

**NORTH MERRITT ISLAND
DEPENDENT SPECIAL DISTRICT BOARD MINUTES**

The North Merritt Island Dependent Special District Board met in regular session on **Thursday, July 12, 2018**, at 6:00 p.m., at the Merritt Island Service Complex, 2575 N. Courtenay Parkway, Merritt Island.

Board members present were: Mary Hillberg, Chairman; Jack Ratterman, Vice Chairman; Gina Lindhorst; Chris Cook; Ted Balke; Catherine Testa; and Jim Carbonneau.

Staff present were: Erin Sterk, Planning and Zoning Manager; Rebecca Ragain, Assistant Planning and Development Director; and Jennifer Jones, Special Projects Coordinator, II.

Chair Hillberg explained the board procedures to the audience.

Approval of May 10, 2018, Minutes

Motion by Jim Carbonneau, seconded by Gina Lindhorst, to approve the minutes of May 10, 2018. The motion passed unanimously.

- 10. RONALD E. DIMENNA** (Malcolm Kirschenbaum/Jack Kirschenbaum) requests a change of zoning classification from AU to EU, with a BDP limited to 1 unit per acre, and one ingress/egress to N. Tropical Trail. The property is 163.33 acres, located on the north side of N. Tropical Trail, approx. 0.11 mile west of North Courtenay Pkwy. (No assigned address. In the North Merritt Island area) (18PZ00054) (District 2)

Jack Kirschenbaum – Madam Chairman, members of the board, my name is Jack Kirschenbaum; my brother was out of town and not able to come tonight. Let me thank you for being here and letting us have this opportunity to speak with you. I'm going to make a few general comments, and then my esteemed engineer, Joe Mayer, who you all probably know better than me from his appearances before you, who we think is really smart and really knows this area, he'll make more of a detailed presentation regarding any engineering issues. Let me first say, as usual, the staff report from the County staff is extraordinary and it points out all of those things that are issues and concerns, matters that you need to consider, and we think we'll touch each one and be able to answer all of your questions concerning them. Ron, the owner of the property, I called him and said, "Ron, how long have you lived on this property?" He said, "It's been so long I can't exactly remember how long, but it's been over 35 years, maybe 40 years." He intends, after this project has begun and finished, to remain there; this is his home, it will always be his home, and for four decades it has been his sanctuary. The one thing that I know about Ron is he will do it right. He will agree to do what this board says he must do, what the Planning and Zoning Board says must be done, what the County Commission says must be done, what the rules and regulations say must be done, he will do to the T. This has been a sanctuary, it always will be; he and his wife retreat here, they live here, and they have been good neighbors and they always will be. As was mentioned, this is a really simple request. The request is to allow, with a binding development plan, one unit per acre, one ingress and egress, no septic tanks, all houses/lots will be on sewer. From the reports and everything we know, there are no substantial traffic issues, and you'll hear the drainage issues discussed by Mr. Mayer, and I know that's a concern everyone will have questions about, but we believe the after-condition the drainage issues will be better than they are now. As I review this, it seems to me the issue that you have to address most urgently is compatibility, and I don't need to tell you what that is, you know the definitions, you hear it all the time. After Joe is done, I'll address that with a few comments concerning compatibility, particularly with regards to the neighborhood and how Merritt Island is moving along. With that, I'll turn it over to Joe to give you some of the technical issues, unless there are any questions right now.

Joe Mayer – Good evening, everyone, my name is Joe Mayer, I'm President of Bussen-Mayer Engineering Group. As Jack said, I will serve as the engineer of record for the project, which is 163 acres and 163 total proposed lots, one unit per acre. We have a binding development plan (BDP) that holds us to that 163 lots, it holds us also to the extension of the force main so that we're on public sewer and no septic tanks; that's all in the binding development plan. We'll also be on city water, the City of Cocoa Utilities Department water

system, so public water, public sewer. With regard to wetlands, 98% of wetlands contained on the property will be preserved. That's because County Code says 1.8% maximum wetlands impact, so we're going to have to preserve the vast majority of any wetlands that are on the property. The National Wetlands Inventory maps do not show a great deal of wetlands on this property; they do show a sliver at one location. I can show it to you if you're interested. The real wetlands impacts will be determined by onsite inspections, by the St. Johns River Water Management District and the Army Corps of Engineers, and whatever they say the wetlands are, we will be allowed to do no more than 1.8% wetlands impacts. So that assures you that the vast majority of the wetlands on the property, whatever they might be, will be preserved. Traffic wise, as Jack mentioned, the staff report indicates we will not impact the current level of service for N. Tropical Trail, and I would also say for N. Courtenay Parkway, current level of service is C; for N. Tropical Trail, after the project is complete, N. Tropical Trail traffic will be at less than 22% of the maximum acceptable volume according to the staff report. In addition, the entrance as shown on the drawing here is only about one-tenth of a mile to two-tenths of a mile from the N. Tropical Trail intersection with N. Courtenay Parkway. We're anticipating very minimal impacts on the traffic on N. Tropical Trail because of that location of the proposed entrance. I know drainage is the biggest issue, understandably, but as you know, the project will be required to meet all of the Brevard County and St. Johns River Water Management District codes and regulations, and will be a continuation of the post-development discharge to pre-development levels for a 25-year storm, et cetera. However, for this particular property, we're aware of the very important outfall ditch – if I can call it that – that runs through the property. There's an outfall ditch and a pump system that I'm sure some of you know a lot more about than I do. I've toured the site and I've seen the system; I've walked most of the ridge that I could get to, so I'm aware of the system and the fact that it serves to drain a region here on North Merritt Island. What I believe after looking at it is that we can work with the St. Johns River Water Management District and Brevard County to actually make improvements to this outfall system that will improve the conveyance capacity, in particular for major storms. As I understand it, that's when there are issues in this particular area, similar to Hall Road. For instance, there's one choke point, if you will, of the ditch that contains two 24-inch pipes that all the water has to flow through. We can fix that. It's going to be a bigger pipe or no pipe when we're done, which will increase the conveyance capacity of this ditch. Again, with all that said, we need the outfall ditch, the area needs the outfall ditch, and we think we can work with the regulatory agencies to make it better than it is; therefore, we think we can be part of the solution instead of part of the problem with this particular site. With that, I'd be happy to answer any questions that you have.

Mary Hillberg – Could you please point out for us and also show the audience where the outfall ditch is.

(Ed. Note: Mr. Mayer referred to a conceptual plan. The conceptual plan is part of the zoning file 18PZ00054 located in the Planning and Development Department.)

Joe Mayer – The ditch starts up here at the corner of the Colony Park Subdivision and comes down northward along the edge of the parcel, and then it turns westward and runs along the south line of the Colony Park treatment plant area, then it runs just north of a very beautiful lake, which we're proposing to preserve, and then makes another turn over here as you get towards the west end of the property, it turns and comes back down and comes out right here into the Pine Island area. It's kind of a circuitous route, but it passes by the Colony Park treatment plant and up along the edge of Colony Park.

Mary Hillberg – You'll be showing this to them, but when you're talking about it, when you get up to this point here, it will be going underneath all these homes?

Joe Mayer – No, we'll adjust the plan, this is just a conceptual layout. We'll address the layout and we'll either move the homes or move the ditch so that it's not going to go under home sites, it's not going to be in lots. The County folks are going to make this happen, but it will be its own separate tract with a maintainable area next to it so people can get next to it to maintain it.

Mary Hillberg – The reason I ask is because what shows here is not what you're saying.

Joe Mayer – I understand. The layout isn't.....we don't know where wetlands are yet. This is a conceptual layout, but we will accommodate the ditch in a separate tract; we have to.

Mary Hillberg – Can you show the folks in the audience the ditch and where it is.

(Ed. Note: Mr. Mayer explained again the outfall ditch and its path to the audience. This portion was mostly inaudible.)

Joe Mayer – I believe we're going to be able to increase the capacity of the ditch. With proper maintenance and design we can make it better.

Mary Hillberg – Thank you, I just wanted them to be able to understand when you're talking about the outfall ditch, which one you're talking about because some people know the ditch, but they don't know where it is.

Joe Mayer – The pump is in this area. I want to mention there's an 85-foot strip that we've left to help accommodate the ditch and possibly increase capacity. We're trying to be sensitive to the drainage outfall.

Ted Balke – If you say this is all a conceptual idea of where the homes are going to be placed, then why are you providing us this, if that's not the ultimate result?

Joe Mayer - A., I've got to start somewhere; and B., staff and other folks want to see.....

Mary Hillberg – Excuse me, we're recording this, and when there's background noise she can't hear for the minutes, so you have to be quiet. I'm sorry, go ahead.

Joe Mayer – He asked me why I have a conceptual layout, and the answer is, A., I have to start somewhere; and B., I'm asked to provide a conceptual layout by County staff and other folks as a part of this process.

Ted Balke – And then you're going to move everything around.

Erin Sterk – The conceptual plan is not required at the zoning level, but you see the board's reaction when people don't come with one and there's no demonstration that what they're proposing could actually fit on the site. It's not binding in any way.

Ted Balke – He has a binding development plan he wants approved. I mean, that's part of the process we have tonight, is to approve that binding development plan, and if that's not the actual concept. We're sort of at a loss.

Erin Sterk – The information in the binding development plan limits him to the number of units, is one of the details, but it doesn't tie itself to this conceptual plan. The conceptual plan is still just to demonstrate that what he's proposing could fit, essentially.

Joe Mayer – There's a great deal of technical data that has to be collected, from graphic information, the soil testing, the wetlands locations, prior to us finalizing in design, and that's when things have to shift around.

Ted Balke – We got all the soil maps and whatever, I mean, everything is disclosed.

Joe Mayer – We have to go to a much greater level than those maps.

Ted Balke – I understand that, I mean, these are just the rough drawings of the area, but there are major issues. The second question I have is, where do you propose that the sewer is going to vacate?

Joe Mayer – The sewer is going to vacate?

Ted Balke – Yes, you're going to pump the sewage out of here, and like you said, these are all going to be on sewer, so where is that going to go?

Joe Mayer – There will be gravity sewer lines, in general, down the middle of each street.

Ted Balke – To where?

Joe Mayer – Those gravity sewer lines will flow to a lift station location somewhere on the property that will then connect to the force main that runs out and down Courtenay Parkway.

Ted Balke – So we're back to using a lift station again?

Joe Mayer – I don't have a choice, sir, that's how.....

Ted Balke – I understand.

Mary Hillberg – Any other questions?

Jim Carbonneau – The binding development plan does not address the drainage system and it doesn't address the pumps, but I'll come back to that. The binding development plan does talk about the sewer connection that is going to be at the cost of the builder, all the way down to Church Road, and that's going to be no cost to the taxpayer or the County. The binding development plan also says that if the area decides to incorporate, the binding development plan is null and void. So, what happens to the cost of that sewage plant, and operations of it, should the area decide to incorporate? The other concern I have is, the pumps that we're talking about that are on the property today, the property is currently zoned agricultural, the permit for those pumps are in place because it's agricultural, and if we rezone it to EU it's no longer agricultural, and according to Chris Holmberg at the St. Johns River Water Management District that I talked to last week, should the area be rezoned anything other than agricultural, St. Johns will probably rescind that permit. So, what is the plan then for drainage should that happen?

Joe Mayer – First of all, the pumps aren't currently functional and they haven't functioned for some time.

Jim Carbonneau – There's no requirement, I agree, for Mr. Dimenna to pump, to use those pumps, because it's time and money to him.

Joe Mayer – I understand.

Jim Carbonneau – And he hasn't been using them with regard to the flooding that the area has seen in the last several years.

Joe Mayer – The agricultural permit that's associated with that pump, I understand at some point can be revoked or cancelled, or whatever the right term is, if the property is no longer under some agricultural use or exemption, et cetera. That doesn't mean that I can't go get, if it's determined that the pump needs to be there as part of the final design, that doesn't mean that I can't go get a permit for a pump for drainage purposes similar to what the County has done on Hall Road, if you will. It probably wouldn't be the same size pump; it may not be a pump at all; I'm not going to design the drainage system at the podium, and I don't have enough information to do that, but if there is a pump required I'm confident that St. Johns will give us a permit, as they're well aware of the problems up here and we just have to show them that it's needed and we get a new permit for a new pump.

Joe Mayer – As far as the sewage treatment plant question, if incorporated, the sewage treatment plant is south of Hall Road and I have no idea what would happen to the sewage treatment plant if North Merritt Island is incorporated. That's way above my head.

Jim Carbonneau – The sewage treatment plant, the sewage line that you're going to run at no cost to the taxpayer, is going to be turned over to the County, and is going to go down a public highway, down N. Courtenay, I assume. Is the County, or the development, going to allow any other people on that section of land access to that sewer line? And if so, how are you going to take that into consideration when you do your calculations?

Joe Mayer – There will be excess capacity in the force main for other people to hook up to a point. There will not be unlimited capacity for everybody; there will be some excess capacity, but I can't tell you 30%, 50%, whatever, but there will be some excess capacity that will allow other folks to hook up. The point of the line down Courtenay in particular, in my opinion anyway, and I'm not the end-all on this topic, but in my opinion on the primary points of putting the line down Courtenay in the first place is to catch all the commercial properties on the frontage. There should be enough, unless there's some wildly, exceeding normal levels, water use, there should be enough capacity for at least the front of the parcels.

Jack Ratterman – I have a question that ties in with his last question. Who would determine whether the property needed a pump or not? Would that be St. Johns or the developer?

Joe Mayer – It's going to be the design engineer in conjunction with St. Johns and Brevard County. I'm very confident John Denninghoff and his group will be intimately involved in this design process because they've got the whole Pine Island thing going. I understand that St. Johns and the County have been to this ditch outfall before and they've looked at it and talked about doing things. I don't know why things didn't happen at that point, but what I'm telling you is I think there's an opportunity here for improvements to the capacity of that outfall.

Jack Ratterman – In your packet here with the binding development plan you list four things; Number 2 says, "limited ingress/egress to one access to N. Tropical Trail." In the last sentence of the next paragraph, it says, "The BDP conditions above do not restrict or eliminate any opportunity for access to this property." So, at some future date that Number 2 could be null and void and you could have another access or several accesses. So, already the binding development plan is not binding.

Erin Sterk – Let me just step in and explain our thought process by including that language. I think the idea they're going for with that limitation on N. Tropical Trail was trying to convey that on old survey's there's the old S.R. 3 right-of-way that they intend to vacate and not connect to that runs in front of Sam's House. I think they're trying to convey that they're not intending to use that entrance, but what we didn't want this to be interpreted to mean is that that will be the only entrance to the site at all. On the concept plan that's in your package you'll see that there's two right-of-ways that stub out and touch the property from the adjacent Colony Park neighborhood that were put there with an expectation that those neighborhoods could connect. This design doesn't show that they intend to connect, but we didn't want it to be perceived that the binding development plan wouldn't prohibit that from happening. So, unless this board were to recommend that a condition be put in the plan, they only need one entrance according to the number of units, our code only requires one entrance. We didn't want this condition to be interpreted to mean that they were prohibited from using this right-of-way. They may not intend to connect to it, but we didn't want this to be something that would prevent them from being able to.

Joe Mayer – Our intention is one access and one access only. Jack, please correct me if I'm wrong, but we're willing to further strengthen the words in that binding development plan if we need to to say that. That's our intention.

Jack Kirschenbaum – Absolutely.

Jack Ratterman – I'm just going by what's happened before to our community. Egrets Landing had one ingress/egress on it to Hall Road, and now they've forced a property owner to give them a second entrance. Forced them.

Joe Mayer – Egrets Landing was always approved from the beginning with two entrances. Above 200 lots the County Code requires us to have two entrances, so it was never intended to be one entrance.

Jack Ratterman – But the property owner, aren't they suing now for that second entrance? That's my understanding. It doesn't sound like to me that it was planned from the beginning if somebody is getting sued for it.

Joe Mayer – I can show you the approval from the beginning.

Rebecca Ragain – I recall that approval, too, and they did have two entrances.

Joe Mayer – I'm very confident that was represented because staff would have stood up and jumped up and down, because 222 lots trips the threshold for two entrances.

Ted Balke – The other one was supposed to be behind Pearson's, the veterinarian, and you were going to use that roadway there, and it turned out that she refused to let you do that, which is why you ended up with the new purchase.

Joe Mayer – No, the property always went north of the vet's office.

Ted Balke – Yes, you were going to use the roadway there, that was the initial plan, that's the way it was worded at the time.

Erin Sterk – If you guys want to elaborate on whether or not you prefer they provide the connectivity, or would not prefer that, I don't think they intend in this plan now to provide that.

Joe Mayer – For the record, we do not prefer connectivity.

Erin Sterk – It's not typical that we have subdivisions.....this subdivision was built so long ago we don't have any code that requires the cross connectivity, but because it's stubbed out right to the edge of the property line we wanted to ensure that you guys could talk about it, and that their language didn't convey some different intentions.

Jack Ratterman – What do you mean stubbed out to the property line? The houses or the buffer zone?

Erin Sterk – Usually, if a subdivision plans on terminating at a property line.....consider that this table is the whole property, and this is the right-of-way, they usually don't build right-of-way all the way up to the property line, they build houses at the end of it and put in some type of a cul de sac. Our code requires that now, so this is kind of an unusual old design engineering that could allow for the connection, but the developer doesn't intend to use it and is not required to.

Jim Carbonneau – Can you address the 500-foot buffer zone? What is it? Where is it? How does it affect the homes around it? If I look at one the maps provided, this one.

Erin Sterk – That's our courtesy notification map. It's not codified, but as a courtesy we notify adjacent property owners. That's what that buffer conveys.

Jack Kirschenbaum – There are no violations of any other policy of your Comprehensive Land Use Plan. This is consistent with every policy, all policies. On the compatibility issue, we're all familiar with the property, we're all familiar with Colony Park next door, and one unit per acre is not unusual or exceptional. There's nothing special or unusual about this particular project. It seems to be compatible with all the other issues. We're happy to answer any questions, and thank you for letting us speak.

Ted Balke – It's not one acre per lot, because they're 50x100 feet and you're talking about a ratio of one acre. These are 50x100-foot lots.

Jack Kirschenbaum – The way you calculate density is one per acre and it's not evenly scattered; they're going to be engineered to make sure the property is enhanced. I can tell you for absolute fact that is what Ron will do, he will make the best use of this property and preserve all that he can.

Ted Balke – And the mitigation you're going to have to do for the animals, for the National Wildlife Association?

Jack Kirschenbaum – We will do whatever is required by the County, whatever is required on drainage, on traffic, on anything.

Jack Ratterman – That's with current code, but right now we're still in the process of a small area study that would drastically change this, but it has not been approved yet by the County. It's on the books to be approved, but for whatever reason it's still in the process. You stated that fact in here, that it would be, instead of one unit per acre, it would be....one unit per acre, but here it says one dwelling unit per 2.5 acres. The change would drastically affect this if that small area study had been approved already.

Jack Kirschenbaum – Let me say two things: One, that's not my report, that's you staff's report, and that was her observation based upon what might happen in the future. And the second thing I can tell you is 'if', they always told me, is a really big word, and nobody can predict the future and it may pass and it may not pass, and it may pass sooner or it may pass in a long time, but Ron can't be frozen and wait for that. None of us can, we have to go on with our lives and make the make the best plans we can and abide by all the codes and rules and regulations that are in existence right now and that's why we're here for your consideration.

Ted Balke – The present plan, as I understand from the previous small area study, shows that all this north section here off of N. Courtenay to the west is all at 2.5.

Erin Sterk – The previous small area study changed....

Ted Balke – And the N. Tropical Trail study changed all of that area to 2.5.

Erin Sterk – The North North Tropical Trail Small Area Study that was done in the 2000's did change a significant amount of lands' future land use designations in the area just on the south side of this property. This property was not included in that study, and I'm not sure how those study area boundaries were defined at the time.

Ted Balke – It was supposed to have been everything all the way to the Space Center.

Erin Sterk – I can tell you for a fact, and I can pull up a map if you need to see it, that the study area for the North North Tropical Trail Small Area Study stopped at N. Tropical Trail. This parcel, as an example, there's a piece of one of these parcels on the south side of N. Tropical Trail, and that future land use designation on that piece of that parcel was changed, in the 2000's, from Residential 1 to Residential 1:2.5. But this portion of North Merritt Island was not included in that study and so it wasn't recommended for change and it retains the Residential 1 future land use designation. I'm not sure if those study area boundaries were defined because

there's a drainage basin.

Ted Balke – I don't think it was defined as such.

Erin Sterk – I'll pull that up now for you.

Mary Hillberg – Does anybody else have any questions?

Chris Cook – It says there are five existing home sites on this property; are they still there?

Jack Kirschenbaum – I don't know if they are all occupied, but there are a number of residences on the property that will probably be gone by the time this all gets done.

Chris Cook – There's eight tax accounts, and I'm assuming that's all going to be rolled into one?

Jack Kirschenbaum – Yes, that will be required when it's platted.

Chris Cook – You mentioned the sewage plant there, these people are going to have a sewage plant that's not maintained very well sitting in their backyard? Is there anything that can be done to help with that?

Jack Kirschenbaum – It would be, I think.....

Erin Sterk – A lift station, is that what you're referring to?

Chris Cook – Colony Park.

Jack Ratterman – Colony Park is on sewer, parts of it.

Jack Kirschenbaum – It would be everybody's wish that Colony Park could hook up to this force main, and that will be available, but I can't tell you that it will happen. All I can tell you for sure is that there will be no septic tanks in Ron's neighborhood.

Chris Cook – On here it says that your access is on an existing road, is that really an existing road? Has the County ever maintained that?

Erin Sterk – I'm sorry, where does it say that?

Chris Cook – On his drawing here, "Old S.R. 3 existing road".

Several speakers at once were inaudible.

Erin Sterk – There is a driveway-ish to Sam's House there. I'm not sure why their surveyor labeled it that way.

Jim Carbonneau – It's a cow path.

Chris Cook – Is that going to be your access point?

Jack Kirschenbaum – The access point will be on the southeast corner, just inside the property line.

Erin Sterk – I think, Chris, that's what their BDP condition was trying to demonstrate. Just before we get too far away from it, Ted, here's the study area boundary for the North North Tropical Tail Small Area Study, and the northern limit is N. Tropical Trail. So, not all the property in here was Residential 1, and not all of it changed

from Residential 1 to Residential 1:2.5, but a significant portion of this area did change as a result of that, but the study area boundary was literally at the southern limits of this property. Don't quote me because I didn't work for the County when this happened, but I think this was some sort of drainage basin where south of N. Tropical Trail flows south. The drainage is captured there so it was more of a concern.

Jim Carbonneau – Is that map proprietary, or is it available.....

Erin Sterk – It's posted on the County website; all old small area studies are on the County website, which is where I pulled it from.

Jack Ratterman – While we're talking about the traffic, was a traffic survey done? I didn't see anything. That part of N. Tropical Trail is pretty narrow. Anybody know how narrow it is?

Chris Cook – Pretty narrow.

Jack Ratterman – 18 feet, that's how narrow it is, and to put all those people coming out they're all going to be using that narrow 18 feet with a pretty good size ditch on the north side. Near Sam's House is probably a good 10 – 12 feet deep. Is it a dangerous curve? It is, because there's a marker there saying somebody died.

Ted Balke – I see it every day.

Chris Cook – Coming down to Sam's House they only allow a right-hand turn because there's been so many accidents. In addition, even when they come out to N. Tropical Trail, that's on a curve as well, too. So, you're going to have all these people backing up trying to get out onto S.R. 3 to go to the Space Center to go up, that's going to be on a curve where people are flying down that road and it's going to be.....we need to do something with FDOT to improve that intersection somehow.

Jack Kirschenbaum – We've relied on the County's traffic analysis and found no loss of level of service, and we'll be happy to look at all the issues to make sure.

Chris Cook – The other issue I have that's not with that, is that when looking at the school analysis, I didn't see anything about a traffic analysis in this packet. I'm an engineer guy, so I look at the data, and the school says it's based on data from October 2018; however, the report was written on March 29th. So, I don't know how they can get October data in March. I guess they just use the data from the last fall for their projections. One thing I know they don't take into account, this is just me looking at stuff, there's seven developments already approved with over 562 residences that aren't accounted for with the school study or the traffic, because they're just on the books, they're already approved and they're going to go in. I just think that's irresponsible to do that; I think the schools are already overcrowded; Lewis Carroll is over-taxed and we're going to be shipping people to MILA, and that doesn't even count for these 562 homes.

Jack Kirschenbaum – I can't speak for the schools, the School Board can speak for the schools, but I do understand, thank you.

Chris Cook – Same thing with the traffic, they also don't account for the over 1,500 parking spots there are going to be with the cruise parking currently under development now, too. I don't know if you guys drive this area often, but I got someone on S.R. 3 the other day who was making left-hand turns and right-hand turns with his blinker, trying to figure out.....he was one of those people in the old Tingley place, and he was trying to figure out how to turn around and get back over the bridge. He almost caused five accidents; I just pulled over and stopped.

Jack Kirschenbaum – Someday self-driving cars will be a benefit to us.

Chris Cook – And that's before these places are even there. The point being made is that there's going to be issues with what we have on the board already, and when we're looking at new stuff we really got to take that into account at some point, somehow, somewhere.

Mary Hillberg – Any other questions?

Jack Kirschenbaum – Thank you very much for your time.

Mary Hillberg – Is the sign-in sheet some place? Is there anyone in the audience who would like to speak to this item? You come up to the podium and give us your name and your address. Remember when you're speaking here that this tiny little recorder is what's recording you for our minutes and that's what we need and that's what's going to be your words that are written out.

Unidentified speaker - I heard a statement from the lady right here that said all the water south of N. Tropical Trail.....

Mary Hillberg – Your name and address?

Arnold Dingman – Arnold Dingman, 6200 Crystal Lane. That water does not flow south, it flows under two drainage ditches, pipes, that are under the road. One right in front of where the proposed entrance is, and one down here that goes along in front of Sam's House and runs that way. There's drainages under Tropical Trail, this canal doesn't connect to the ditch that drains our property; it connects to where they are going to have a retention pond. The main thing is, all the water here, north of Crisafulli Road, goes north. South of Crisafulli it goes south. I've lived there 45 years and I've seen every hurricane event when the water was literally flowing over Tropical Trail going north. These ditches that are right here, it's a long ditch that comes in through here, and my property is right here, and on the side of mine is a ditch that comes up, hits Tropical Trail, turns right and runs into a bigger ditch, which is where the drains are. Those drains then go across onto the current property, but do not connect to this proposed canal they have now. Is that going to connect? How are they going to address the water that's going to be blocked when they put this one buffer, per se, in this lake? How's the water going to get from this section all the way to Crisafulli, going north like it does today? That's a major concern. I'll show you a few pictures that will back that up. I've got two of these, I don't know if I want to leave them with whomever, but I'll walk you through it. (Ed. Note: Mr. Dingman referred to photos he submitted to the board. The photos are included in the official record and can be located in the Planning and Development Department under file 18PZ00054.) This is my house almost three months out of the year. The first page is where I currently live. On the left is what it looks like when it rains. On the right is how it looks today. This is how it looks right now and this is how it looks when it rains. This is my garden that we've had for many years. This is my garden now, it's under water.

Ted Balke – And those are just afternoon rains?

Arnold Dingman – This one was when we had a 10-inch rain one night. Once again, the garden has been under water for a long time. On the second page, these are also pictures from our property. This is on October 2, 2017, and it's completely flooded, that's my garden. These pictures here are from my back yard looking south towards Crisafulli; during this rain you could canoe from Crisafulli all the way up through our orange grove to my house from one of our neighbor's and then all the way back down. That's a lot of water and that's a lot of flooding. That's a major concern, period. This is the road directly across, on the next page, it says, "Kangaroo" at the bottom, Tropical Trail and Kangaroo, on the bottom is the way it looks today, and on the top is how it looks during the storm. All the houses are under water. This is the same exact picture, I took this today, and that's how it looked during the storm. The next page shows Boomerang, and the next page shows the person's house that lives directly in front of where the road is going to come out, and he had to get a canoe to canoe out of his property to get to his car; you can see his trucks are parked up under his house; his whole yard was under water for about two months. On the next page, this is the gentleman who is across the

street that will be up next to the retention pond; this is his car today, and here is his car under water during the hurricane storms. This is Boomerang here during a storm, completely under water, all the houses; people were coming out on tractors because they couldn't get their cars out. This is the road today. When we're talking flooding, we're talking serious flooding. And, this water goes north, which, what are they going to do? Are they going to take it? Are they going to let it pass through? Are they going to connect it to the other ditch? That's a big problem. All the houses that were built in the development directly next to me between my house and the volunteer fire department, per code, are all raised up 2.5 to 3 feet above the crown of the road. My house, back when I built it, was only 1-foot above the crown of the road, so all that what is up there goes to my house, the neighbors' house, and anyone around there. These are the two ditches on this particular picture. This is the one down by Sam's that cuts around and goes in the drain. This is the one directly across from where the entrance is going to be. I've got them circled here where they're going to be. The water definitely goes north. My main concern is that I've lived there 45 years and the last 10 years it has flooded more than ever.

Mary Hillberg – Is there someone else who would like to speak?

Shawn Downs – Shawn Downs, and I am at 380 St. Charles Avenue in Colony Park, and I'm right here, so I abut up to the lake. (Ed. Note: Ms. Downs referred to the concept plan) This is also at the end of road where I guess there's a potential access, which we don't want, none of us want. My other issue is the flooding. This ditch that runs right down behind Colony Park, here, does not stop and take a turn here, it does not turn until it gets to the back of the houses on the south side of St. Charles Avenue, and then it dead-ends at the first house right here. The rest of the ditch is gone, and it's my understanding from the County that this was supposed to go all the way across and dump into a ditch right here to be funneled on out, but the County is informing me, the last three supervisors over the last five years, that the property owner is not letting people on the property to clean out these ditches. They're supposed to be draining all this excess water off. So, if they can't work with the County and solve all the current flooding issues I'm definitely not in favor because I'm going to be under water. When [Tropical Storm] Fay came through here this lake was all the way up, half-way in everybody's back yards surrounding the lake. That property has not been maintained either; trees and power lines all the way up and around, which knock our power out in a hurricane. The traffic, I'm with everybody else, but the flooding is a major problem. We're routinely on a regular rain right here, this whole intersection is flooded, water is all the way up to this neighbor's house touching the walk, and these ditches have not been maintained at least in 10 years.

Ted Balke – You commented that you continually lose electricity, does that happen weekly?

Shawn Downs – Yes, we don't even reset the clocks anymore.

Mary Hillberg – Who else would like to speak?

Kim Smith – My name is Kim Smith, I'm reading for the North Merritt Island Homeowners Association, PO Box 542372, Merritt Island, Florida. The North Merritt Island Homeowners Association represents over 8,000 residents of North Merritt Island. At their last meeting the board examined this rezoning request and its projected impacts presented in the County's rezoning review worksheet that you all have and it's available online also. They decided they cannot support this request based on concerns of considerations in the

Brevard County Administrative Policies as follows: 3.A., traffic activity that would significantly diminish the safety and quality of life of existing neighborhoods; 3.B., a material reduction in the value of existing abutting lands and developments; 3.C, this proposed use being inconsistent with the emerging and existing patterns of surrounding development based on, (1), historical land use patterns, (2), dissimilar or actual area development in the past three years, and (3), dissimilar approved area developments in the past three years; 4, the character of the area being material and adversely affected by this rezoning proposal, considering (A), the introducing intensity of traffic that almost doubles the projected average daily trips and the p.m. trip volumes;

5.B, this large increase of traffic on Tropical Trail would deteriorate the physical quality of the existing road system, this narrow road of N. Tropical Trail; 5.C., the existing road way being an insufficient width to serve this traffic increase; 5.D., the insufficient traffic increase proposing a potential danger to public safety; 5.F., this traffic increase hastening the physical deterioration of the surrounding roadways; 5.G., the traffic impact materially, adversely, therefore impacting safety and welfare of residents in existing neighborhoods; 7, the proposed use causing or substantially aggravating any, (a), substantial drainage on surrounding properties, as a large portion of this property is classified as being within floodplains, and portions of it consist of frequently flooded hydric soils, and (b), significant adverse or unmitigable impact on habitat listed on this property for endangered or threatened species with no impartial site inspection yet regarding these having been conducted; 8(3), negative impact of this proposal on available and projected traffic patterns and the established character of the surrounding properties; 8(5), inappropriateness based on these and other ordinances and regulations relating to consideration of public safety and welfare. Then jumping back to Administrative Policy 6, this rezoning proposal thus being inconsistent with written land development policies described before and set forth as regulations of the County and these administrative policies. Under Factors to Consider, (1), the character of the land use of the property surrounding the property being considered, the majority of which is much less dense residential properties on conservation lands; (3), the impact of the proposed zoning on available and projected traffic patterns; other public facilities, such as the over-capacity schools serving this area, the established character of the surrounding properties; (5), thus the inappropriateness of the proposed zoning based on the previously mentioned conditional violations in these policies and factors to consider, and in consideration of public safety and welfare. The North Merritt Island Homeowners Association does hear the same complaints about how increasing North Merritt Island development causes among other problems, more flooding during storm events, and that is because increasing North Merritt Island development density is exacerbating more storm event flooding; every year it gets worse, not better. The North Merritt Island Homeowners Association might have looked at it somewhat more favorably at another zoning with no binding development plan, such as RR-1 or SEU, and ideally, if the Dimenna's truly wanted their property to be a sanctuary it would be a great addition for the North Merritt Island environment community if added to the Pine Island Conservation Area in the Dimenna name. Thank you.

Mary Hillberg – Who else would like to speak? No one else wants to speak? You sure? Okay, the applicant can come back up, please.

Jack Kirschenbaum – Mr. Mayer would like to address the drainage issues.

Joe Mayer – Just two points I'd like to make. If Mr. Dimenna chose, under the current zoning and the County's Open Space Ordinance, he could half the land up to 80 – I don't think 80 would actually fit – up to 80 one-acre lots without a rezoning, without going through this process, just going through staff approvals. Feel free to correct me if I'm wrong, Rebecca. What I'd like to point out to you is 80 one-acre lots, as far as fill from a drainage perspective, 80 one-acre lots with associated streets and drainage, is about the same thing you're looking at as far as the 164 one-third-acre lots; it's not like developing one-acre lots is going to drastically reduce our footprint that we have to fill. I just want to point out that either way, you're still having the impact if he chooses to develop.

Mary Hillberg – Could you explain to me how 80 one-acre lots would be the same impact in terms of fill, than 165 one-third acre?

Joe Mayer – 163 one-third acre lots equate to 50 or 60 acres of land; the 80 one-acre lots equate to 80 acres of land, so right there, if the roads and retention areas are about the same, which they would be, that's an extra 20 acres of fill, because we have to fill the whole one-acre lot.

Gina Lindhorst – I don't agree with that. That wouldn't be the same at all because you don't have to fill the one-acre lot the same height as a house.

Joe Mayer – You have to fill it out at a flood plain.

Gina Lindhorst – Right, but you don't put it two feet above the road. Also, there are fewer houses occupied trying to water their grass and wash their cars and fertilize, so that's a huge difference, twice the size.

Joe Mayer – I just thought I'd try that out on you.

Mary Hillberg – Your mentioning the open space ordinance sounds like a good idea.

Joe Mayer – In my opinion it's about the same impact on the footprint of this property. I understand that you disagree. Secondly, to address this gentleman's problem, you live there and I don't, and if this does go through and receive approval, I would love to come and sit down with you and get your local knowledge because that's very important, but what you described is what I saw the day that I toured; the pipes come under the road, but the ditch system is disjointed. I can't speak to the history, I'm just a drainage engineer, and as a drainage engineer we start connecting these things and creating a real outfall, I think it really helps you. Again, you don't have to believe me, but I'm saying it. I think a lot of the problem is the disjointed system that exists out there, and I think through the project we can make it better. That's all I wanted to say.

Arnold Dingman – I'll give you my address and I'll walk you through the whole place.

Ted Balke – How did you get 80 units?

Joe Mayer – The open space ordinance says....

Ted Balke – On wetlands? This is wetlands.

Mary Hillberg – It's not all wetlands.

Erin Sterk – We included wetlands maps in your package.

Ted Balke – A percentage of it is wetlands.

Erin Sterk – The open space subdivision requires that they work around those, so that's what it seeks to preserve.

Ted Balke – It wouldn't be 80.

Erin Sterk – There's 163 acres, and you can tell that not half the site is wetlands. You can see that on the map.

Joe Mayer – We're talking about a zoning level perspective, and from a zoning perspective and the open space ordinance, you could do 80 lots. I'm not saying we could physically fit 80 on there.

Gina Lindhorst – I am concerned that we're not doing a stair step change; we're doing a drastic change from AU to EU, because AU says 2.5 acres per home, which is well more than 40,000.....one acre is 40,000 square feet, and then half an acre is 20,000 square feet, but the EU says 15,000 square feet is the minimum lot size, so I don't think it would be really a nice transition from the AU around it to have lots of homes jammed together. The trailer park is an old dinosaur that has been there and you don't want one like that, I know nobody wants a neighborhood with tiny little lots to cram your houses into. My concern is we're not transitioning, we're jumping way to EU instead of RR-1 for instance, would be reasonable, or SEU, which is one acre and you could do the open space plan with that.

Mary Hillberg – Would the applicant consider RR-1 at one acre? That would be compliant with the Future Land

Use Map and that would be.....

Joe Mayer – It's not an engineering question, I'm not going to answer that one.

Gina Lindhorst – That would be a lovely neighborhood.

Mary Hillberg – But I would like to say that because you're the engineer, that the flooding is the overwhelming problem. If you look on the FEMA floodplain maps it's the overwhelming problem. It's all floodplain, I mean, there are a few areas that are not, but it's a floodplain, so we're building in a floodplain, and what these people are saying is they've been on the fringes of it and on the edges of it and suffered. If you build this and harden it, you know.....

Joe Mayer – I understand what they're saying. I'm the engineer and I truly believe that we can help the problem.

Chris Cook – What's the status on the compensatory storage requirements that they're talking about for this area?

Mary Hillberg – Compensatory storage is in the small area study.

Chris Cook – Okay. Per statutes, you're responsible to hold water on your property, correct?

Joe Mayer – For a 25-year storm.

Chris Cook – I think what they're talking about is they're trying to upgrade that because of all the issues that we have there, but what about all the water that comes over across from Mr. Dingman. There's no way he can handle that, right?

Joe Mayer – I'm not suggesting that we handle that in our ponds, I'm suggesting that that's historical drainage and we have to take care of it. If we connect it up and not force it to flow through orange groves and breaches in the ditch, places where the ditch doesn't exist, et cetera, I think we can help the overall duration of the flooding. That's just my visual observation, that's my opinion.

Chris Cook – I get letters from people all the time, emails, and this one guy said he was a futile morgue because his house was built up and he gets a moat around his castle every time it rains, but the poor people who don't have castles.....

Joe Mayer – I can only speak to, do I think it can be better? Yes, I do.

Jack Ratterman – But as Mr. Kirschenbaum pointed out, that's if you decide to do it, and as he pointed out, 'if is a big word. If you don't decide to do it these people are going to be left in the water. If you decide to help them that's one thing.....

Joe Mayer – Or for that matter if we're not allowed to do it.

Gina Lindhorst – About how much is the cost for the sewer going from these homes to hook up with whatever else is going to be placed? Are they just going to hook up from their property here to N. Courtenay? A short one mile section.

Jim Carbonneau – The end of the sewer line is Church Road.

Gina Lindhorst – That's a lot of money for that.

Erin Sterk – It's 1.25 miles away.

Gina Lindhorst – That's got to be a huge outlay. That's not a small thing; however, if you're saying to be nice you would put in other drainage ditches and pumps and things it seems like another outlay of money.

Joe Mayer – It's not to be nice; if it's historical drainage we have to do it, and in my opinion it's the right thing to do, but I also have to do it.

Mary Hillberg – Any more questions? Thank you. Mr. Kirschenbaum, do you think that your client would be amenable to considering RR-1 or SEU?

Jack Kirschenbaum – I don't think the economics work bringing the sewer line through as far as we are and doing all of the other things that are going to need to be done, I don't think it would be economical. I'm not at liberty to agree to that, so that really isn't on the table tonight.

Mary Hillberg – If it's not possible, it's not possible. Thank you.

Chris Cook – Everything is possible, it's just not feasible.

Mary Hillberg – Now it's back to the board. Any discussion? First, I guess we need a motion. Is there a motion? Or do you want to discuss first?

Jim Carboneau – Let's discuss. First of all, I'd like to commend your client for everything he's done for the community of surfing. A lot of us remember when Ron Jon's was a little storefront selling flip flops and suntan oil, and then surfboards, and then they got into hatch cover tables and et cetera. He's come a long way, with resorts and everything else. He's in a very comfortable position in life. He's got a beautiful compound he's had for 35-plus years on N. Tropical Trail. He's chosen to live quietly on his property with his wife. Having said that, looking at this jump forward now for developing the land and kind of throwing all that good intentions, stuff that he's done, out the window, and looking at the impact to the community I can't support. I'm not going to go through every little piece of.....Kim has gone through it, I'll go through these Administrative Policies. Looking at his legacy, we've heard lots of stories about the intent about why Mr. and Mrs. Dimenna have gone forward with this project, a lot of it circles around his legacy. Well, if he wants to be known in the community, be it the surfing community or the local community, I think it was an excellent idea about having that piece of property donated for the betterment of the community rather than development. We talked about the flooding issues, we've talked about traffic impacts, but one thing we haven't talked about is fire security, which is another concern, also noise pollution, crime, theft, everything that comes associated with the bad part of developing. There are a lot of things that are on peoples' minds, flooding is obviously first and foremost. Mr. Dingman's property to the south is my property, I had 30 inches of water after [Hurricane] Irma and after the subsequent rain. The piece of property off of Boomerang that was mentioned, Boomerang and Kangaroo, I believe were developed by Mr. Dimenna years ago. After Irma I was back with my family and trying to figure out what to do about the drainage. In the corner of that property that he developed we unearthed 43 or 47 sandbags that were put in place by somebody to prevent the drainage of my ditch from going to the north. It gets back to retention, more water the more they have to retain. Who did that, I can't say, but it was done. This person who is going to do the right thing, I want to make sure somewhere either they bind it to the development plan that has teeth and merit, that everything is addressed going forward. I can't support a plan as we've heard that is tentative. I think we're a little pre-mature in this whole process of going forward and I wonder if it's being rushed along because the Small Area Study has not been approved and decided on yet. If you would like me to, Mary, I will go through all of the Administrative Policies.

Mary Hillberg – Are you making a motion?

Jim Carbonneau – I'd like to make a motion to decline.

Mary Hillberg – Motion to recommend denial on the grounds of?

Jim Carbonneau – Administrative Policy 3.A., noise levels and traffic, impacts to existing neighborhoods. Administrative Policy C, historical land use patterns. Administrative Policy 4.A., where it talks again about traffic density, the volume of the traffic. We talk about impacts to not only Courtenay, but the intersection of ingress/egress to S.R. 3 during peak traffic.

Mary Hillberg – You can just give the numbers of the policies.

Jim Carbonneau – Administrative Policy 4, the character of the neighborhood; Administrative Policy 5, criteria B., C D, E, and G; Administrative Policies 6, 7, 7.A., 7.B., and 8(5). Under Factors to Consider, (3), traffic patterns.

Mary Hillberg – We have a motion on the table.

Ted Balke – Second.

Mary Hillberg – We have a motion and a second. Ted seconds it, now we further discuss.

Catherine Testa – I agree, and from what I've heard here tonight he hasn't been a good neighbor in not allowing the drainage areas to be maintained or to have the electric lines maintained. It doesn't sound like he really cares about the neighborhood; he claims to, but he doesn't by his actions. That, in addition to all the administrative reasons, I see no reason to approve it. I don't think he can keep good on promises if he hasn't cared for his neighbors yet, why would he care in the future, when he's making all this money and developing all this land. It's not a legacy, it's a shame that he's not been kind to his neighbors.

Chris Cook – I just want to get on the record, we talked about the character and we talked about capacity and the outdated data that we use, how we don't have a traffic study, so I don't see how we could even consider it without having the traffic analysis done. Also, the Small Area Study, flooding. The one thing that wasn't mentioned is my personal aversion to having BDP's. To me, a BDP should be something for a certain egress or entrance or something like that, it's not to get a downgraded zoning, because we all know what happens is you get three commissioners and the BDP is gone, and it doesn't mean anything. That's what happened with Droor up there, they had an agreement with all the homeowners there, everything was all set, and all of a sudden, "we're going to double our zoning", and it was done. So, I would like to see no BDP's, or if a BDP is done it's just for a specific little thing that's particular to that property, not to reduce your lot size.

Gina Lindhorst – I'd like to say that I'm concerned about BDP's because I don't think they're effective, they're not set in stone or a concrete document for us to rely on.

Erin Sterk – The only thing I'll say to that is that all of the conditions in the BDP, except for the limitation on units up to the density that the Comp Plan allows for, could go away if that would be negotiated through a public hearing process, but the limit on the number of uses that makes this zoning classification consistent with the Comp Plan can never go away unless they were to propose to change the Comp Plan. So, even though it is a condition within a BDP, which is a moment in time and can be re-negotiated through a public hearing process, that specific condition can never go away unless they were proposing to change the density in the Comp Plan. That's one thing that our code allows for that cannot be undone in this case.

Mary Hillberg – What does that mean in practical sense?

Erin Sterk – It means if they ever wanted more than 163 units they would have to change the Comp Plan and

propose to go to Residential 2; they could never take away the binding development plan and say they could get more third of an acre lots, because they can't exceed the Comp Plan.

Mary Hillberg – But the items in the binding development plan could change?

Erin Sterk – Any binding development plan that's negotiated through a public hearing process.

Jack Ratterman – I concur with Jim. I firmly believe that his company and Mr. Dimenna has done a lot for the community; I witnessed that as a teacher, they did drug awareness workshops and had great t-shirts and brought in all the kids from the community to make them aware; that was a wonderful project. When I was a teen I actually worked for them. All that said, I still have to vote against the proposal.

Ted Balke – I agree with Chris, too, because of the fact of all the documentation and all the support that the County is providing.....introducing the seven acceptable plans that have already gone through. You said 740 new homes?

Chris Cook – 560 new residences.

Ted Balke – That's not in any of the consideration when we're looking at new zoning changes.

Gina Lindhorst – It's all taken in isolation.

Mary Hillberg – It's hard to put it all in a big box. I would say my two cents is I'm hearing flooding, flooding, flooding, drainage, hydric soils, flooding, flooding. It's a safety issue and it's also a property value issue. These are heavy issues that have to be considered, in my opinion. I would wish that the applicant would consider SR, even going to a half-acre would be better, preferably RR-1 would be better, but EU is very hard. There's a motion and a second on the table. All those in favor?

All – Aye.

Mary Hillberg – The motion passed unanimously.

Mary Hillberg – I'm sorry, your application has been recommended for denial.

Jack Kirschenbaum – Thank you for your time tonight.

The meeting adjourned at 7:26 p.m.