

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

The North Merritt Island Dependent Special District Board met in regular session on Thursday, February 12, 2015, at 6:00 p.m., at the Merritt Island Service Complex, 2575 N. Courtenay Parkway, Merritt Island.

Board members present were: Tom McFarland, Chairman; Shaye Williams; Chris Cook; Jack Ratterman; Ted Balke; and Catherine Testa.

Staff members present were: Cindy Fox, Planning and Zoning Manager; and Jennifer Jones, Special Projects Coordinator II.

Catherine Testa was absent at the outset of the meeting.

The meeting was called to order by the Chairman, Tom McFarland, at 6:00 p.m.

LETTER TO COUNTY MANAGER WHITTEN

Tom McFarland – I guess we can take this letter as our first order of business. We had asked at our last meeting if we could get some guidance on the condition of drainage in specific areas on North Merritt Island, and this letter is what staff has drafted for us.

Cindy Fox – I also wanted to give you guys some background. I did some research and it appears that the latest drainage study was done by PBS&J and performed in 1996; and around 2013 a FEMA consultant performed modeling as part of the new flood zone maps that they prepare. It is estimated that if we wanted to expand upon the FEMA modeling it would cost between \$50,000 and \$75,000, and if we were able to do that it would examine the drainage patterns and identify culvert and other drainage structure issues, and this would also identify those culverts that are not functioning, that are under private ownership that may trigger, or initiate, the County to seek a remedy for that. Under culvert ownership – I know the board is sensitive to private ownership and things like that – if the culverts provide drainage flow under a private landowner driveway, it belongs to the private land owner. If the culvert provides drainage service under a public road, then the culvert is the public's responsibility. In this case it would be the Public Works Department of the County. In most cases, if the culvert is providing general drainage service for the road along much of the road, not just the property owners adjacent to the road, and for private drives, then it would probably be a publicly maintained culvert. So, there's some different ownerships, and that's assuming the culvert is always in a public right-of-way or on public property. So, that's a little background to let you know at least what I could find about what's been done and ownership over the culverts.

Tom McFarland – My recollection is that right-of-ways have kind of been a back and forth issue on North Merritt Island because so much of the development in the early years, property owners owned to the middle of the road, but in recent years that has mostly changed in my understanding, so this is really good information and I appreciate it.

Catherine Testa's presence was noted.

Ted Balke – PBS&J is located where?

Cindy Fox – They are a local engineering firm.

Tom McFarland – Palm Shores, I think.

Cindy Fox – Yes, in that area. They do a lot of engineering work for the County and they have for a lot of years.

Tom McFarland – They are a huge outfit and have been here a long time.

Jack Ratterman – How about the right-of-way? How far does a County right-of-way extend?

Cindy Fox – It's different and it depends on maintenance. If the County maintains it, then the County would take ownership over it, so it depends. I don't know exactly what the maintenance patterns are in the area.

Tom McFarland – I think it varies, too, in some neighborhoods and some particular roads. This will be good for them to look at it, I think. So, if there's no objection, I'll go ahead and sign the letter and send it off.

Jack Ratterman – You're saying that the cost would be between \$50,000 and \$75,000?

Cindy Fox – Yes.

Tom McFarland – If they contract with PBS&J to do it, that's the estimate, or someone else.

Cindy Fox – Just to expand the FEMA modeling to understand the drainage in the area.

Tom McFarland – It seems to me like it would be money well spent. If you had one bad flooding event, you could eat up \$100,000 in a few homes being damaged. In 25 years there's been a lot happen here, almost 30 years.

Ted Balke – Even the rains last week created problems with flooding on front lawns, and that was only a one night event.

Tom McFarland – It was a lot of rain, but it wasn't a three and four day event like hurricanes. Thank you, very much, for your work on this.

Cindy Fox – You're welcome. Did you want to make a motion and have the board vote to have your signature on your memo?

Tom McFarland – Sure.

Ted Balke – I make the motion.

Chris Cook – Second.

Tom McFarland called for a vote on the motion and it passed unanimously.

MINUTES OF JANUARY 8, 2015

Tom McFarland – The only thing I saw was the fifth from the bottom on the first page, it says, "The minutes from our last board meeting, I think everyone them in your envelopes". I probably meant to say, "had" them. That's the only thing I saw. Anyone else have any additions or corrections?

Shaye Williams – Motion to approve the minutes as read.

Jack Ratterman – Second.

Tom McFarland called for a vote on the motion as stated, and it passed unanimously.

III.B.1. (14PZ-00118) – RO1, LLC – (Kim Rezanka, Dean Mead) – requests removal of a BDP (Binding Development Plan) in a BU-2 (Retail, Warehousing, and Wholesale Commercial) zoning classification, on 3.44 acres, located on the east side of N. Courtenay Pkwy., approx. 420 ft. north of E. Crisafulli Rd. (No assigned address. In the N. Merritt Island area)

NMI Recommendation: Cook/Balke – Denied. Vote was unanimous.

Kim Rezanka – My name is Kim Rezanka, I'm with the law firm of Dean Meade, 7380 Murrell Road, Suite 200, Viera, Florida. I'm here representing RO1 LLC, which is a Portland, Oregon company. The property was purchased by my client last year out of a foreclosure special assets trust, essentially, and they since hired the Michael Gaich Company to sell the property. They found out this Binding Development Plan was on it, and according to Don Anthony with Michael Gaich, it's just not marketable, and no one wants to put mini-warehouses on it, and that's what the property is limited to. It is 3.44 acres. Almost 18 years ago it was rezoned from BU-1 to BU-2 with this Binding Development Plan with the plan to do mini-warehouses. They were never built, and the property changed hands four times. As I said, it was foreclosed on in 2014. The surrounding area – I know you all are very familiar with this property – the surrounding area is BU-1 to the north and south, BU-2 to the west, and residential to the east. It actually has a little AU strip immediately to the east. What I've given you is just some pictures – again, I know you're familiar with the property – to the south is the Ramsey's Alignment Service, it is very close to the road and it has four bays. It's an automotive shop, it appears to be minor automotive, so it is appropriately zoned. Shuttles Restaurant and Bar is to the north. I've pulled these pictures off of the Property Appraiser's website, so it's really the best picture they had to show the road and where it was. I think everyone knows what it looks like. There is no specific site plan. The third page in your packet is what was submitted back in 1997, the conceptual site plan. This is a large piece of property of almost 3.5 acres, it has 600 feet of frontage. The plan at that time was to keep the 30-ft. landscape buffer on the west edge, and that was basically to hide these very non-descript warehouse buildings, would be my understanding. It had one entrance because that's all you really need for mini-warehouses. It was to have the trees remain in the back – although most of those look like they're gone now from the aerials I've looked at – and there appears to be a culvert back there, or some sort of ditch. The Binding Development Plan was done to reflect the mini-warehouses. They didn't want anything to be built there, so this is what they planned to build. This has been sitting on the property for almost 18 years. The intent is to market this property for retail/professional use. That is apparently what Don Anthony thinks the demographics support in that area. You've got warehouses across the street that are vacant. They don't want to do mini-warehouses here because they don't think that would sell. Because it's such a large piece of property, in theory they could split it, they could sell it to multiple users, they could put a strip center in there, such as the Eckler Center further to the north. That is the intent and what they believe will be the highest and best use for this property. The BDP won't allow professional uses or retail uses. It's limited to a mini-warehouse. It doesn't say, 'any uses except', or, 'any uses allowed in BU-1, or mini-warehouses', which the more recent binding development plan says something along those lines. The BDP is too restrictive; the west landscape buffer – for retail/professional you need to be able to see the buildings, and you won't be able to see it beyond a 30-ft. landscape buffer. Currently, the Code – if you look on the next page – for landscape buffers, it requires a Type B roadway buffer, which would be a 15-ft. landscape buffer adjacent to a public road. That is consistent with the North Courtenay Parkway Corridor Study, which recommended a 15-ft. buffer. Back then we called it a Type C landscape roadway buffer, but it's really a Type B now. That corridor study was done in 2005, it doesn't say 'adopted' on it, I'm assuming it was, but I don't know when they adopted it, but it was done almost 10 years ago. I assume the code was changed to reflect that, because it does have that 15-ft. public road buffer. One access, as I said, doesn't make good retail sense, necessarily, especially with such a large 600-ft. access way, and for driveway cuts we need DOT. So, we would like that restriction removed. The buffering on the east, as I said, that's going to require what the code requires under 62-4342, Type A compatibility buffer, which is a completely opaque buffer of at least 6 feet and a 20-ft. vegetative buffer area. So, that is actually consistent with what the Binding Development Plan required. We would ask that you entirely remove this BDP to allow them to be able to market the property and sell it and put something useful in there. That's all I have.

Tom McFarland – Any questions from members of the board?

Ted Balke – You alluded to the drainage in the back. There is a huge retention area out back there. It runs the entire length of the property and is probably about 30 feet wide. It is on the retention maps. It is unusable at this point. So, it cuts back on his 3.44 acres.

Kim Rezanka – I didn't know that.

Ted Balke – It's quite extensive.

Kim Rezanka – I couldn't tell what it was from the aerials.

Ted Balke – If you look at the County map you can see that there is a pond in the back there, and it is adjacent to Mr. Tall's driveway access from 90 E. Crisafulli. The houses beyond that...

Kim Rezanka – There's a 30-ft. buffer there anyway.

Ted Balke – Well, that's on the east.

Kim Rezanka – Right, on the east, which generally is the concern with compatibility with residential.

Ted Balke – The problem there is when they built that area up to put something else in there, the water is going to run someplace, and it's going to be those homes that are right behind it.

Kim Rezanka – That would be handled in site development, they have to retain their own water, and they have to make arrangements so it wouldn't do that. You're still going to have to have the opaque buffer.

Tom McFarland – Any other questions of the applicant? You'll have another shot if someone from the audience has anything.

Shaye Williams – Actually, I had a question regarding the landscape buffer. The zoning classification you're going for.....

Chris Cook – They just want to get rid of the BDP

Tom McFarland – They would still have a 15-ft. buffer in the front.

Kim Rezanka – Correct. The 15-ft. buffer is required by Code.

Shaye Williams – And the corridor study, did they go forward recommending a 25-ft. buffer?

Kim Rezanka – What they did say – and I have it here on page 13 – “Property owners within the corridor are encouraged to provide a 25 ft. buffer landscape buffer”; the minimum landscape buffer only requires 15-ft. So, that was the recommendation, but it never made it to Code.

Tom McFarland – Is there anyone else who would like to speak to this issue?

Kim Smith – Kim Smith, 5390 Judson Rd., Merritt Island. I'm here for the North Merritt Island Homeowners Association, and they looked at this and discussed it, and they are objecting to the request as it stands regarding the removal of this buffer zone, and has concerns over the broad commercial range of uses by removing the restriction, thus the potential of inconsistency with surrounding developments and the neighborhoods. And lastly, expanding the hardscape on the property, which will contribute to more runoff next

to known flood zones. What they're asking is that the property owners instead propose their own replacement binding development plan regarding these and other concerns.

Tom McFarland – Thank you. Would the applicant like to come forward and address the questions?

Kim Rezanka – Again, from a perspective of land development it doesn't appear to be incompatible, BU-2 is what you've got across the street for a very large section across the street. You have uses – automotive to the south and restaurant/bar to the north – those are still relatively high, even BU-1, uses. Again, I don't think they're doing BU-2 major automotive, but is an automotive place. So, I don't think the inconsistency, or incompatibility, exists, even with the removal binding development plan, because of what's around there and because of the zoning to the west. As to flooding, again, they have to retain their own water. That's one of the common principles that's discussed at every meeting. They have to retain their own water. Whatever they build, it has to be engineered and they have to retain it, they can't affect anybody else. So, other than that we just ask for the development plan to be removed so they can do something with the land other than warehouses.

Catherine Testa – Your client wants to sell the land? They don't want to actually develop it?

Kim Rezanka – Correct.

Catherine Testa – So, you're only interested in selling it?

Kim Rezanka – Correct.

Chris Cook – Why don't you just go for a BU-1?

Kim Rezanka – Well, because the rezoning process is a much longer process and is a much more expensive process, and it takes a longer time to do it. It was rezoned 18 years ago.

Chris Cook – One thing that should be noted is that the binding development plan was put in place for a reason, to restrict the use. There is no hard BU-2 going on up in that area. That place is abandoned. The current place that is zoned BU-2 is basically sitting there doing nothing, and it's been doing nothing for years. So, it's putting in a hard BU-2 that would be inconsistent with the character of the neighborhood. The reason that binding development plan was put in place, I read from the notes, was because of the small area study that was going on in 2005. There is a small area study going on right now that just got start that's going to redo all that stuff, so it's really kind of wise to maybe take that into consideration as well.

Tom McFarland – I'll ask staff, if under our circumstances can we ask for a BU-1 rather than BU-2, or are these two separate processes?

Cindy Fox – This board doesn't have the ability to give them BU-1 because they are not requesting a zoning change, they are just requesting to have the BDP removed, so in lieu of that, this board has the option of instead of removing, asking to amend, or deny it and have them come back for BU-1. That's up to this board.

Tom McFarland – Thank you.

Cindy Fox – The BDP does run with the property, so if they do sell it, whatever BDP is in place the new owner would have to abide by it.

Chris Cook – I think there is a general concern about getting a hard BU-2 there because they can put a lot of things in BU-2 that's incompatible. So, I would suggest that they come back with a new BDP of what they want to do, if they find a buyer that knows what they want to do with it, and come back with a BDP. It can be a

pretty broad BDP, but BU-2 is so wide open to what can go there, it's really kind of..... there's a lot of things there that would not be compatible, especially with what's going on with the small area study. Either that, or go for BU-1, because it does border on residential on one side as well.

Jack Ratterman – I would agree with Chris that those are our only options. I'm worried about once they sell it, the new buyer, what are they going to do with it? Are they going to be concerned about the community?

Chris Cook – It was purchased with the BDP on it.

Tom McFarland – I don't remember exactly where the cut is through Courtenay. I know there's one right where Ramsey's is, on the south side of Ramsey's.

Kim Rezanka – There's not a cut there. I drove there today and I had to go all the way up.

Tom McFarland – I think that the cut is south, so access may be an issue. Can I hear a motion? Do we want to approve or deny?

Ted Balke – I support Chris's comments and oppose.

Chris Cook – I'll make the motion if you want. I make a motion that we deny the request to remove the BDP, and in lieu of that, request that they come back with a new BDP, or a BU-1 rezoning.

Tom McFarland – And you can put that as our recommendation to the board? Is there a second?

Ted Balke – Second.

Tom McFarland called for a vote on the motion, and it passed unanimously.

Upon consensus, the meeting was adjourned at 6:25 p.m.