



# Brevard County Board of County Commissioners

2725 Judge Fran Jamieson  
Way  
Viera, FL 32940

## Legislation Text

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**File #:** 2174, **Version:** 1

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### **Subject:**

Appeal of Administrative Decision, Re: Island Forest Preserve (20WV00017)  
Developer: IFP Merritt Island, LLC                      District 2

### **Requested Action:**

Staff seeks direction from the Board regarding the Island Forest Preserve's pending administrative appeal as to the requirement that the developer install reuse lines and a proposed Infrastructure Cost Sharing Agreement.

There are three options for the Board's consideration:

1. Approve the waiver as requested by the Developer (no reuse extension);
2. Deny the waiver as requested by the Developer (reuse extension required); or
3. Approve the Infrastructure Cost Sharing Agreement and a Budget Change Request (BCR) for the County's cost portion which will extend the force main and reuse lines to the Island Forest Preserve development (see attachment - Infrastructure Cost Sharing Agreement) and provide the Board Chair authorization to execute the Agreement and any necessary amendments or documentation upon review and approval by the County Attorney's Office.
  - a. If the Board approves the Infrastructure Cost Sharing Agreement, the County is seeking a BCR approval in the amount not to exceed \$640,000 for the County's portion of the agreement.

### **Fiscal Impact:**

If the Board approves the waiver, the fiscal impact will be the loss of the return on investment to the County for the conversion of the Sykes Creek Wastewater Treatment Plant to produce reclaimed water and for the installation of the reclaimed water line along North Courtenay Parkway to serve as the transmission line for future development to connect for irrigation.

If the Board approves the Infrastructure Cost Sharing agreement, a BCR approval in the amount not to exceed \$640,000 for the County's portion of the agreement.

### **Dept/Office:**

Utility Services and Planning and Development

### **Summary Explanation and Background:**

On the October 27th Board agenda, IFP Merritt Island, LLC (IFP) requested an appeal of an administrative decision requiring the installation of a reclaimed water line to service the Island Forest Preserve development pursuant to County Code Section 110-312. In effect, Island Forest Preserve seeks a waiver from this requirement. Since the October 27<sup>th</sup> meeting, Staff and the Developer have come to an agreement on the cost, terms and conditions for an Infrastructure Cost Sharing Agreement which will include the extension of a force main and reuse line.

**Staff's position related to the recommendation of the waiver is as follows:**

County Code Section 110-312(c) affords applicants the opportunity to appeal an administrative decision or determination concerning implementation of the provisions of Chapter 110. In this particular case, IFP Merritt Island, LLC, requested that staff grant a waiver of Section 110-308 which requires all new subdivision developments within designated reclaim districts to install a reclaimed water line, concurrently with the installation of any sanitary sewer line, in such a manner as to provide service to the entire project or development. The Utility Services Department reviewed the waiver request and did not find an undue hardship or unreasonable practical difficulty resulting from strict compliance with the requirement to provide reclaimed water.

During the development of the County's North Merritt Island collection system, it was decided to expand the services for this area to include reclaimed water for future development irrigation needs. This was done to comply with environmentally safe practices, which still apply today. These initiatives included:

- Eliminating discharge to the Indian River Lagoon by installing deep injection wells and providing reclaimed irrigation water.
- Protecting the potable water supply and eliminating irrigation wells in the surficial aquifer by introducing reclaimed water as the primary source of irrigation.

The Board of County Commissioners passed Resolution 87-157 to support the initiatives noted above. This is the basis of the County investing in the Sykes Creek wastewater treatment plant to produce reclaimed water and for the extension of the reclaimed line along North Courtenay Parkway.

The developer proposed Island Forest Preserve is located within the Merritt Island Wastewater Reuse District which was established by the Board of County Commissioners in 1987, via Resolution 87-157. The Utility Services Department has invested approximately \$1.5M to extend the reclaimed water line from the Sykes Creek wastewater treatment plant north along North Courtenay Parkway to Hall Road. The present-day value of the Sykes Creek wastewater treatment plant being converted to reclaim production capacity would be approximately \$3M to \$4M. The County has received construction bids to extend the North Courtenay waste water and reclaimed water lines from Church Road to North Tropical Trail. The approximate cost to the County for this waste water and reclaim line extension project is \$912,000 (the final amount will not be known until the project is completed). These FY 21 waste water and reclaimed water line extension will provide the connecting point for the Island Forest Preserve Development even though the developer's BDP calls for them to connect and build at Church and Courtenay (about 2,900 feet farther south than the East Crisafulli location would be). The Developer bears no direct cost in the County's waste water and reuse line extension or in the investment the County placed for the Sykes Creek wastewater treatment plant producing reclaimed water. The signed binding development plan (see attached BDP) between the County and the Developer states that the Developer agrees to comply with all County code requirements, which would include Section 110-308.

The Sykes Creek WWTP has capacity to supply the new development as well as all expected future customers with reclaimed irrigation water.

Island Forest Preserve Development is proposing to construct 110 lots on 110.34 acres. As a part of the development the project is expected to build, in addition to the reclaimed water main, a sanitary force main the length of East Crisafulli Road. This construction is expected to require at least partial reconstruction or repair of the existing road. This situation is not expected to be exacerbated by the requirement to build the

reclaimed water main.

As there is still a great deal of vacant land (in addition to Island Forest Preserve) on East Crisafulli Road and in much of North Merritt Island (the Reclaim Water District), approving the requested waiver appeal could set a widely effective precedent for the entire area, limiting the benefits of and the effectiveness of the efforts to achieve reclaimed waste water use.

Based on the forgoing and as outlined below, there are five major reasons staff did not approve the waiver request:

1. The code requires extension of reuse mains and we have found no hard ship to justify the waiver request. This condition existed before the developer purchased the property and started any development efforts. Appropriate due diligence would have revealed the requirement. The developer has and has had the ability to change the development plan from 110 units with sanitary sewer and reuse service, to 55 units with high efficiency septic systems. Again, there is no hardship.
2. The developer already agreed to build the reuse line as a part of the BDP (agreed to comply with all the codes). The BDP was agreed to during or as a result of a public hearing process associated with the land development rights approval process. To approve the waiver would in effect begin to dismantle the BDP without benefit of a publicly noticed public hearing and contrary to the previous public hearing.
3. Given future development on NMI, waiving the requirement in this case will set a precedent which will jeopardize the earlier investment the rate payers have made and are about to make in support of providing reuse (reclaim) water for irrigation on NMI.
4. If waived, the developer will instead provide the development with an irrigation system which draws water from retention ponds which, during the dry part of the year, is in actuality, ground water. This will result in reduction of the water table and increase the risk of salt water intrusion. Further if the utility department doesn't deliver reuse water for irrigation they must pump more treatment plant effluent down the deep well disposal system. Both of these conditions are not as environmentally sound as using the reuse water for irrigation.
5. If the waiver request is approved, the developer provided irrigation system (drawing water from the retention ponds) will later be turned over to the HOA to own and operate. Such systems are inherently cheaper to build and costlier to maintain. Thus, the HOA would be left with a costlier system to maintain than would occur if the waiver request is denied and reuse water is provided. In other words, the developer saves expense now leaving the HOA to bare a higher cost in perpetuity.

**The following is a status of the Infrastructure Cost Sharing Agreement between the County and the Developer:**

Since the October 27<sup>th</sup> Board meeting, Staff and the Developer have been in discussion regarding an Infrastructure Cost Sharing Agreement which would address the oversizing of a force main and reuse line along East Crisafulli Road to serve not only the Island Forest Preserve development but also any future development along that corridor. Cost, terms and conditions have been agreed upon between the Developer and the County, pending Board approval.

Brief summary of the agreement is as follows:

- The scope of work calls for the developer to design, permit and construct and install a 6-inch reuse line

and 6-inch force main, including, but not limited to, valves, air release valves and all accessories, from the west side of the North Courtenay Parkway right-of-way, along or under East Crisafulli Road, to the Island Forest Preserve Development.

- The cost shall not exceed \$1,480,000 and the Developer shall be responsible for \$840,000 (or 56.8%) and the County \$640,000 (or 43.2%). Should the cost increase there are stipulations ensuring the increase does not adversely affect either party.
- Payment provisions which allow the developer to have the option to be reimbursed by the County either upon final completion of the improvements or in progress payments.
- Please see attached Agreement for further detail.

Reference: 19SD00010, 17PZ00158

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