



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

New Business - Development and Environmental Services Group

J.1.

11/10/2020

Subject:

Waiver of Subdivision Perimeter Buffer, Re: Armen Groves Subdivision (20WV00014)
Developer: NAJJAD, Inc. District 2

Fiscal Impact:

None

Dept/Office:

Planning and Development

Requested Action:

The applicant is seeking a waiver to Section 62-2883(d), that would omit the requirement to provide a natural 15' buffer tract along a portion of the northern property line of the subdivision.

Summary Explanation and Background:

Section 62-2883(d) requires that subdivisions provide a minimum 15' buffer, undisturbed along all property boundaries, platted as a common tract separate from individual lots. The buffer tract is intended to provide screening between the boundaries of residential developments. The developer of Armen Groves is requesting a waiver of the 15' perimeter buffer along a portion of the northern property line where residential lots are abutting a 100' FPL easement on the adjacent property. The remainder of the project will have the 15' perimeter buffer as required.

Armen Groves is a new subdivision proposed north of Smith Road in Merritt Island, containing 36 single family lots on 27.72 acres. In 2017 the Board spent a significant amount of time in discussion before approving a rezoning request for EU with a Binding Development Plan limited to 40 units. The developer also agreed to additional buffering conditions including construction of 200 feet of 6' high wall along the east side of the entrance, and the location of a retention pond on the south side of the development to provide additional buffering for the existing parcels. He also stated that the development will meet all of Brevard County roads, drainage, water, sewer, and environmental requirements. The area affected by the requested waiver was not discussed during the zoning hearing.

North of the proposed subdivision, the Savannah Landing Subdivision is currently under construction. The 100' FPL easement is located on the Savannah Landing property abutting Armen Groves. They did not request a waiver from the 15' buffer tract requirement, but it will overlap with the 100' FPL easement.

Staff has not granted approval of waiver request 20WV00014, and pursuant to Section 62-3207 of the Code, requests that it be evaluated by the Board of County Commissioners. Board approval of this project does not relieve the developer from obtaining all other necessary jurisdictional permits.

Reference: 20WV00014, 18SD00015

Contact: Amanda Elmore, Interim Assistant Director, Ext. 58996



November 12, 2020

M E M O R A N D U M

TO: Tad Calkins, Planning and Development Director

RE: Item J.1. Waiver of Subdivision Perimeter Buffer for Armen Groves Subdivision (20WV00014) – Developer, NAJJAD, Inc.

The Board of County Commissioners, in regular session on November 10, 2020, tabled the waiver of subdivision perimeter buffer for Armen Groves Subdivision (20WV00014) until staff and the applicant are prepared to present it before the Board.

Your continued cooperation is greatly appreciated.

Sincerely yours,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

Kimberly Powell, Clerk to the Board

/cld



BOARD OF COUNTY COMMISSIONERS

Planning and Development
Planning and Zoning
2725 Judge Fran Jamieson Way
Building A, Room 114
Viera, Florida 32940
(321) 633-2070 Phone

LAND DEVELOPMENT WAIVER APPLICATION

This form should be used for all waiver requests or appeals associated with the Code of Ordinances, Section 62, as it relates to Subdivisions, Minor Subdivisions, and Site Plans. Fees for Waivers are \$775.00.

Office Use Only	
Request Date	Fees
Board Date	
Original Project Number	Waiver Number
Coordinator Initials	Reference Files
County Manager/Designee Approval	

APPLICATION TYPE: Subdivision Waiver Site Plan Waiver Other

If other, please indicate _____

Tax Parcel Identification:

Township Range Section Subdivision Block/Parcel Lot

Tax Account Numbers (list all) _____

Project Name Property Owner

Site Address:

Street City State Zip Code

CORRESPONDENCE TO BE PROVIDED TO APPLICANT AT THE ADDRESS BELOW:

Applicant Name Company

Street City State Zip Code

Phone Number Cell Phone Number Fax Number Email Address

ENGINEER/CONTRACTOR (if different from applicant)

Company Engineer or Project Manager

Street City State Zip Code

Phone Number Cell Phone Number Fax Number Email Address

DESCRIPTION OF WAIVER REQUEST AND CODE SECTION:

Owner/Applicant Signature Print Name

If you wish to appeal any decision made by the county staff on the waiver, you may request the Board of County Commissioners to make a determination. The Board's decision approving or disapproving the waiver or interpretation is final.

LAND DEVELOPMENT APPLICATION DOCUMENT SUBMITTAL REQUIREMENTS

Waivers for Site Plans or Subdivisions require an application, waiver criteria (listed below), an 8 ½-inch x 11 inch vicinity map, and a fee of \$775.00.

WAIVER CRITERIA FOR SUBDIVISIONS AN SITE PLANS

For a waiver to be considered and approved by staff, your request must comply with all of the following criteria. Please explain, in detail, how your request meets the following conditions.

1. The particular physical conditions, shape, or topography of the specific property involved causes an undue hardship to the applicant if the strict letter of the code is carried out.

2. The granting of the waiver will not be injurious to the other adjacent property.

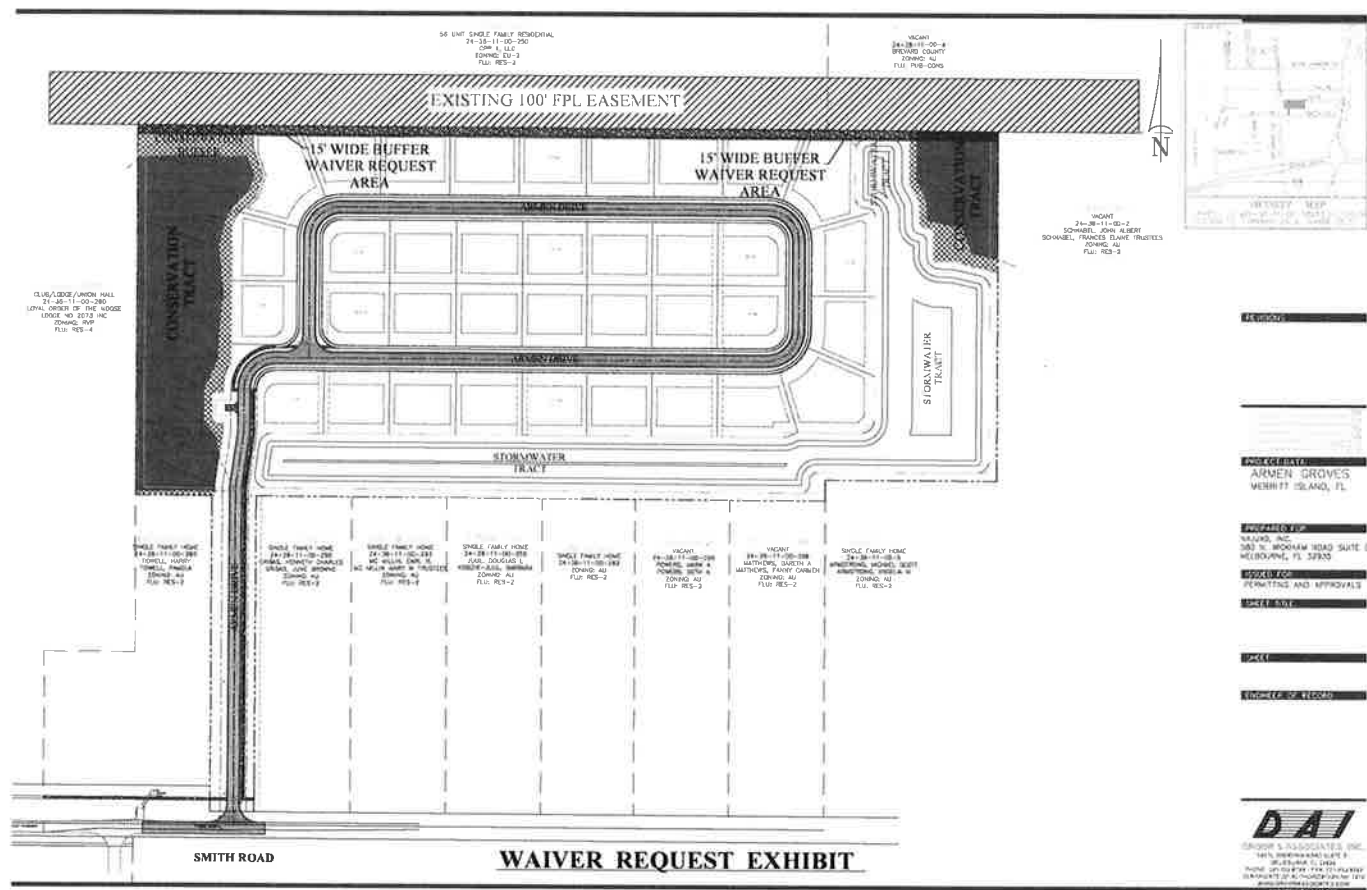
3. The conditions, upon which a request for waivers are based, are particular to the property for which the waiver is sought and are not generally applicable to other property and do not result from actions of the applicant.

4. The waiver is consistent with the intent and purpose of the county zoning regulations, the county land use plan, and the requirements of this article.

5. Delays attributed to state or federal permits.

6. Natural disasters.

7. County development engineer and affected agencies concur that an undue hardship was placed on the applicant. (To be filled out by county staff)



ITEM IV.E., CHANGE OF ZONING CLASSIFICATION, RE: SEU TO EU-2 – NAJJAD, INC. (NOEL DROOR). THE PROPERTY IS LOCATED ON THE NORTH SIDE OF SMITH ROAD, APPROXIMATELY 0.12 MILE EAST OF N. COURTENAY PARKWAY. (17PZ00005) (DISTRICT 2) NMI RECOMMENDATION: DENIED. P&Z RECOMMENDATION: DENIED.

Vice Chairwoman Pritchett called for a public hearing to consider a change of Zoning Classification from SEU to EU-2 on property located on the north side of Smith Road, east of North Courtenay Parkway on 26.11 acres.

Rebecca Ragain, Assistant Planning and Development Director, stated the next item is a request by Noel Droor for a change of zoning from SEU to EU-2, with a Binding Development Plan limiting the development to a maximum of 40 homes on 26.11 acres; it is located on the north side of Smith Road just east of North Courtenay Parkway; the North Merritt Island and Planning and Zoning boards both recommended denial; there are 48 letters of objection as of 4:15 p.m., a petition with 490 signatures against, and three letters in support.

Vice Chairwoman Pritchett stated she spoke with Mr. Droor and she did send in a letter for public record stating who she spoke to on these items.

Commissioner Isnardi stated she did as well, she believes a couple of months ago.

Commissioner Barfield stated he spoke with Mr. Droor as well.

Commissioner Smith stated he spoke with Mr. Droor about three or four months ago.

Noel Droor, NAJJAD, Inc., expressed his appreciation to the Board for their time in meeting with him. He stated he has been a resident of Brevard County since 1975, and has owned and operated a small family business since 1995; and NAJJAD is a family-owned company, which drives the namesake, which represents each of the members of his family. He went on to say since he purchased the subject parcel in January 2005, it has always been his intention to develop this parcel into something that would be an asset to the community as a legacy and source of pride for his wife, sons and grandsons; as the market continues to evolve, as a result of the financial crisis that has been experienced since 2008, they have just proposed their density be more consistent with the surrounding land use and the reality of today's real estate market; the proposed scope of development for this project is intended to be a low density, up-scale, single-family and residential development; and the project will feature all up-scale amenities that add value to the community, including large lots, underground utility services, side walk, curb, gutter, and paver driveways. He stated the proposed density of this project is one and a half units an acre, which is consistent with the density of the parcel located along the north project boundary; the density is also far less than the Crisafulli Enterprise project, located two miles north of proposed parcel, which was approved by the Board in August 2017; and the request of zoning is consistent with the historical land use pattern. He added the requested density is also equivalent to or lower than other communities approximately one mile from the property, such as Palmetto, Sea Gate, Sea Gate West, River Isles, Sunset Groves, River Oaks, and Sunset Lakes; the proposed density is also consistent with the Comprehensive Plan; the existing zoning to the north is EU-2, to the west is Institutional, and to the south on Smith Road is a Planned Industrial Park proposed to use zoning as a transitional zoning from EU-2 to the north to existing zoning along Smith Road, the proposed parcel; and this project will result in a substantial benefit to the community, each of the homes is estimated to be valued at approximately \$500,000 each, which significantly increases the neighboring property values. He commented this will increase County revenue, as the additional units will increase in the tax base by an estimated \$20 million; each unit will require the developer to pay County Impact Fees at approximately \$15,000 per unit, for a total of \$600,000 to be paid to various County agencies; and the development should have no negative impacts to established residential neighborhoods. He went on to say to the side will be a large retention pond; the nearest home is approximately 300 feet through the thick, dense woods; older developments in North Merritt Island historically have had drainage issues and these areas are drained with pumps during and after heavy

storms; the proposed parcel is currently draining to the east through the Barge Canal via Sykes Creek, and will continue to do so after development; and the proposed development does not aggravate the drainage problem on surrounding properties, and will likely alleviate off-site drainage or runoff. He pointed out the drainage from the proposed development should not be an issue since the County has a Code that sets the standards for all new development to follow to insure the new development does not aggravate its drainage issue; the majority of the areas having drainage issues currently are older developments and have not followed Brevard County and St. Johns River Water Management rules; newer developments tend to not have drainage issues, not to mention that based on his conversation with Mark Crabtree with Brevard County Central Maintenance Division, the only major issue that the surrounding area had was road washing due to their road, which is part of the dirt road to the northern property line of the access parcel, would be paved; and it should alleviate some other washout problems. He added the proposed development does not avoid any impact to the existing developments with proper buffers; the current traffic volume for the North Courtenay Parkway is 35 percent of the maximum acceptable volume and there are no unknown traffic issues for this area; he understands that there are some people that are prepared to speak in opposition of this request; although development is often unpopular in the community, it is important to mention that this one be done right without cutting corners or taking shortcuts; and it has and always been his intention to be an asset to the Merritt Island community and to the surrounding neighbors. He advised he reached out to the immediate neighbors on several occasions, and he is proud to say they have come together and worked as a team to start with some development guidelines above and beyond County Code for the community; these guidelines include re-configuration of the site, such as a proposed retention pond located along the southern boundary, providing additional buffers to the existing homes; the proposed layout includes a landscape berm along the entrance; initially the Zoning request was for EU-2 Zoning Classification, which will allow a minimum of 9,000 square foot per lot; and he has subsequently amended his request to ask for a less intense Zoning Classification of EU, which requires a minimum of 15,000 square feet per lot. He went on to say this was done in order to alleviate the local residents' concerns regarding the ability to modify the Binding Development Plan at a later date, so limited development to a density is something they could agree on; working together as a team, they have been able to establish a development plan which has been submitted to the County and will be included in the conditions of approval for the development as a Binding Development Plan; and it is their willingness to work together and make accommodations to enhance this development. He noted he has received signed statements from three out of the five resident adjacent property owners to support the development; although these concessions will ultimately be more costly, he thinks it will be worked on additional time and effort to add value to the community and to be a good neighbor; for the remainder of people who have elected to come and speak against this development, it is important that most of them do not live anywhere close to this proposed development, many living several miles away; and it is his hope that these residents take the time to consider his effort to work with the community to provide something that they can be proud of. He concluded by saying he is requesting an EU Classification with a Binding Development Plan to maximize the number of lots to 40 lots; as the owner, he has taken several steps to revise the development program above and beyond the Brevard County minimum to add features that will benefit the neighbors and incorporate their property values; and he is happy to say that he has received support from some of the residents. He went on to say the development is consistent with the Comprehensive Plan; it is consistent with the neighboring density and land use, and will meet all of Brevard County roads, drainage, water, sewer, and any environmental requirements for the development; the proposed re-zoning request will maintain acceptable levels of service on local roads and is consistent with the Future Land Use and Comprehensive Plan; and for this parcel, the proposed zoning will be consistent with administrative policies in the Future Land use element which establishes the expertise of Brevard County staff who have approved and supported this project with regards to zoning and land use issues and criteria for considering increased zoning. He stated he hopes the Board will see the project as the asset it will be to the community, and it will grant approval of the re-zoning request. He expressed his appreciation to the Board for its time and consideration; and he stated he will be glad to answer any questions the Board may have.

Vice Chairwoman Pritchett stated there are 20 cards for this Item, and there are 40 cards all together tonight; she is going to call people up, and she would like them to come up one after the other; and

perhaps if someone spoke something another person agrees with, he or she can say they agree to help keep the time a bit more efficient.

Tamy Dabu stated she is physically located less than a half a mile from Mr. Droor's proposed site, so she is in the immediate vicinity, and she has been a resident for over a decade; she wants to mention that her background is, and has been previously for decades working for the Florida Department of Environmental Protection (FDEP), and in addition with the U.S. Army Corp of Engineers; her specialty is in wetland delineation, threatened and endangered species, looking for drainage, and so forth; she is quite familiar having worked with these two agencies for an excess of 25 years, with the importance of proper zoning and right zoning in the right location; and unfortunately, tonight, Mr. Droor, she does not support him with what he is proposing to do because it is not conducive to what the forefathers thought from the get go. She went on to say when the zoning and Comprehensive Plan were put together way back, it was done for a reason; they looked at the land, the soil, hydrology, and what the proper land use is; the proper land use for this parcel with the amount of wetlands on there, and drainage problems in the area, it is not conducive to reduce that zoning to allow more residential use; it is not the right place or the right location; it cannot be compared to the Crisafulli's location that was recently approved; they are entirely different parcels. She commented the shoe does not fit in this particular spot; it was fine for Crisafulli just like it was fine for the Gaich development; in this particular location the amount of wetlands, the amount of flooding that the system is already inundated on a regular basis on a good portion of the property due to other incidences; the traffic at Grant, Smith Road, and Courtenay, because Grant goes to the west, Smith goes to the east, and Courtenay to north and south, that intersection has numerous accidents on it; and unfortunately there is not an arrow for cars that are going southbound to turn east onto Smith Road. She added there is no right turn lane for folks to turn going northbound on Courtenay Parkway to turn eastbound to Smith Road; increasing traffic on these roadways will increase accidents and cause harm to the public health and safety. She advised the Board she is before it as a resident who cares about the environment, public health and safety, and she is pushing and encouraging it to take a strong look at all of the public health, safety, and welfare. She asked the Board to not approve the request.

Vice Chairwoman Pritchett expressed her appreciation to Ms. Dabu; and she stated Mr. Schantzen and then Jack Kirschenbaum are the next speakers.

John Schantzen stated he has lived on North Merritt Island since 1980; recently the County published its Annual Report 2016 Year in Review, and it says backed by half cents sales tax approved by the voters this fall to save the Indian River Lagoon initiative will invest an estimated \$340 million to clean up the Lagoon, and another \$1.7 million was spent on flood pumps on Pine Island Road to take care of flooding north of East Crisafulli; and of course, they are proposing to spend more flood pump money to the Mosquito Impound, which is directly adjacent to this property, to prevent flooding experienced since Hurricane Irma, in fact, before Irma. He went on to say as a matter of fact, Pine Island Road is still flooded, but that is countering what the County is spending out of people's sales tax initiative, because when the flood pumps kick in, it goes right to the river, and everything that is in those canals goes directly into the river. He commented the FEMA flood map for North Merritt Island shows that this property has both the flood plain, AE, and Z, and better than half of it is either AE or the floodplain; every square inch of driveway, road pavement, of roof or house slab is one square inch that is impervious to water; it runs off to the adjacent land, and then that land is required to absorb that water, which was absorbed by the house plan; it continued to increase the density on North Merritt Island, which is nothing but a bowl; and they are going to look like Houston before they know it.

Vice Chairwoman Pritchett advised Steve Semonich is after Mr. Kirschenbaum.

Jack Kirschenbaum, Lawyer for Gray, Robinson, stated there is a Binding Development Plan that was entered into on March 10, 2005; that BDP allowed the applicant to have 18 one-acre lots; and what the Board will hear from the testimony of his clients, Earl and Mary Nancy McMillin, and the expert planner Steve Semonich, that this application is an attempt to squeeze 40 stuffs into an 18-pound bag; and this is not an appropriate application for this particular property. He went on to say a land owner seeking to re-

zone property has the burden of proving that the proposal is consistent with the Comprehensive Plan and complies with all procedural requirements of the Zoning Ordinance; according to the Snyder case, the burden of proof lies with the applicant by providing substantial, competent evidence that this is an appropriate re-zoning; what the Board has heard fails to meet that burden; and nothing else it hears this evening will assist in meeting the burden. He noted what one wants to do with one's property is not unrestricted; a balance is met by the law, by the Comprehensive Land Use Plan, and by the Zoning Ordinances; and the burden falls with the applicant to achieve this balance. He advised his clients will present evidence themselves and so will their planner that this is neither a consistent nor a compatible use with the Comprehensive Plan; the planner will submit to the Board evidence based upon his expertise; the second point is the Board is not the first public body or public board to review this application; two advisory boards have met, held public hearings, hear testimony, taken evidence, heard from staff, and recommended denial unanimously; and there was not one vote on either board to approve the application. He stated that says volumes about this application. He pointed out the citizens want and deserve consistency and certainty from government; a BDP is intended to be just that; and here they are a few years later unbinding the BDP sought by the applicant. He stated they are trying to take 40 units and squeeze them into an 18-unit bag; the ingress and egress is a huge issue in this particular case; the Board has seen its staff report showing the egress and ingress from this proposed development will be on skinny lots that goes to the south and then west on Smith Road; and the Board has heard testimony from the residents out there regarding the problems that exist and what additional problems will be created. He concluded by saying maybe the most important, this project, if approved, will significantly change the neighborhood; it would significantly change the lifestyle of the residents on Smith Road, particularly his clients; and he reiterated as the Snyder case says, even if the burden was met by the applicant, which is has not been, then it shifts to the government to demonstrate that maintaining the existing zoning classification accomplishes a legitimate public interest; if he met the burden, then it shifts to the Board to demonstrate a public interest, and his clients property and the neighborhood is just that; and he asked the Board to deny the application.

Vice Chairwoman Pritchett stated Mr. Semonich is next and then Ken Smith.

Steve Semonich stated he was retained by Mr. McMillin and Mr. Kirschenbaum to provide his professional assessment of this re-zoning; his expertise is in the field of land planning, he is an expert witness in court, and he testifies on behalf of property owners in trials to determine highest and best use of properties; and in addition, he has worked for 13 years with the land planning firm of Rahenkamp Design Group on dealing with projects over 500 acres, 500-unit subdivisions in commercial, industrial, and so on. He commented he is obviously an advocate for his client; one of the concerns he has is that the application before the Board prior to the amendment is previously an EU-2 Zoning; as the applicant indicated that was 9,000 square foot lots; and it is going to now be a burden on him that he is going to re-zone to EU, which has a 15,000 square foot lot requirement. He advised the Board that is not the case; the previous application was binded by a 15,000 square foot lot minimum with 40 lots, so he is still getting 40 lots and he is still getting 15,000 square foot lot sizes; and he does not see any concession on the applicant's part in regards to that. He went on to state in accordance with Section 62-1255 of the Land Development Code, it deems this property to be inconsistent of the EU Zoning; and obviously, per the staff's report, it stated that the Board would be allowed to address if there was a substantial decrease in density. He stated even the County's Code itself recognizes that the EU, EU-1, and EU-2 Zoning is inconsistent with the Residential 2 Future Land Use, and there is a reason for that; and obviously there are ways to get around that, which he believes the applicant is trying to do today, but he does not believe that there is enough concession on the applicant's part to meet that criteria. He noted the applicant is requesting 40 lots, he currently has an approval for 18; something around the lines of 25 to 30 would be a little bit more consistent as a transitional use from the northern adjacent property to the properties to the south, which are two and a half acres; just because the property to the north was re-zoned with EU-2 does not necessarily make this property owners property EU-2 as well; another concern is the transitional from the EU-2 to his clients property; and he does not think EU is enough either. He stated it is really the density not the lot size; it is the amount of trips that are put on Smith Road, not necessarily Courtenay Parkway; and the staff reports application indicated what the trips would be on Courtenay Parkway, but there was not anything in there

for Smith Road. He pointed out there are going to be 40 cars at minimum going in and out of there on a daily basis; he will not testify to that as he is not a traffic engineer, but he knows that if there is a home there is generally a vehicle and people that go to work in the morning and home in the evening; and that is a substantial increase in that road, which is by fact a shell road, it is not even a paved road. He explained the applicant has indicated that he would pave a portion of that road, but he just does not believe that is within the character of that neighborhood; and the Policies to the Comprehensive Plan, Policy 3C and 4C which talk about compatibility and character of the neighborhood, have not been met. He stated Policy 3C indicates that historical land use patterns, actually development over the immediate proceeding three years, and development approved through the past three years but not yet constructed; and he does not believe that historical pattern is there to justify that this applicant should get a re-zoning.

Commissioner Tobia inquired what degrees Mr. Semonich has after Landscape Architecture.

Mr. Semonich replied that is it.

Commissioner Tobia stated according to *Wikipedia*, Landscape Architecture is the art and practice of designing the outdoor environment, especially designing parks and gardens; and he asked if that is correct.

Mr. Semonich responded affirmatively.

Vice Chairwoman Pritchett stated Kim Smith is next, then Earl McMillin and Nancy McMillin.

Kim Smith stated she has a letter that was sent to residents of North Merritt Island from Randall Holcombe who is a DeVoe Moore Professor of Economics; she is going to read the letter aloud to the Board; it has some fantastic information; he did not accept a fee for this consultation; and there is information he would like the Board to hear. She read, "The accepted wisdom on this among academic economists, which is residential vice commercial development, is that taxes levied by residential development do not cover the costs of providing government services to the development. So, costs are shifted to existing taxpayers. Higher density development pays a lower share of its infrastructure and service costs. In contrast, taxes on commercial development more than pay for the services associated with it. The common sense behind this is that residential development brings with it demands for schools to educate children who live there, police, and fire services, and infrastructure associated with development. Meanwhile, property taxes on commercial development are in general higher than for residential development. Multifamily development tends to impose the highest fiscal costs on a municipality, because more residents live in multifamily residences relative to taxes paid. Communities interested in maintaining their fiscal health do best by encouraging commercial development and do worse by encouraging multifamily development. Academic studies on this subject are relatively rare because the conventional wisdom on the issue is generally accepted. Some examples of past studies can give you an idea of the conclusions those who have studied the issue have drawn. Eban v. Fodor, quoted in *The Real Cost of Growth in Oregon, Population and Environment*, 18, No. 4 (March 1977) at page 373 says, about residential development, "most of these public infrastructure costs are distributed across the entire population of a community through property taxes or general obligation bonds, whereas the benefits of these investments accrue primarily to the new development." Jeffrey H. Dorfman, Professor at the University of Georgia, *The Fiscal Impacts of Land Uses on Local Government* (April 2006) says, "While commercial and industrial development can indeed improve the financial well-being of a local government, residential development worsens it." He goes on to say, "The cost of providing services exceeds the revenue generated by the new houses in every case study." The conclusion that residential development has a negative fiscal impact on municipal governments whereas commercial development has a positive impact makes sense when you consider that (1) property taxes tend to be higher on commercial development, and (2) that government services are provided to residents, so more residents means higher costs. Because multifamily residences tend to have more people living in them relative to the value of the residence, multifamily has the greatest negative fiscal impact. In short the higher the density of residences per acre, the greater the potential negative impact." She stated, this is Professor Holcombe, he has taught public finance courses at Florida

State University for 29 years and he is interested in these development issues over that period, not only because of his teaching but because of Florida's experiences with growth management programs going back to the *Growth Management Act of 1985*; and this is a notarized copy of what he sent them, and the Board has copies of that.

Commissioner Isnardi stated she has a question.

Commissioner Tobia stated he has a question as well.

Commissioner Isnardi inquired if this is Ms. Smith's testimony or does she agree with the letter.

Ms. Smith replied she is reading the letter into the record, because it blew her away how much these folks were saying.

Commissioner Isnardi stated the reason she asked is because everybody that speaks is supposed to provide testimony either showing this is a good project because of 'x' and the evidence, or 'y' and their evidence; this is written by someone else, that is why she is asking for the record if that is her position, because Professor Holcombe does not believe that residential development has a positive impact as opposed to commercial; and for the record, does Ms. Smith prefer commercial development or does not like residential.

Ms. Smith responded his conclusion, and what was amazing, the evidence that he presented to them was, which is in the last paragraph of the letter, that the higher density of residences per acre, the greater the potential negative fiscal impact.

Commissioner Isnardi stated she appreciates Ms. Smith reading the letter into the record but Professor Holcombe is not here to testify.

Ms. Smith stated there is a notarized copy that she provided to the Board.

Commissioner Isnardi asked if Ms. Smith is reading this on behalf of someone else.

Ms. Smith replied she agrees with what Professor Holcombe said.

Commissioner Isnardi pointed out that is what she needed.

Commissioner Tobia asked if Dr. Holcombe was aware of this property when he composed this letter.

Ms. Smith replied yes, he is; they were researching if this would be a good thing or not; and he was contacted, and this was his opinion.

Commissioner Tobia inquired if Ms. Smith finds it unusual that a renowned economist does not cite the specific property in his analysis; he stated he mentions as something it looks like a Georgia land use study in there; the reality of the way that revenue is derived from taxable value is different in the State of Georgia than it is in Florida; property taxes are different as Georgia has a state income tax and Florida does not; and he again asked if it is unusual that the subject property that Ms. Smith is adamantly opposed to is not mentioned in the strong research that she brings forward.

Ms. Smith replied municipalities and governments have general sameness throughout the country.

Commissioner Tobia noted as a government instructor, he would disagree with that.

Ms. Smith stated Professor Holcombe has been teaching these public finance courses at Florida State University so he is familiar with Florida.

Commissioner Tobia stated again, he did not mention that in the letter that was just read; he wants to be correct; and he inquired if the subject property is listed in the letter.

Ms. Smith replied it is not stated in this opinion.

Vice Chairwoman Pritchett stated Mr. McMillin and then Ms. McMillin.

Earl McMillin stated he met with Professor Holcombe, showed him the maps of the property, explained to him what the project was, et cetera, and the bottom line is that every study, whether from Georgia, Pennsylvania, California, or Indiana, none show that residential property generates enough tax income to cover the cost that governments incur; this is an expert opinion they are offering for the Board's consideration; twelve people who know much more about zoning than he ever will said no to this application; there are the six people on the LPA and on the Dependent Special District Board; and Mrs. Blasky who is here tonight, will tell the Board how this Commission in 2007 unanimously voted to preserve the Smith road neighborhood when a former resident wanted to put four houses on five acres. He went on to say the Board is a Quasi-Judicial body, it is not bound by the precedent but it has to consider the precedent; since 2007 two more beautiful homes have been built on Smith Road, one at \$600,000 and another at \$450,000; and in Brevard County v. Woodham, the court said zoning regulations can be employed to promote the integrity of the neighborhood. He pointed out his wife will tell the Board why the NAJJAD property is different than the Harvey Groves property to which the applicant points; and she will explain to the board that Florida has rejected the 'me too' argument because 'me too' would destroy the zoning plan. He commented Mr. Kirschenbaum referred to the memorandum of the Planning and Zoning Department that says, "Since the request of the EU Zoning Classification is not consistent with the current residential future land use designation, a Binding Development Plan is required so the maximum density allowance in the Florida Land Use Map of two units per acre is met" He stated Mr. Droor, the applicant, is hard to pin down; this expert who has a degree in Landscape Architectural but who has also worked with many lawyers on zoning issues has given the Board his opinion; but it does not have to rely on his opinion, it has its own experts; Rochelle Lawandales is a city planner on LPA, Bruce Moia is an engineer who does development work is on the IPA, and Henry Minneboo has worked with the County for years; and they all say 26 acres, 26 homes. He went on to say they asked the applicant several times during that hearing if he would consider 26 homes on 26 acres; and the applicant refused, and one of his reasons were he cannot make money with 26 homes. He explained the law is clear; from a Brevard County case, a zoning ordinance is not invalid because it prevents the owner from using the property in the manner which is most economically advantageous; if the rule were otherwise, no zoning would ever stand; placing a financial burden on taxpayers and making Smith Road residents bear the impact of 40 homes may be for the applicants good but it is not for the public good; and the priest who gave the invocation today prayed the Board would make a decision in the public good or for the public good. He noted in the past 12 months, there have been three developments on North Merritt Island that directly access Courtenay Parkway; they will generate in a year if each residence generates the accepted nine vehicle movements per day, 1,070,000-plus vehicles on Courtenay Parkway; and if this goes from 18 homes to 40 homes it is 122 percent jump. He stated to go from 26 to 40, which the LPA recommended, is a 54 percent jump; and he does not have a problem with 24 to 25 homes of 2,500 square feet.

Vice Chairwoman Pritchett stated Ms. McMillin is next and then Chris Minerva.

Mary Nancy McMillin stated the applicant has claimed that it should have the same zoning as Harvey Groves property to the north; the applicant is saying the Board gave it to Harvey Groves, it should be given to him as well; and Florida rejected the 'me too' argument years ago when the Supreme Court held, "The fact that the applicant's land is situated across the street from that which commercial enterprises maybe operated is not enough alone to support his position that he should be given the same latitude and use of his property. Were this the case, it would be a matter of time before the alterations of the whole scheme by successfully liberalizing the use of abutting property would result in disintegration and disappearance of the entire planets zoning." She went on to state at the Local Planning Agency hearing she tried to make a

simple point that the evidence shows that Harvey Groves and NAJJAD are different; the list of those notified by the County of the Harvey Groves re-zoning does not show a single residence; all of those notified were businesses; the NAJJAD list chose four residences, Grivas, McMillin, Jewel, and Armstrong; and a fifth residence, the Storey residence, is next door to the Jewel residence but they have been missed because the property does not show up in the Property Appraiser's website. She pointed out the Rowell and Blasky residences on the south side of Smith Road were omitted because they are both over 500 feet away from NAJJAD's site; both NAJJAD and Noel Droor received written notice of the re-zoning it was proposing but the Rowell's and Ms. Blasky did not; and obviously as residents on a dead end road, they are impacted by the NAJJAD re-zoning. She advised the Board she is not asserting that the NAJJAD list is defective, she has added Serios, Rowell, and Blasky to make the record complete; her point is simple, the two lists are competent substantial evidence that the Harvey Groves and NAJJAD properties are different, zero residences impacted by the Harvey Groves re-zoning, seven residences impacted by the NAJJAD re-zoning; the other proof that Harvey Groves and NAJJAD are different is geographic; access to Harvey Groves is due west and directly on State Road 3, it has no access to Smith Road; and access to NAJJAD is due south directly onto Smith Road. She noted the applicants 'me too' argument is contrary to the holding of the Florida Supreme Court and the evidence does not support its 'me too'; Smith Road is a small, unique neighborhood; she asked the Board to focus on Smith Road and not Harvey Groves; and she stated she has never been contacted by anyone from NAJJAD to ask her what she thought about what was going on.

Motion

Vice Chairwoman Pritchett advised Mr. Minerva is next, and then Mr. Ratterman.

Chris Minerva stated he is from the North Merritt Island Homeowners Association; he will try to be brief; a lot of people have covered things he is saying; the Homeowners Association is fine with the existing SEU, one home per acre zoning in the Binding Development Plan; but they cannot support the request for EU based on these. He added at .34 acres per home is a potential maximum of three per acre, potential, even though it said 40; Administrative Policy 3, the incompatibility with the existing land use Criteria A, Site Activity, diminishing enjoyment of an quality of life in existing neighborhoods within the area; Criteria B, causing material reduction in value of existing abutting developments; Criteria C, inconsistent with, point one, historical land use patterns, point two, actual development over the preceding three years, and point three, development approved within three years but not yet constructed, which they heard; and Administrative Policy 4, uncharacteristic with surrounding neighborhoods and areas. He went on to say Policy 8.1, negatively impacting character of the land use surrounding property; Policy 8.2, change of the land use and surrounding property; Policy 8.3, negative impacts on available and projected traffic patterns and the established character of the surrounding properties; and factors to consider please, the character of the land use of the surrounding properties, the change in conditions of the land use of the property, impact on traffic, not compatible with existing land use plans, and not appropriate based on these conditions. He commented the North Merritt Island Homeowners Association asks that the property be zoned appropriately and not require additional binding development restrictions. He expressed his appreciation to the Board for its consideration and the work it does.

Vice Chairwoman Pritchett stated Mr. Ratterman is next, and then Bill and Mary Hillberg will follow him.

Bill Hillberg stated from the audience that he will cede his time and distinctly requests that the Board disapprove of this Item.

Jack Ratterman stated he is speaking in opposition to the applicant; he asked the Board to think back to the last Commission meeting when it approved Mr. Crisafulli and his application for the 48 units; and he stated at the end of that, Commissioner Barfield said it was the law, and almost indicated that was why it was approved. He asked the Board to think back when he or she studied U. S. history, and to have the wheels turn back to the Revolutionary War Act, the Empowerable Acts, the Quartering Act; he advised those are unjust laws and the citizens, law enforcement, government officials, and even government instructors do not follow those laws; and they were unjust, and people made their own decisions on what

was right, not what the law was. He explained he is asking the Board to think not so much about what the law is, what it can do, or what it can cram into that short space, but what is right and just for the community; he inquired what is its legacy going to be; and he requested the Board deny the applicants request for those homes and that acreage.

Vice Chairwoman Pritchett stated Mary Hillberg is next, and then Mr. Weber.

Mary Hillberg stated she is a board member of the North Merritt Island Homeowners Association, as well as the chair of the North Merritt Island Special Dependent Special Advisory Board; as a native and life-long resident of Merritt Island, she knows some members of the Board have been in Brevard for several years; however, all may not be aware of the situation on the North Merritt Island area and need current, competent, and a substantial evidence to make a wise decision on the Smith Road issue; and she is prepared to provide that for the Board. She stated she has a 1989 FEMA map of the area; the darkened area is flood area, and the darkened area over here is a flood area; this area right here is the subject area; and because it is very small, she has made a bigger copy of it. She added there is Smith Road, and as the Board sees, everything is an X Zone, which means there is no flooding there; in 1989 North Merritt Island was designated, most of it, as X Flood Zone, which means there was no danger of flooding; after Tropical Storm Faye in 2008, the low elevations in North Merritt Island were painfully obvious; in 2012, the North Merritt Island Homeowners Association invited Frank Scarvales, Director of Flood Management for Brevard County, to explain the new FEMA designations; and he brought maps and answered questions. She explained in 2014 a change happened; this is the FEMA map from 2014; as the Board sees, the post it area here shows this area right here is the subject area, and the blue over here on the side; the blue is the same as this blue on the edge over here; that has something to do with, and it says on the legend on the right, it says it is a flooding area where there are these tiny little dots; and they are concentrated on that side. She pointed out because it was so small; she made a bigger copy for the Board to see. She stated she outlined the subject property so the Board can see exactly where it is; all of this over here is flooding property; FEMA released their flood maps in 2014, these changes still have not been acted on by the County in terms of correcting the Future Land Use Map or the Codes from North Merritt island; and she inquired why. She advised in 2017, FEMA again recognizes there is still an issue; evidently they keep watching them; now they have the FEMA maps, the smaller maps, and the blue is areas of flooding and have basically no flood base elevation; this means there is zip on flood elevation; and she provided the Board with a larger copy of that map. She noted this area says it will flood, it has approximately one foot, 12 inches or less above flood elevation; that means more than 12 inches and it will flood; this area has less than that and it is the same as the edges; FEMA recognizes with advanced LIDAR satellite imaging that this area required further defining and has produced preliminary maps that are more accurate than ever; and from this competent and substantial evidence, it is obvious for the safety of the residents and the protection of the properties that the county needs to correct its Future Land Use Maps and Codes before it allows inappropriate development in documented flood prone areas. She commented Brevard County Public Utilities Department continues heroic and creative efforts to protect the structures and residents of North Merritt Island with pre-storm work and multiple surface water pumps that are manned when a significant rain event occurs. She pointed out John Denninghoff, Assistant County Manager, has done a wonderful job. She requested the Board oppose this item for all of the aforesaid mentioned reasons.

Vice Chairwoman Pritchett advised Mr. Weber is next and then Mr. Rockliff.

Marty Weber stated he is within three-quarters of a mile of the development lay in parcel that is being talked about; he goes left on grant Road instead of going right on Smith Road at the intersection of Courtenay Parkway, Grant, and Smith Road to get to his property; and he is going to summarize a bunch of what he has on this piece of paper for the Board because of time. He went on to say first of all, they do not need to talk about intricacy of the changes that NAJJAD has asked for; he asked for three different things; he wanted to relieve the BDP, then he wanted an EU-2 Zoning, and now he is asking for an EU Zoning; and he inquired what makes anyone even begin to think he will adhere to something that he agrees to today. He noted secondly, on August 4th, the property north of him was approved for a different Zoning; however, approving the EU-2 Zoning request with a house would allow, and this according to the

County's statistics from the EU-2 Zoning, would actually allow 126 lots/houses on 26.11 acres, or 1,137,135 square feet, that is what 26 acres is equal to; and it would support that number of houses and 1,500 square feet without Zoning. He stated obviously the Board has to take things out for infrastructure and so on; now he has changed and wants to do 1,500 square feet, which would allow 76 homes or lots at 2,000 square feet; the next thing he would question is he gave an estimate of \$550,000 per house/lot combination for this new development; and he inquired if any of the Board Members would pay \$275 a square foot. He explained that is what it amounts to; if he is going to sell a 2,000 square foot house on three-quarters of an acre of land, he is going to be asking \$275 a square foot; he just bought his property a year ago on North Tropical Trail, he has 2.78 acres and 2,200 square feet; and he paid less than \$400,000 for three acres of ground. He commented in August the LPA board, which he presented at and so did a number of others who are representing the North Merritt Island Homeowners Association, the board agreed, they suggested that NAJJAD agreed to 26 houses; he at that point refused; the LPA was reluctant to change its decision and hold on to the old BDP to which had previously been agreed to; they asked twice if NAJJAD would agree to this compromise; and he refused. He stated that is when the LPA denied his request. He advised the Board has a chart he handed out to it that show it when the Florida Land Use Plan was approved for this property zoned Residential 2, it prohibits use of EU, EU-1, and EU-2 on this land. He expressed his appreciation to the Board for listening to them this evening; and he stated he hopes the Board denies the request on behalf of all of them.

Vice Chairwoman Pritchett stated Mr. Rockliff is next, and she asked Anita Blasky to be ready to come up.

Larry Rockliff stated they have been residents here for one year now; they escaped from Broward County after 24 years; and during that time in Broward County he was president of a homeowners association of a large, rural community. He went on to add they all had four and one-half acre properties in the City of Miramar; there were 32,000 people when they moved there in 1992; their first night was Hurricane Andrew; and when they left there were 177,000 people. He explained during the 1990's there was a euphoria between developers and the Commission and there was also an awful lot of wealth, because the developers were more than happy to pay their impact fees, which made the city and county flushed with money, but it is different today; they discovered in the homeowners association in Miramar, the rural community that they were far more beneficial to the community to the city to work with the commission versus working against them; and that is exactly why he wants to come to the Board today. He pointed out they are not within 500 feet of the development, they are on the river on the opposite side of North Courtenay Parkway; there are three issues here, concurrency, compatibility, and consistency; the issue of concurrency also applies to Broward County, and it is a mess there today; and certainly they want to avoid that here. He noted concurrency takes a look at the amount of road demand, but it looks at it over long periods of time and it does not specifically look at it on the micro, it looks at it more on the macros; but in the case of North Courtenay Parkway versus Smith and Grant, it needs to be looked at on more of a micro basis if more traffic is saturated into that area. He stated consistency is with the land plan, and that is the County's expertise, not his; without a doubt compatibility is an issue that is germane to this topic; the developer to the north of Miramar Parkway in Broward County wanted to go from one house net per acre, not gross, one net per acre, which would have been compatible against the two and a half net per acre; but he wanted to change this to what they call RS 4 to RS 7, meaning four to seven houses per acre net; and of course, he was more than happy to pay the large impact fees and be in his way elsewhere. He went on to say they did not fight it and say they did not want it to happen; they wanted to be reasonable about it; they said they did not want to see it, hear it, or smell it for all intended purposes; and this is the issue here. He commented the developer in this case has suggested the Board have a water buffer, his water retention, which is a requirement of his particular development, which would serve as a buffer; having moved to on the river here, he knows fully well that from the sound point of view, water is not a good buffer; and they hear the train on Highway 1. He noted he can hide from the community, he would suggest that perhaps there is room to work with him; otherwise, there has to be consistency, some compatibility, and there is no compatibility whatsoever between one house net per two and a half acres and several per acre; and he expressed his appreciation to the Board.

Anita Blasky stated they have lived in North Merritt Island since 1972, but in 1977 she and her husband purchased 40 acres at the end of Smith Road; they built a new home there and have lived there since 1981; they lost 32 acres to the Brevard County Mosquito Control in 2006; and her husband passed away in 2016. She went on to state somehow she is not included in Mr. Droor's numbers, but she lives there, the first house on Smith Road, and she adamantly objects to this re-zoning. In 2005, Mr. Droor of NAJJAD tried to re-zone the 26-acre property from AU to SEU; this acreage has ingress and egress to Smith Road; NAJJAD asked to build 18 homes on the 26 acres with a Binding Development Plan; she does not believe she and her husband were notified of the NAJJAD request; but she can say she would not have been opposed to 18 homes in 2005 and she would not object to those 18 homes today. She noted to her knowledge no one on Smith Road opposes the 2005 NAJJAD application; the North Merritt Island Association was in favor; the North Merritt Island Dependent Special District unanimously recommended approval; and the Board unanimously approved it. She stated in 2007, the Lynch family who owned two and a half acre lots requested re-zoning from AU to RR-1 for their combined five acres on the north side of Smith Road to allow four to five houses to be built; Gareth Matthews who owns two and one-half acres that abutted the Lynch property opposed the Lynch request; however, the North Merritt Island Dependent Special District recommended approval. She added she wrote a letter to the Board, which basically said to allow the Lynch's request to break up their two, two and a half acre lots, change the zoning from AU to RR-1 right in the middle of Smith Road, which drastically changed the layout of the neighborhood; the RR-1 would allow them to build at least four, maybe five, houses on the five-acre plot; the change in Zoning would greatly increase traffic, destroy the quiet enjoyment of the area, and severely impact the peaceful neighborhood; and Mr. Matthews spoke against the Lynch application at the Board meeting. He pointed out the board agreed with Mr. Matthews and voted unanimously to reject the Lynch application; thus, in 2005 and 2007 the Board recognized the uniqueness of the Smith Road neighborhood; it recognized that plans for half acre lots among and abutting two and a half acre properties on Smith Road were not compatible with the Smith Road neighborhood; and since then, Smith road has become more of a neighborhood. She went on to add her son, Tim and his wife Kelly, built a new home on a two and one-half acre lot on the south side at 195 Smith Road; Jim and Terri Serios built one on a two and one-half acre lot on the north side, which was previously owned by the Lynch family; Scott and Angela Armstrong made major improvements to their property and bought more land to maintain their tranquility; a few weeks ago the Powers bought the other two and a half acre lot once owned by the Lynch family; and she asked the Board not to grant the NAJJAD request for a change in zoning from SEU to EU, and to hold them to the promise they made in 2005.

Vice Chairwoman Pritchett stated next is Ms. Lindhorst, and then Mary Sphar will be next.

Gina Lindhorst stated she has been a resident for 23 years and has been in Brevard County for 48 years; they would like the Board to deny more high density in a very low area; they need the Board to protect the residents and properties of citizens in North Merritt Island; they need the Board to consider the new FEMA designations that were changed due to the increased intensity of events in the last few years, and have been newly revised in 2017; they need the Board to protect the Lagoon as they have voted thousands of tax dollars throughout the County to clean and restore the Indian River Lagoon; high density development will ultimately destroy it; and they need the Board to recognize the past flooding of North Merritt Island, the issues with heavy traffic on single-access roads in a natural low topography in the wetlands that they cannot change, all of this makes high density not appropriate and even hazardous for the residents who live in the low topography areas. She commented they need to comply with the County Administrative Policies; they really need the Board to consider the safety of the people and the health of the Lagoon; they request a moratorium on any further re-zoning or development in North Merritt Island while the Future land Use Maps be corrected, may be the safest step to take in order to avoid unsafe zoning and land use in this area; and she reminded the Board that the North Merritt Island Special Dependent Special Advisory Board recommended denial of this change, the P&Z recommendation was denial, as well as North Merritt Island Homeowners Association.

Commissioner Tobia asked if Ms. Lindhorst is speaking on her behalf.

Ms. Lindhorst replied yes, hers, her family, and all of her friends who have discussed it with her.

Commissioner Tobia inquired if she was speaking on behalf of the North Merritt Island board, as he does not know if she sits on that board.

Ms. Lindhorst responded she does, but she is not referring to them right now, this is her own personal feelings, and her family's opinion.

Vice Chairwoman Pritchett stated Ms. Sphar is next, and then Steve Smith.

Mary Sphar stated she is representing Sierra Club Turtle Coast Group; this is a rather interesting Agenda Item for the Sierra Club; Sierra Club's been commenting for many, many years, and this is the first time she remembers of a zoning request that was changed when the information on the County site, which they study carefully, all said the applicant wanted EU-2 Zoning, with a maximum of 40 homes, and now, according to what the slide says, it is EU Zoning; and she is not sure how that plays into it. She went on to say as a matter of fact, she received an Agenda from the back of the room and it said change to Zoning Res EU to EU-2; the LPA heard EU-2 Zoning; there are two Binding Development Plans; the one proposed in January stated EU-2 Zoning, the one that was submitted in the package August 8th said EU-2 Zoning; and she does not know when the Board found this out, but that is rather strange for the Sierra Club to be in the position where they do not even know in advance what zoning was requested. She noted she has a couple of legal considerations for the Board; the applicant has no legal right to 40 homes on his 26.11 acres just because the property has a Future Land Use of Residential 2; he has no legal right because he has to get zoning that allows such a density; tonight the Board will make the decision to approve or deny that zoning change request; and the applicant has no legal right to propose zoning changes just because the proposed zoning appears to be compatible with the zoning on the property to the north. She added the proposed zoning should be compatible with the surrounding zoning in general, and the proposed changes are definitely incompatible to the zoning to the south and east, which is mainly AU; the current zoning SEU is the compatible zoning; and as others stated, this application was rejected unanimously by the North Merritt Island Board and the Planning and Zoning Board, for good reason. She stated she was at the P&Z board; the board tried to work with the applicant to give a slight increase in the development potential, but the applicant would not budge except to say that he would put in sewer instead of using septic; the proposed increase in development potential from 18 homes to 40 homes would adversely affect the Indian River Lagoon; and the Citizens Oversight Committee, which is required by the Save Our Indian River Lagoon Project Plan, is quite concerned that all of the effort that they made to protect the Lagoon could be negated by bad zoning and land use decisions, and they discussed that at their meeting in August. She asked how the applicant plans to deal with flooding situations they all know plague North Merritt Island especially right now; she stated staff analysis lists mapped flood plains but the BDP does not require compensatory storage in any portion of the property in estuary marine flood plain; they can speculate that the property will have to be raised to meet FEMA requirements, which they all know can cause problems with neighboring properties; and without specific plans to mitigate flooding potential, the re-zoning and developing of 40 homes there is sure to aggravate an almost intolerable drainage and flooding situation. She concluded by saying Sierra Club is concerned that the development limitations are dependent on a BDP, which is EU-2; she asked if there is another BDP; she stated if the County does not have a BDP, they know it is offering a new owner of the property often requests that it be modified or removed; and it is much better to have a zoning category that is actually appropriate and protects the natural resources and ensures compatibility. She asked the Board to deny this application.

Vice Chairwoman Pritchett stated Mr. Smith is next and then Darlene Hunt.

Steve Smith expressed his appreciation to County Manager Frank Abbate and Assistant County Manager John Denninghoff and staff for doing such a great job attempting to pump out all of the water they have after Hurricane Irma; and he stated he knows there have been many phone calls, they are doing a nice job, and they appreciate that. He stated they bought their house in the 90s; it was built in the 60s; when they bought it they heard nothing about any kind of flooding in the area; throughout the 70s, 80s, and 90s,

and 2000, no flooding; they have always maintained their septic system by having it pumped out on a regular basis; flash forward to 2005 and Hurricane Wilma, they got flooded and it stopped up their septic for a week; in 2008 they had Faye, flooded inside of the house and the property driveway, and they had no septic service for about five weeks; 2011, no name storm, same thing, two weeks of no septic there; in 2014 heavy rains; during Matthew they lost it for about three weeks; and Hurricane Irma came by and they haven't had any since. He went on to say major change on North Merritt Island has been that there are more and more residences built every year; tonight they go home, his driveway is about 600 feet long, they are going to go home and put on waders because they cannot get to their house anymore; and the next step is going to be get a boat. He noted there is no evidence, no record or evidence their property would have flooded when they bought it back in the 90s; they have researched with the neighbors and the County, and the flooding is just not their fault; they are not the only flooded residence up there; and there are quite a few other North Merritt Island families that are going through this today, and a number has only yard flooding. He advised it is kind of a high-density housing that is allowed to continue; there is no place for the water to go; and they are seeing more and more of this kind of thing. He pointed out they are asking the Board to approve building in less fragile areas of the County and no more of this dense housing in these flood-prone areas; and residents who already live here should not be punished by this high-density kind of housing. He stated he has a degree in Architecture himself; he wanted to throw out that there is a lot more to landscaping architecture than found in *Wikipedia*; it is a difficult profession; and he did one semester of landscaping architecture and decided it was not for him. He asked the Board to deny the request.

Vice Chairwoman Pritchett advised Ms. Hunt is the next to speak, then Sarah Hodge.

Darlene Hunt stated she strongly objects to the increase in density requested in the NAJJAD zoning change for four reasons; first, it is not compatible with the character of the area; she knows she is repeating things but she is going to repeat them; it will also greatly increase the traffic at the critical road and intersection; it will cause flooding to adjacent properties and the impact on an already stressed Indian River Lagoon by over development; and as far as the character, all adjacent properties are large parcels. She went on to say many of them are used for agricultural purposes, large rural home sites or wetlands; to allow an additional density of 40 residences would generate additional 360 trips daily based on the County's formula; this would be insane for this intersection; there is currently a FDOT study underway with regard to this intersection; and this is the only road for people to travel to their homes. She noted it happens to be a main thoroughfare for Kennedy Space Center employees, Space Center tourists, plus all new aerospace businesses that the Board heard about this evening; flooding and the Lagoon, this property is very near the Barge Canal, which is part of the Indian River Lagoon; this County and its citizens are currently dedicated to protecting the outfall and cleanup of the Lagoon; and this property is located in a bowl or a basin, which makes up all of North Merritt Island. She added it has an elevation of about two to four feet above sea level as shown on the County's LIDAR map; the sides of the islands are the highest part of this bowl with an elevation of nine feet above sea level; to alleviate flood, waters are directed from this basin into the Lagoon under the Control of St. Johns River Water Management District; although developers show plans to contain the water on the property, all stormwater retention areas and ditches are channeled to drain into the Lagoon during heavy rain events like they are going through now; and Merritt Island is currently experiencing an unprecedented flooding, and none of the drainage systems are currently able to handle the excess water. She stated as the County spends time and money to alleviate flooding, allowing over development is totally unacceptable to the citizens who currently live there and those to come; the current density of 18 houses on 26 acres is as dense as this land can sustain; and she respectfully requested the Board deny NAJJAD's request to change this density just as a Dependent Special District and the County P&Z board have advised.

Vice Chairwoman Pritchett advised the next speaker is Ms. Hodge, then Michael Hirkala will be next.

Sarah Hodge stated she and her husband strongly oppose this zoning; they are a victim right now of the flooding; her family homesteaded that property in the 1800s; this has historically never flooded; and they have orange trees under water. She commented part of their grove is dying because of this flood; she

knows the Board does not think about the people who are suffering right now; she has a friend on East Merritt Island that has been flooded since Hurricane Irma; and she had to move her animals yesterday because there is no hope for it to drain any time in the near future. She asked the Board why it is allowing this; why is it not listening to its Planning and Zoning board and the North Merritt Island Homeowners Association; she stated it is not fair; the Board has to be accountable for this; it is just going to do what it wants to do; but if it does not listen to the people it is going to be worse every time. She noted there is nothing she can do to make the Board do this, but it will get worse if it keeps zoning more and more homes in that area that cannot drain, and she cannot understand why.

Vice Chairwoman Pritchett advised that is all of the speaker cards; and she asked the applicant to come up and speak as he has five minutes.

Mr. Droor stated one and a half units per acre is not a high density; if that is a high density, what is 10 or 20 units per acre called; part of North Merritt Island is having flooding issues; this area is not having flooding issues; none of the newer developments have flooding issues because they are designed and there are Codes and Ordinances to follow; and if a person follows them, there should be no issues. He went on to say across Smith Road is a Planned Industrial Park; he asked how that is not being compatible; where is the compatibility when there is an industrial park in front of a property, there is commercial all along Courtenay Parkway; there are two acres and more per acre; as far as the flooding, there are two types of floods in the area; one is the one that is being used for flood storage; this is not the area that is used for compulsory storage; this is not the area being used for it, they are about 25 percent; and it is an area that could flood but not being used for flood storage, and there is a difference. He stated he will answer any questions the Board may have.

Commissioner Barfield stated Mr. Droor came before the previous board in 2005 and he made a change from AU to SEU with a BDP for 18 homes on 26 acres; 12 years later he wants to change it to two units per acre, EU-2; and he asked what has changed.

Mr. Droor replied the economy basically; this is no need for large lots; the reality of the real estate is people's children do not want big lots, they do not want to maintain yards; the demand is for mid-sized lots; he asked if there are two and one-half acre lots getting built lately; and if so, what is the reason.

Commissioner Barfield stated Mr. Droor is at one acre right now.

Mr. Droor advised he is at one are, because again, the recession and the reality of the real estate and what the demand is.

Commissioner Isnardi stated for clarification, Mr. Droor is asking for two units per one and a half acres.

Mr. Droor responded one and a half units per acre. He went on to say the Comprehensive Plan is two units per acre; the reason he went to EU from EU-2 is because the concern was that later on a person can revise the BDP and put more lots because of EU-2 Zoning; but if the Board is familiar with the development, by the time the rules are put aside, the retention pond aside, there is no way to put more.

Commissioner Isnardi inquired if Mr. Droor said several months ago during their meeting that he had approval of three out of five of those property owners that are right in front of Smith Road.

Mr. Droor replied there are three, the ones that he has approval is the one that is right next to the entrance that gets the most effect, and then the one next to that one is the one that is opposed; he has the next house and one is not published and he cannot find records on it; and Mr. Armstrong has got the largest lot at the end of Smith Road.

Commissioner Isnardi asked if the property that abuts the entrance to this development would be the most impacted because the traffic for however many homes are developed there, it would be where the traffic

passed through; she stated they talked about a buffer; and she asked if the property owners are having an issue.

Mr. Droor responded no, he has his approval; he has the approval of the property owner that is going to get the most impacted at that entrance; after negotiation, they did put a buffer there; and it will be a sand buffer that will not hurt with the noise or the traffic.

Commissioner Isnardi inquired if they will be stopping before getting to those residences across from the Industrial Park.

Mr. Droor advised there is no reason for them to go down the road.

Commissioner Barfield stated Mr. Droor mentioned requesting it be changed to EU; and he inquired if he meant EU-2, which is what was submitted.

Mr. Droor replied no, he wants to change it to EU; he requested EU-2, which is 9,000 square foot minimal lots; again, after listening to concerns, he wants to change it to EU, which is 15,000 square feet with a BDP, which would be 2,500 square foot minimum houses; and after talking to Commissioner Pritchett, it is going to have paver driveways also.

Commissioner Barfield inquired if he floated this to the North Merritt Island District and to the P&Z board by changing it to EU.

Mr. Droor replied no, he did not talk to them about changing it to EU; EU came after the meeting after listening to concerns; the main concern was that he can change and do away with the BDP; having EU-2 he can do 80 lots or whatever, and that is how EU came about; he again was trying to accommodate the neighborhood.

Vice Chairwoman Pritchett stated she does not think this is necessarily high density, and the Board did make approval to the north already; she has listed through the last few days and has been studying things; she likes the fact that the upgrade to Smith Drive will occur, and that is only going to affect the two houses that seem to not have too much trouble with the project as far as traffic going through there and up to Smith Drive; and as far as the residential and commercial conversation that went on earlier, she would never just stop residential development from happening just because a person thinks commercial would be better, she is for both with that. She added the County can maintain an acceptable level of services; she saw this on the analysis that was given to the Board; it is in agreement with the Future Land Use; she thinks Mr. Droor making a compromise and changing it to EU to make lot sizes bigger makes it even more palatable; that is her thoughts on this and the reasons she will be probably voting in favor of the project; and she thinks it is a good fit for the area, and a nice project.

Commissioner Isnardi stated since the Board is coming to a close to this discussion, she wants to say she was excited about the retention, she thinks it will buffer those neighbors that are concerned about the development having an effect on the neighborhood; as far as commercial versus residential, she does not think development of houses should be stopped because people think commercial makes more sense; she thinks Mr. Droor did himself a disservice not hiring a lobbyist or attorney to testify on his behalf; it is not going to change her mind on seeing where his heart is in this project and that he is willing to compromise; the fact he is willing to sign a BDP and change his zoning to try to accommodate people; and she is going to approve this project as well vote for it.

Commissioner Barfield stated he wants to tell everybody how sorry he is they are going through this flooding; he has been all over looking at it and he feels bad about it; he has had meetings and he is setting up more meetings; and they are working to make some changes. He went on to say he has a major problem with this in the fact that he thinks at this point there is an applicant who came before the Board in 2005 to change from AU to SEU, 18 homes and 26 acres; he is fine with that; he would be fine with 26

homes on 26 acres, which is one per acre; and the P&Z and North Merritt Island Special District Board's recommendations are sound. He commented Harvey Groves is a different situation, it is EU-2; below there is SEU, which is up to one acre; then there is AU, which is the perfect transition; and when a person has EU-2 and then goes straight to AU, it is not a logical transition. He pointed out he is opposed to this the way it is written; he would be good with 26 homes, but that would be it; he inquired how often is the Board going to change the zoning; he stated someone comes in and asked for a BDP this time, they want to change the BDP and zoning again; there has to be a cutoff where enough is enough; and he is opposed to this request.

Commissioner Isnardi stated she would agree with Commissioner Barfield, but as he knows, he would hope that he would understand that 12 years later the needs or the community could change; he thinks 26 homes as opposed to 40, a 14-home difference over 26 acres, is not a significant change; she is not going to compare Mr. Crisafulli's development because it is not fair and she did not oppose his development; and many of these people do not even live with a mile of these acreages. She stated to be told by one person from Merritt Island that the Board Members do not care about flooding, she will point them to her staff where they sat out in the rain storm in the middle of people's floods; every Board Member has been there and done that; and she feels offended a person assumes the Board sits in its offices and do not go out to the public and care about flooding in his or her neighborhoods, because the Board Members do care. She pointed out it hurts her feelings and diminishes the work of her staff because they have worked hard, along with other County employees, to make sure they are doing what can be done to clean out sewers, storm drains, and residents; and while she appreciates the heckling in the audience and some of the curse words she is hearing, it will not change her mind. She added she does not have a problem with this because a lot of the complaints are coming from higher elevation property owners; the County develops smarter now with natural resources, in consideration with utilities, public works, and growth management, because they do not want mistakes made that will cause flooding of neighborhoods.

Commissioner Barfield pointed out that over that time frame, those 12 years, the flood maps show substantially more flooding in that area than before; the Board needs to start looking at the impacts when working on developments in the future; and at some point there needs to be a workshop on this issue.

Commissioner Smith stated he is not familiar with the area, but he drove by probably three or four months ago; he knows there are flooding issues; Commissioner Barfield, the P&Z board and Merritt Island are opposed to this; and he would have to say he is opposed as well. He stated if the baby can be split and make it like 26 homes, it would service the size, and would be equitable on both sides.

Vice Chairwoman Pritchett stated she totally respects Commissioner Barfield and the other Commissioners; she knew she would have to really think this through; she believes it is a good fit; the County is growing; and even District 1 is flooded. She commented this is a really unusual time and different properties have different flooding issues; she cares very much about wetlands, and it is important they be maintained; but she does not think this is a high density project; and with good conscience, she could not vote to deny this tonight.

There being no further comments, the Board approved the request by NAJJAD, Inc. for Zoning Classification change from SEU to EU with a Binding Development Plan limited to 40 units.

RESULT:**ADOPTED [4 TO 1]****MOVER:**

John Tobia, Commissioner District 3

SECONDER:

Kristine Isnardi, Commissioner District 5

AYES:

Rita Pritchett, John Tobia, Curt Smith, Kristine Isnardi

NAYS:

Jim Barfield

Prepared by: Noel Droor, NAJJAD, Inc.
Address: 580 N. Wickham Rd, #E, Melbourne, FL 32935

BINDING DEVELOPMENT AGREEMENT

THIS AGREEMENT, entered into this 21 day of Nov., 2017,
between the BOARD OF COUNTY COMMISSIONERS OF BREVARD
COUNTY, FLORIDA, a political subdivision of the State of Florida
(hereinafter referred to as "County") and NAJJAD, 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, EU zoning
classification(s) and desires 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. NOWHEREFORE, 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, until such time as the improvements are

and platted as public streets by the BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY. 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, lying outside of the proposed public right-of-ways.

2. The Developer/Owner shall limit density to Forty(40) single family units and may be further restricted by any changes to the Comprehensive Plan or the Land Development Regulations.
3. The Developer/Owner shall limit ingress and egress to Smith Road.
4. Developer will not share access with the north parcel 24-36-11-00-250 (AKA Harvey's property). For North parcel legal description see exhibit "B".
5. Developer shall provide an approximately 200 feet long landscape berm at the east side of the entrance. If constructing a landscape berm is not feasible, 6' high, 200 feet long wall will be constructed instead of the landscape berm.
6. Developer/Owner to construct the retention pond at the South side of the property to provide buffer to the South parcels.
7. Each house constructed shall be minimum of 2,500 square feet.
8. Developer/Owner shall comply with all regulations and ordinances of Brevard County, Florida, including the restrictions and minimum code requirements for the EU zoning category. This Agreement constitutes Developer's/Owner's agreement to meet additional standards or restrictions in developing the Property, and are as follows:
 - All streets shall be curbed and guttered.
 - All streets shall have sidewalks.
 - All utilities shall be underground.
9. This agreement provides no vested rights against changes to the Comprehensive Plan or land development regulations as they may apply to this Property.
10. Developer/Owner, upon execution of this Agreement, shall pay to the County the

10. 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.

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

12. Violation of this Agreement will also constitute a violation of the Zoning Classification and this Agreement may be enforced by Sections 17 and 62-5, Code of Ordinances of Brevard County, Florida, as it may be amended.

13. 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 12 above.

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



Scott Ellis, Clerk
(SEAL)



RITA PRITCHETT CHAIRWOMAN

As approved by the Board on 11/21/17

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

WITNESSES:

DEVELOPER/OWNER

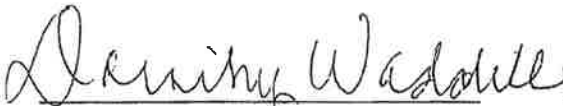


Frank Moayer

(Witness Name typed or printed)

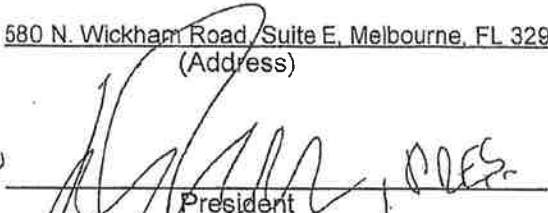
NAJJAD, INC.

580 N. Wickham Road, Suite E, Melbourne, FL 32935
(Address)



DOROTHY WADDILL

(Witness Name typed or printed)



President

Noel Droor, President

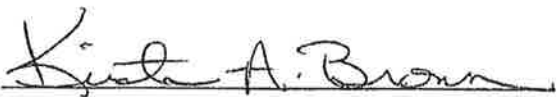
(Name typed or printed)

STATE OF FLORIDA

COUNTY OF BREVARD

The foregoing instrument was acknowledged before me this 1 day of November, 2017, by Noel Droor, as President of NAJJAD, INC., a Florida corporation, who is personally known to me.

My commission expires
SEAL
Commission No.:



(Name typed, printed, or stamped)



NAJJAD BDP

EXHIBIT 'A'

PARCEL ONE

All of the SE $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 11, Township 24 South, Range 36 East, excepting the South 630 feet thereof:

The west 330 feet of the NW $\frac{1}{4}$ of the SW $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 11, Township 24 South, Range 36 East, all in Brevard County, Florida; ~~TOGETHER WITH an easement for private roadway purpose over the West 25 feet and the North 40.33 feet of the West 330 feet of the SW $\frac{1}{4}$ of the SW $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 11, Township 24 South, Range 36 East; Also an easement for private roadway purposes over the North 66 feet of the SW $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 11, Township 24 South, Range 36 East, lying East of State Road Number 3, as described in Deed Book 375, Pages 440 and 441, Public Records of Brevard County, Florida. TOGETHER WITH an easement for pumping water in the drainage ditch along the northern boundary line of the east 330 feet of the NW $\frac{1}{4}$ of the SW $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 11, Township 24 South, Range 36 East.~~

TOGETHER WITH:

PARCEL TWO

A parcel of land lying in the Southeast quarter of the Northwest quarter of Section 11, Township 24 South, Range 36 East, Brevard County, Florida, being more particularly described as follows:

Commencing at the Southeast corner of the Northwest quarter and run S.89° 41' 35" W., a distance of 900.00 feet; thence run N.00° 18' 32" W., parallel with the East line of said Southeast quarter of the Northwest quarter, 25.00 feet to a point on the North right of way line of Smith Road; thence run S.89° 41' 35" W. along said right of way line a distance of 183.40 feet to the Point of Beginning; Thence continue S.89° 41' 35" W., a distance of 85.00 feet; thence run N.00° 18' 32" W., a distance of 604.98 feet to a point on the South line of that certain parcel of land as described in Official Records Book 2482, Pages 0999 and 1000, of the Public Records of Brevard County, Florida; thence run N.89° 41' 35" E., along said South line a distance of 85.00 feet; thence run S.00° 18' 32" E., a distance of 604.98 feet to the Point of Beginning. Said parcel containing 1.181 acres more or less. [Which is the same property as conveyed in deed recorded in O.R. Book 4701, Page 2602, Public Records of Brevard County, Florida.]



CFN 2005012153

OR Book/Page: 5408 / 4795

EXHIBIT "B"

LEGAL DESCRIPTION OF PROPERTY LOCATED TO THE NORTH

The Northeast one-quarter (NE 1/4) of the Northwest one-quarter (NW 1/4) of Section 11, Township 24 South, Range 36 East, Brevard County, Florida.

AND

The North 100 feet of that portion of the Northwest 1/4 of the Northwest 1/4 of Section 11, Township 24 South, Range 36 East, Brevard County, Florida, lying East of the East right-of-way line of State Road# 3.

NAJJAD BDP

JOINDER IN BINDING DEVELOPMENT PLAN

KNOW ALL MEN BY THESE PRESENTS, that the undersigned, being the authorized agent and signatory for the owner and holder of that certain Mortgage dated JANUARY 12, 2005, given by FLORIDA BUSINESS BANK as mortgagor, in favor of the undersigned, NAJJAD, INC., as mortgagee, recorded in Official Records Book 5409, page

4220, Public Records of Brevard County, Florida, and encumbering lands described in said Mortgage, does hereby join in the foregoing Binding Development Plan for the purpose of consenting to the change of property use and development requirements as set forth therein.

WITNESSES:

MORTGAGEE NAME/ADDRESS
FLORIDA BUSINESS BANK
340 N. HARBOR CITY BLVD.
MELBOURNE, FL 32935
(Address)

[Signature]

[Signature] Authorized
Agent Signature

TERRY Z. GABBARD
(Witness name typed or printed)

WILLIAM R. NORRIS, PRESIDENT/CEO
(Name/title typed, printed or stamped)

Patricia L Carroll

Patricia L Carroll
(Witness name typed or printed)

STATE OF Florida
COUNTY OF Brevard

The foregoing instrument was acknowledged before me this day 10th of October, 2017, by William R. Norris who is personally known to me or who has produced _____ as identification

My commission expires

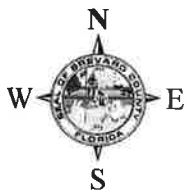
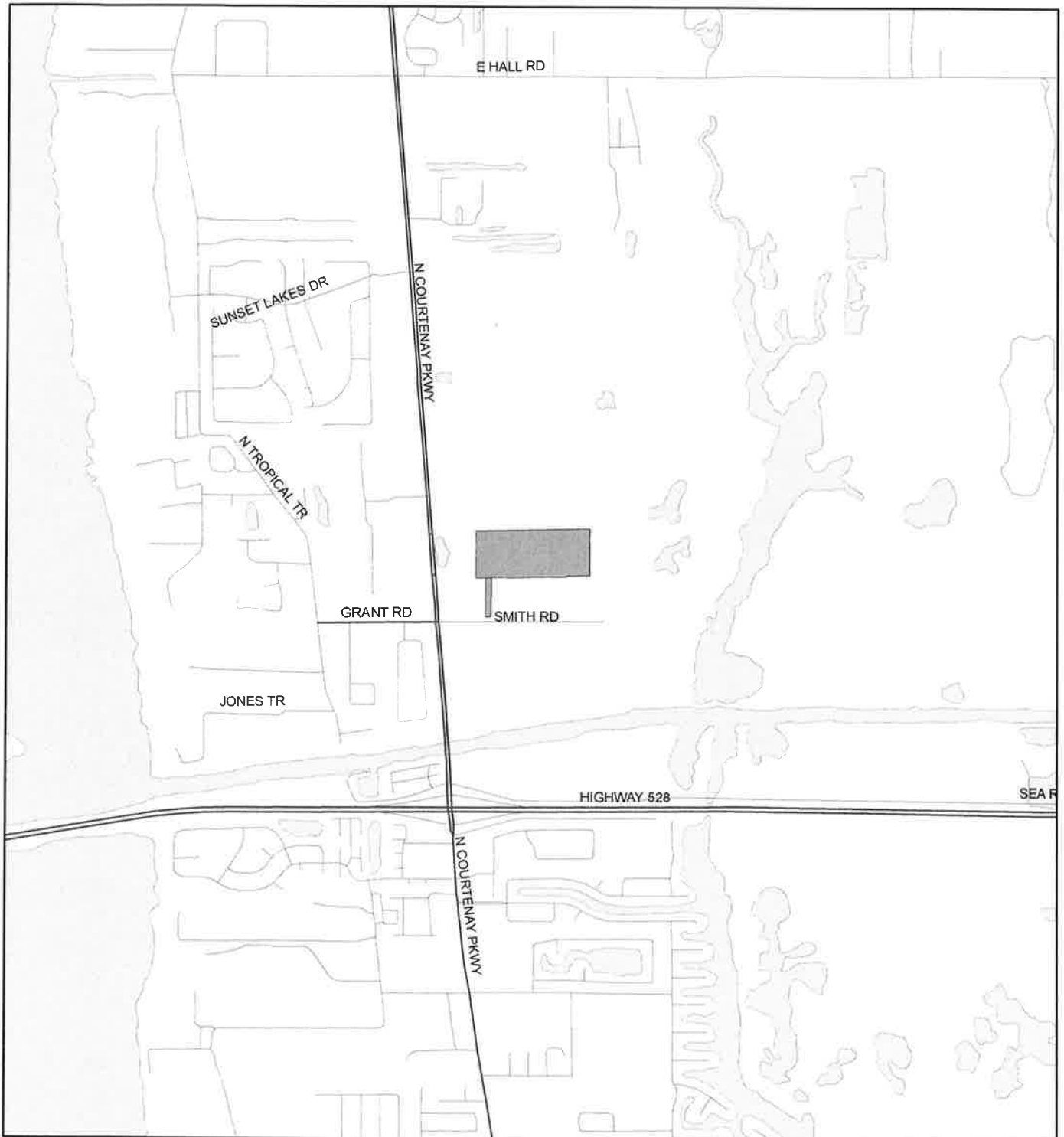
SEAL

Patricia L Carroll



LOCATION MAP

SUBDIVISION PERIMETER BUFFER WAIVER ARMEN GROVES
20VV00014

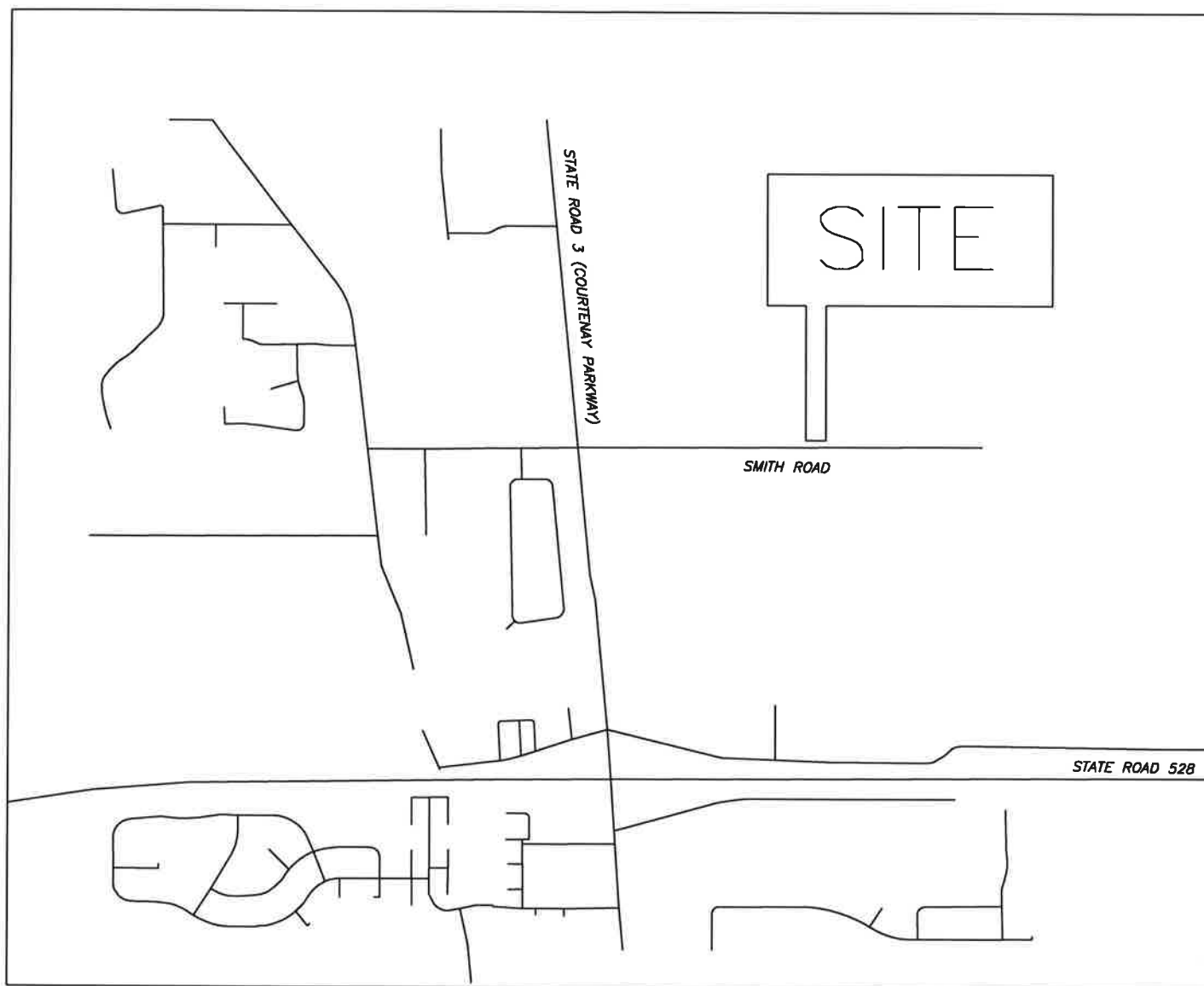


1:24,000 or 1 inch = 2,000 feet

 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.

Produced by BoCC - GIS Date: 8/27/2020



VICINITY MAP

Google Maps ARMEN GROVE

**ARMEN GROVE VICINITY MAP** Map data ©2020 500 ft