obtain a waiver to omit the 6-foot wall requirement.**
3. The Developer/Owner shall limit number of outdoor storage spaces to 350 and may be further restricted by changes to the Comprehensive Plan or the Land Development Regulations. **The Zoning Code does not limit the number of storage spaces.**
4. The Developer/Owner shall limit ingress/egress to Norfolk Parkway. **Currently, Norfolk Parkway is the only access with road frontage to provide access to the site.**

5. The site shall be developed as a Boat and RV storage facility and ancillary services and facilities. **This is already allowed by the Zoning Code. The proposed condition does not offer to prohibit other uses allowed within the BU-2 zoning classification.**
6. No sewage dump station shall be allowed, unless public sewer connection is obtained. **A sewage dump station is not allowed in a BU-2 zoning classification.**
7. Outdoor lighting is limited to 17 feet in height from the grade to the bottom of the light fixture. **The code does not limit the height of a light fixture. Lighting shall be provided in accordance with Brevard County Code Sec. #62-2257.**
8. The applicant shall provide a traffic study detailing any required roadway improvements including, but not limited to a right turn lane, at the time of site plan submittal. If an improvement is warranted, and approved by the City of West Melbourne, it shall be constructed accordingly. **Roadway improvements will be approved at the sole discretion of the City of West Melbourne.**
9. No residing or overnight stays within the stored vehicles shall be allowed. **The proposed BU-2 zoning classification prohibits the overnight stays within the vehicles.**
10. Developer/Owner comply with the applicable requirements of the FDEP Guidance for Disturbance and Use of Old Closed Landfills or Waste Disposal Areas in Florida. **These guidelines are in addition to what Brevard County requires.**
11. 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 prior to issuance of an approved development order. **The non-underlined language is part of the standard BDP template. The underlined portion was added by the applicant. The County Attorney's Office does not agree to this addition. It appears what they are attempting to say is that they have no vested rights up until the issuance of an approved development order but, then, upon issuance of a development order, there would be a blanket agreement to vested rights for the property. This would not be in the best interest of the County; moreover, the County has a procedure in place for vested rights claims (Sec. 62-507) which would be the avenue to determine vested rights, if any. In sum, it is broad and speculative as to what vested rights they are entitled.**

The Board may wish to consider these additional conditions and determine if they help address any off-site impacts to the surrounding area.

Attachment: Binding Development Plan, submitted January 25, 2020.