

January 5, 2023

TRANSCRIPT OF THE MEETING OF THE
COLLIER COUNTY PLANNING COMMISSION
Naples, Florida
January 5, 2023

LET IT BE REMEMBERED, that the Collier County Planning Commission, in and for the County of Collier, having conducted business herein, met on this date at 9:00 a.m., in REGULAR SESSION in Building "F" of the Government Complex, East Naples, Florida, with the following members present:

Edwin Fryer, Chairman
Joe Schmitt, Vice Chair
Robert L. Klucik, Jr. (appearing remotely)
Paul Shea
Randy Sparrazza
Amy Lockhart, Collier County School Board Representative

ABSENT:

Christopher T. Vernon

ALSO PRESENT:

Raymond V. Bellows, Zoning Manager
Mike Bosi, Planning and Zoning Director
Heidi Ashton-Cicko, Managing Assistant County Attorney
Derek Perry, County Attorney's Office

PROCEEDINGS

MR. BOSI: Chair, you have a live mic.

CHAIRMAN FRYER: Thank you, Mr. Bosi.

Happy New Year, everyone, and welcome to the January 5, 2023, meeting of the Collier County Planning Commission.

Will everyone please rise for the Pledge of Allegiance.

(The Pledge of Allegiance was recited in unison.)

CHAIRMAN FRYER: Will the secretary please call the roll.

COMMISSIONER SHEA: Commissioner Lockhart?

MS. LOCKHART: Here.

COMMISSIONER SHEA: Commissioner Shea, here.
Commissioner Fryer?

CHAIRMAN FRYER: Here.

COMMISSIONER SHEA: Commissioner Schmitt?

COMMISSIONER SCHMITT: Here.

COMMISSIONER SHEA: And, Commissioner Sparrazza?

COMMISSIONER SPARRAZZA: Here.

COMMISSIONER SHEA: Mr. Chair, we have a quorum.

CHAIRMAN FRYER: Of four. And what's the word on Commissioner Klucik? Is he calling in? He is calling in. He's online.

COMMISSIONER KLUCIK: Can you hear me?

CHAIRMAN FRYER: Yes. And from my part, I think you have an excellent reason for not coming in and contaminating us, sir. So I'll cut to the chase and move that you be permitted to participate remotely.

Is there a second?

COMMISSIONER SCHMITT: I second.

CHAIRMAN FRYER: Any further discussion?

(No response.)

CHAIRMAN FRYER: If not, all those in favor, please say aye.

COMMISSIONER SHEA: Aye.

CHAIRMAN FRYER: Aye.

COMMISSIONER SCHMITT: Aye.

COMMISSIONER KLUCIK: (No verbal response.)

COMMISSIONER SPARRAZZA: Aye.

CHAIRMAN FRYER: Opposed?

(No response.)

CHAIRMAN FRYER: It passes unanimously.

Welcome, Commissioner Klucik.

COMMISSIONER KLUCIK: Thank you very much. Good morning. Happy New Year.

CHAIRMAN FRYER: Happy New Year to you, sir.

Let's see. Addenda to the agenda, Mr. Bellows.

MR. BELLOWS: We have no changes.

CHAIRMAN FRYER: Thank you.

Planning Commission absences. Let's see. Our next meeting is on January 19, 2023. Does anyone know if he or she will not be able to attend that meeting? Mr. Bosi.

MR. BOSI: Chair, one of the things that we did want to discuss with the Planning Commission is there are no petitions on the 19th. Would the Planning Commission like to cancel that meeting officially?

CHAIRMAN FRYER: Okay. My -- that raises a question, because the material that Mr. Bellows sent out indicated there were no matters on for February the 2nd. Is that also true?

COMMISSIONER SPARRAZZA: On the look-ahead?

CHAIRMAN FRYER: Yeah, on the look-ahead.

MR. BOSI: Correct.

CHAIRMAN FRYER: Wow.

COMMISSIONER SCHMITT: Well, if we cancel, will we still get paid?

CHAIRMAN FRYER: Yes, at the same rate.

MR. BOSI: Yes, you're 110 percent of your income.

CHAIRMAN FRYER: Oh, wow. Now you're talking.

Well, is staff recommending that we cancel both of those or just the --

MR. BOSI: Staff is recommending, because with the elongated advertising, even if something did shake loose, we couldn't -- we couldn't satisfy the advertising requirements for the 2nd.

CHAIRMAN FRYER: Okay.

MR. BOSI: So it will be -- the 16th of February will be the next meeting.

CHAIRMAN FRYER: Okay. Well, I don't --

COMMISSIONER SHEA: We're canceling the 19th of January?

CHAIRMAN FRYER: Canceling the 19th of January and the 2nd of February. And I'd entertain a motion for that, please.

COMMISSIONER SCHMITT: Make a motion to cancel those two meetings as recommended.

CHAIRMAN FRYER: Is there a second?

COMMISSIONER SPARRAZZA: Second.

CHAIRMAN FRYER: Further discussion?

(No response.)

CHAIRMAN FRYER: If not, all those in favor, say aye.

COMMISSIONER SHEA: Aye.

CHAIRMAN FRYER: Aye.

COMMISSIONER SCHMITT: Aye.

COMMISSIONER KLUCIK: (No verbal response.)

COMMISSIONER SPARRAZZA: Aye.

CHAIRMAN FRYER: Opposed?

(No response.)

CHAIRMAN FRYER: They are canceled. Thank you, Mr. Bosi.

Approval of the minutes. We have two sets of minutes before us for action today, those of the November 17, 2022, and December 1, 2022, meetings. If there are any corrections, changes, or additions to either of those minutes, we will divide the question but, if not, I'd entertain a motion to approve both sets as submitted.

COMMISSIONER SCHMITT: Make a motion to approve both sets of minutes.

CHAIRMAN FRYER: Is there a second?

COMMISSIONER SHEA: Second.

CHAIRMAN FRYER: Any further discussion?

(No response.)

CHAIRMAN FRYER: If not, all those in favor, please say aye.

COMMISSIONER SHEA: (No verbal response.)

CHAIRMAN FRYER: (No verbal response.)

COMMISSIONER SCHMITT: Aye.

COMMISSIONER KLUCIK: (No verbal response.)

COMMISSIONER SPARRAZZA: (No verbal response.)

CHAIRMAN FRYER: Opposed?

(No response.)

CHAIRMAN FRYER: Very good. We have approved both the November 17 and December 1, 2022, meeting minutes.

BCC report, recaps, Mr. Bellows.

MR. BOSI: Chair, Mike Bosi, Zoning director.

On the 13th of December, the Board of County Commissioners approved the Maple Lane rezone, the 2022 AUIR, as well as the Brightshore SRA.

CHAIRMAN FRYER: Thank you.

COMMISSIONER SCHMITT: I do have a question of staff.

CHAIRMAN FRYER: Vice Chair.

COMMISSIONER SCHMITT: Just on the upcoming meetings, we're being inundated with emails on this project called, is it Haven?

MR. BOSI: Yes.

COMMISSIONER SPARRAZZA: On Airport and Orange Blossom.

COMMISSIONER SCHMITT: On Airport Road.

MR. BOSI: Just, I think, south of the Carlisle.

COMMISSIONER SCHMITT: Is that in the -- on the -- even being planned? Is there anything projected for that? For some reason the public seems to think that's, like, imminent and because --

MR. BOSI: What happened is they've had their neighborhood information meeting.

COMMISSIONER SCHMITT: Yes.

MR. BOSI: Neighborhood information meeting happens after your first review. Typically within any rezone petition, there's three to four individual staff reviews before it will get to the Planning Commission. So you're probably six months out.

COMMISSIONER SCHMITT: All right. All right. I'll just put those in the "to be reviewed some day" file.

MR. BOSI: We'll schedule that for your summertime fun.

COMMISSIONER SCHMITT: Okay.

CHAIRMAN FRYER: Thank you, I think.

All right. Chairman's report, none.

Consent agenda, none today.

***Public hearings. Our first and only land-use petition of the day is PL20220003938, the Kaicasa RPUDA.

All those wishing to testify in this matter, please rise to be sworn in by the court reporter.

(The speakers were duly sworn and indicated in the affirmative.)

CHAIRMAN FRYER: Thank you.

Ex parte disclosures from the Planning Commission, beginning with Ms. Lockhart, please.

MS. LOCKHART: Staff materials only.

COMMISSIONER SHEA: Staff materials only.

CHAIRMAN FRYER: Public materials and a meeting with staff.

COMMISSIONER SCHMITT: Staff materials only.

COMMISSIONER SPARRAZZA: Staff materials only.

CHAIRMAN FRYER: And, Commissioner Klucik?

COMMISSIONER KLUCIK: Staff materials only and a meeting -- you know, my normal pre-meeting meeting with the staff to discuss items on the agenda.

CHAIRMAN FRYER: Very good. That dispenses with that part. So now we'll go to the applicant's presentation. You may proceed.

MS. MARTIN: Good morning. I am Amanda Martin, a planner with Johnson Engineering. I'm representing the applicant, Habitat for Humanity of Collier County.

Today we have two of the representatives from Habitat with us, Reverend Lisa Lefkow and Mara Foley. I'm going to have Lisa come up and give just a brief overview of Habitat's mission

and the current activities happening on this site. As it was mentioned, it was recently in the news for activity, so...

CHAIRMAN FRYER: Thank you.

MS. LEFKOW: Good morning, Commissioners. For the record, Lisa Lefkow, CEO, Habitat for Humanity. It's great to be with you this morning. Thank you for this opportunity.

For those of you -- it's been a long time since Habitat has been here before you, so --

COMMISSIONER SCHMITT: It has been a long time, Lisa.

MS. LEFKOW: -- a little review. Habitat for Humanity of Collier County is one of the oldest and is currently the largest producing affiliate of Habitat for Humanity in the United States. So I want you to know that. That's something that many in this community are not aware of.

The mission of Habitat Collier is to provide access to affordable homeownership to families who are primarily making less than 80 percent of the area median income. Over our 45-year history, we've built homes with about 2,500 families. So very long and successful history here.

We started out building primarily infill housing, buying a lot, building a home, buying a lot, building a home. In 2000, in the year 2000, we took a different tactic and approach and began buying parcels of property and creating fully built subdivisions. To date, we have 13 active homeowners and condo associations as a result of subdivision construction.

So who are we building with? We're building with all kinds of folks from our workforce, and these are the folks that are making this economy run. They're the folks that held us over through COVID stocking shelves, driving buses, serving in county government, keeping our roadways beautiful, caring for our hotels and resorts, working in our hospitals and restaurants and hospitality industry.

So, truly, the heart of our workforce are the folks that qualify for Habitat for Humanity. We qualify folks through a comprehensive application process which really mirrors very closely what it would be like to apply for a mortgage with a bank. Reviewing not only legal status -- everybody must be either a U.S. citizen or permanent legal resident, demonstrate capacity to repay our interest-free loan. We don't give houses away. We sell them. We are the bank and hold that mortgage with an interest-free loan. So a little general review about Habitat for Humanity.

Today we're talking about Kaicasa. A little history about Kaicasa. Kaicasa, folks would say, well, what -- where did this name come from? You-all are certainly aware that the name Immokalee means "my home" in the Seminole language. Kai is how you say home in Creole, and casa is how you say home in Spanish. So a little history there. Now you'll have that in your pocket when somebody says what you talk about today.

Kaicasa is a property that we purchased back in 2004. So we've had this in our inventory for a long time planning and preparing for this day. And as we referenced earlier, we celebrated the first wall raisings this week. We're here today to talk about an amendment to the PUD so that we know who we can sell homes to and ensure that our deliverable is affordable for each of them.

The project is zoned for 281 homes. That is our intention, to deliver 281 affordable homes. We have a beautiful home design. I'm very proud of not only the site plan, but a very unique home design. The houses in Kaicasa will be triplex or quadruplex two-story townhomes with a single-car garage. So lovely house design, a lot of curb appeal, and we expect that it's going to be a very desirable neighborhood, hence some of what brings us here today to talk about the income amendment to the PUD.

So a little background for you, and I'll turn it back to Amanda.

CHAIRMAN FRYER: Thank you.

MS. MARTIN: Thank you, Lisa.

Again, Amanda Martin, for the record.

I'm going to go ahead and give a brief overview of the project history and details of the request before you today.

The Kaicasa PUD is a 100-acre parcel located in Immokalee on the north side of State Road 29 directly east of Farm Workers Village. The PUD was originally approved in 2007 and, as Lisa mentioned, there's current construction activity happening.

The project is located in the high residential designation on the Immokalee Future Land Use Map which allows a maximum density of eight units per acre; however, the ordinance in 2007 was approved for a density of four units per acre. So I know you were intending to build a little under 300 units, but it's actually approved for 400 units on the site currently.

Affordability commitments were made in the PUD, but the applicant did not receive any bonus density in exchange for that.

It's also noteworthy that all of the units in the PUD are subject to the affordability commitments, not just a portion of the units, which is typically seen.

A lot has changed in the last 15, 16 years since this PUD was approved, including the housing market, the vision for the Immokalee community overall, and the intentions and mission of Habitat for Humanity. This PUD amendment will bring the housing commitments up to date with the current conditions.

Two changes are requested to the affordability commitments; however, there are no changes requested to the master plan, the density, or the uses already approved.

The first request is to revise the income level served from at or below 60 percent of median income to serve at and -- or including and below 120 percent of the area median income. This commitment to make sure all units are subject to affordability was voluntary from the applicant and, again, no bonus density was received for this commitment.

By expanding the income level served, this change brings the PUD commitment up to date with the current policy of Habitat for Humanity which is to provide homeownership opportunities that are affordable to a mix of income levels.

As I mentioned, the economy and the goals for the Immokalee community as a whole have changed since 2007. Specifically, the recently adopted Immokalee Area Master Plan aims to provide a mix of housing types and price points. By broadening the income levels served in this PUD amendment, it supports the housing goals in the Immokalee Area Master Plan by providing housing units at a mix of price points.

The second request is a bit more straightforward. It's to increase the affordability commitment from a period of at least 15 years to 30 years from the date of CO. By extending the time frame, it will ensure the long-term affordability commitment to homeowners. These proposed changes maintain the commitment to affordability within the Immokalee community as stated in the PUD and allows Habitat for Humanity to expand homeownership opportunities to a broader range of income levels.

And with that, we appreciate staff's very thorough review of this application and their recommendation for approval, and we respectfully request this board's recommendation for approval.

CHAIRMAN FRYER: Thank you.

Vice Chairman.

COMMISSIONER SCHMITT: Thank you. Certainly totally support this proposal. I just have one question. If you could, for the public, how do you control the 30-year time frame to assure that for 30 years this is -- remained affordable? Say, for sales, future sales, or whatever, a homeowner sells to another homeowner. I want to make sure that there's mechanisms in place. I know there always has been, Lisa, but there are mechanisms in place to assure that there is oversight and control when property's transferred to a new homeowner.

MS. MARTIN: I'm going to let Lisa speak to that.

COMMISSIONER SCHMITT: Thank you. She was eager to tell us anyway.

MS. LEFKOW: Everybody should know the answer. So it's a great question. Lisa Lefkow.

So we have a couple of tools/instruments that we use. Again, we are the lender, so we

hold the mortgage. In the mortgage there are a couple of clauses that assist in maintaining the affordability period and making sure that we don't lose inventory, which is critical. I mean, part of the problem today is that we lose inventory in the affordable arena when commitments expire, primarily. You know, we're talking about rental communities.

For Habitat, we have the right of first refusal, so we're always going to work to make sure that we are able to purchase a home that is ready to be sold. But in addition to that, we also use -- we use some layered loans, a strategy of layered loans that allows lower income families to get into their homes with an affordable payment that may include a deferred or a balloon mortgage, so that would assist in ensuring that the property comes back to Habitat.

And then, thirdly, we do have a shared appreciation agreement. So any appreciated value is shared over the life of the loan between Habitat and the home buyer. So there's really no incentive to sell.

But let me also say that over our 45-year history, only a small handful of families have ever sold their homes. And, generally, we've been able to purchase those homes back. So we've had very little turnover into the open market. So we work very hard to maintain that long-term affordability and inventory. And, obviously, when we purchase a home back, we're going to renovate the home, bring it up to our like-new standard, sell it, and restart that affordability period.

Our mortgage term may run longer than the 30-year affordability period. So that, obviously, is maintained.

COMMISSIONER SCHMITT: I certainly don't want to deny the current homeowner an opportunity if the home appreciates.

MS. LEFKOW: Right.

COMMISSIONER SCHMITT: And they share in that appreciation, just like anybody selling a home today would certainly have an opportunity to at least get hopefully appreciation. But thank you. Thank you for that answer. And it's clear to me.

CHAIRMAN FRYER: Thank you. Commissioner Shea.

COMMISSIONER SHEA: I guess I don't see how this helps diversity. I get confused. You're going from 60 percent. Now everybody's going to be 120 percent. And you can say you're going to have diversity, but you have no requirement to have diversity. So we've just -- this is a massive change to me in terms of affordable housing where now you're saying everything had to be under 60. Now it's up to 120, and I think you're actually not really doing a great job at affordable housing.

Would you entertain an idea of putting in brackets, a certain percentage in certain ranges, so we still get some 60 percent, some 60 to 80, and not just automatically just be bumping up against the 120 all the time?

MS. LEFKOW: Certainly. What I can tell you is that, absolutely, that is our process. So today we actually don't have any homeowners that have purchased a Habitat home who earn more than 80 percent of the area median income. Our focus is 80 percent and below. It is that low-income wage earner, because there's -- there's very little option for them. So that -- that remains our primary focus.

The idea of allowing some flexibility really is forward thinking. What we know is that our entire community is challenged, and so we know that the missing middle, that 100 to 140 percent of area median income, is equally challenged in finding access to affordable homeownership.

So what I can tell you is that I -- you know, if I were to look in the crystal ball, my guess would be, my vision would be that there would be a small percentage of folks that would be making somewhere between 80 and 120 percent of area median income that would purchase their homes in Kaicasa, but that does create a bigger mix of income -- incomes earned in that neighborhood. So it gives a little wider spread. Certainly, we're going to continue to focus on families that are making lower incomes.

Most of our properties -- most of -- I should -- let me go back the other way. Most of our

home buyers at the very low side of the income spectrum need assistance from you. So they need down payment assistance through the SHIP program or through HOME. Sometimes we have a grant on the entire property which determines what the income levels will be of everybody in the neighborhood.

So we absolutely have that variety of income levels. This is the first time that we'll actually open up the possibility of working with families of a little higher income. But I certainly see the vast majority of buyers in Kaicasa being that primary focus for Habitat, which is making less than 80 percent of the area median income.

COMMISSIONER SHEA: So if a developer came back in here 15 years after making an agreement and decided they wanted to make, again, what I believe is a massive change in terms of what you're committing to, as a champion of affordable housing, would you recommend we accept that?

MS. LEFKOW: So given the economy today --

COMMISSIONER SHEA: But AMA [sic] accounts for --

MS. LEFKOW: -- and the economy of 2007 --

COMMISSIONER SHEA: But you have an adjustment with AMA for the economy.

MS. LEFKOW: Well, certainly --

COMMISSIONER SHEA: AMI, I mean.

MS. LEFKOW: -- each year the AMI is adjusted, absolutely. I can tell you right now at 60 percent of AMI, we would not be able to sell homes. And the math just simply doesn't work to build homes and be able to sell them to families making -- to all families making less than 60 percent of AMI. The economics of construction today are very different than the economics of construction in 2007. And what's happened is the delta between AMI and cost has grown significantly over time. You know this. I'm not telling you anything new. So this is what is really pushing for us to increase our focus in Kaicasa.

Today Habitat for Humanity, our mission internationally, so governed by our charter with Habitat for Humanity International, is to work with families making less than 80 percent of AMI. Back in 2007, it was 60 percent of AMI. But even the international parent has recognized that the economics of that just don't work any longer.

COMMISSIONER SHEA: What has taken it so long to get to this point? I mean, that's a long time from the time you had approval to the point you're building, and you're just finding this out. And I guess -- and the secondary question is, if it's 80 percent, why don't we just go to 80 percent as your mission?

MS. LEFKOW: Yeah. So it's a good question. Again, we're forward thinking. So we're looking into the future. And we're hearing the desire and the need in the community of serving a wider portion of our workforce. You're talking about teachers and first responders and folks that are young professionals in this community. They make more than 80 percent of AMI, but they still have no place to enter into the homeownership market in Collier County.

So we are simply responding to what we have been hearing for many years. I can't tell you how many conversations I had with Commissioner Fiala who said, why can't you build for higher income families? And our charter, again, with Habitat for Humanity International really governs that.

So this -- this is forward-looking. It is, again, making sure -- it's going to take some time to build 218 homes and to qualify families in Immokalee to purchase those homes. And we know that over the course of the future, it may be that there are families who make 100 percent of AMI who are the young teachers serving the school district in Immokalee or our fire fighters who are in the Immokalee community, our Sheriff's deputies who are in Immokalee who would be -- who would want to have a home in Kaicasa. We know that the desirability will be high. We know that as Oil Well is getting built out, that the service needs of Ave Maria and Sky Sail and other communities coming online are going to increase the need for housing out in the eastern section of the county. And we believe that this community will be very desirable for that reason.

So having a wider -- an opportunity to work with a wider variety of, again, service industry workforce members is simply a healthy -- and we believe creates a better, more desirable community. I can guarantee you, Commissioner, that there will not be 100 percent of families in Kaicasa who are earning 120 percent of the AMI.

MS. ASHTON-CICKO: Mr. Chairman.

COMMISSIONER KLUCIK: Mr. Chairman?

CHAIRMAN FRYER: First of all, I'm going to ask for Ms. Ashton and then Commissioner Sparrazza and then Commissioner Klucik.

COMMISSIONER SHEA: Can I finish?

CHAIRMAN FRYER: Yes, go ahead and -- finish, and then we'll go in that order after you finish.

COMMISSIONER SHEA: So what you're saying, basically, is there's not a big opportunity in the county for homeownership if you're less than 60 percent. They're kind of confined to a rental scenario, because that's where you see it going?

MS. LEFKOW: So we do certainly sell homes to families making less than 60 percent of AMI. About a third of our -- of our deliverables each year are sold to families making less than 60 percent, and the remainder that would be, you know, between 60 and 80 percent of AMI.

COMMISSIONER SHEA: So would you accept some kind of graduated scale? Rather than just 120 percent with no real enforcement capabilities for lower levels, would you accept a bracketed, like, certain amount 25 percent less than or equal to 60, another in the 60 to 80, and then kind of a bracketed?

MS. LEFKOW: Yeah, I certainly would consider the difference between 80 and 120 percent. This is often what you've asked for of for-profit developers. Remember, we are not a for-profit developer, and our mission is affordable housing. So when you talk about, you know, an uncertainty about how this impacts affordability, that, sir, is our sole mission. And we are at this moment, and for many years, have been your only provider of affordable homeownership.

You've got lots of folks building rental communities, and you've got some affordability agreements with them. Primarily, you know, they're providing a deliverable of something like 20 percent of their units at a maximum that are available to, often, folks making less than 120 percent of AMI with the rest being market rate.

So, yes, I certainly would consider saying, you know, we'll set aside something like 20 percent of the community that would be available to that higher income and the vast majority that would be -- I'm sorry. I actually want to flip that and say that we would have 20 percent that would be at that lower income so that we have the flexibility in the neighborhood. But, again, remember that our mission is to provide access to affordable homeownership for low wage earners.

So, you know, we're not a for-profit builder. I'm not here saying we've got to sell, we've got to increase our margins. That's not what we do. We lose money with every house that we sell.

So I appreciate your support in making sure that this can be a viable project so that we can continue to serve the community and we can continue to build healthier and more economically diverse communities. This will be the first time that we will have this level of diversity or the opportunity for this level of diversity in a community.

CHAIRMAN FRYER: County Attorney Ashton.

MS. ASHTON-CICKO: May I ask Ms. Lefkow a few questions?

CHAIRMAN FRYER: Of course.

MS. ASHTON-CICKO: To clarify --

CHAIRMAN FRYER: Certainly.

MS. ASHTON-CICKO: Good morning.

MS. LEFKOW: Hi.

MS. ASHTON-CICKO: Is the density of this project four units an acre?

COMMISSIONER KLUCIK: Mr. Chairman?

CHAIRMAN FRYER: Yes, Commissioner Klucik. I want to let -- I want to let Ms. Ashton finish.

COMMISSIONER KLUCIK: Yeah, I just think it's inappropriate for the attorney to be asking questions. This is our chance, and then we can ask for her opinion. But, you know, I don't understand why she would be asking questions. She's the -- you know, there to give us advice, not to -- you know, I don't understand why we would open this up for questions from --

MS. ASHTON-CICKO: Well, I was trying to get it from her, but it is on the record that this is a four-unit-an-acre project.

CHAIRMAN FRYER: Let me respond to his question.

By tradition, we have always been very liberal in hearing from the County Attorney. Now, whether we should continue that tradition is something that we can talk about. For the purposes of today and this morning, I'm -- it's going to be my ruling, if you will, that we allow the County Attorney to speak pretty much anytime the County Attorney wishes to do so. But then if -- when we get to new business, if we want to talk about changing that going forward, that would certainly be appropriate, because we do have the authority and control over our agenda.

Having said that, Ms. Ashton.

MS. ASHTON-CICKO: Thank you, Mr. Chairman.

I just wanted to make clear on the record that you-all understand that this is a four-unit-an-acre project which does not have an affordable housing agreement. If I say anything wrong, please let me know. This commitment must have been offered by Habitat at the hearing, and now they're seeking a modification of it.

Thank you for just letting me make that clarification so you all are clear on it. And if you'd prefer me not to assist, please let me know, and I'll refrain from requesting to speak.

CHAIRMAN FRYER: Well, if it be the wish of the Planning Commission to talk about that, we'll do so under new business. But for the purposes of leading up to that, it's going to be my decision that we're going to continue with the tradition that we've always had.

MS. ASHTON-CICKO: Thank you.

CHAIRMAN FRYER: All right. Commissioner Sparrazza and then Commissioner Klucik.

COMMISSIONER SPARRAZZA: Thank you, Mr. Chairman.

Good morning and welcome, Ms. Lefkow. I appreciate your telling us the wonderful story that Habitat is trying to deliver to this community.

I'd like to ask a technical question which I may need to also ask the county for some assistance in.

I apologize to my fellow commissioners if this is known 100 percent. But as I reviewed what I can regarding AMI, let me put together a proposal -- and please help educate me or correct me on this. For simple numbers, we'll state AMI is 100,000. You wish to bring your AMI commitment up to 120 percent, meaning 120,000. Is there any starting point? Well, as you said, it's tough for anybody under 60 percent. So we'll say it's the full change up to 120, correct?

MS. LEFKOW: Correct. To qualify to purchase a Habitat home, there is a minimum qualifying income, which is \$30,000. So based on family size that is, you know, approximately 30 percent of the AMI.

COMMISSIONER SPARRAZZA: Okay. Are there different percentages of a discount if a family has an AMI of, we'll keep it simple, 80 percent? They're able to purchase the home for X amount. If that family has an AMI of 100 percent, is that amount that they're purchasing that exact same home different?

MS. LEFKOW: So that's a great question. So, again, because we are the bank, we have a unique financing model. We sell our homes at 1 percent below the appraised value. So today appraised value of homes that we're currently building in Naples is between 305- and \$315,000. That is the sales price. But our commitment to our buyers, to our qualified buyers, is that their monthly payment will be no more than 30 percent of their income. So we work, then, the model

from income to payoff.

So the first mortgage, which is an interest-free mortgage, so this is important in the deliverable of affordability, right? No interest is computed. First mortgage, which includes the escrow payment for property taxes, homeowners insurance, flood insurance when required, and association dues, that monthly payment is no more than 30 percent of their income. So we take what remains after the escrow is removed from their affordability level, and that becomes their principal payment. No interest. We multiply that over however many months it's going to take to pay off the purchase price.

If that extends beyond 38 years, then we'll take a portion of what remains and put it into a balloon payment that is -- that is payable at sale or refinance of the home. If there still remains a delta that cannot be accomplished in affordability, then that becomes a forgivable loan. So we hold the -- we hold the equity. We lock the equity so that they can't flip the house and make money, but we'll lock that equity up in a forgivable loan that goes away at the satisfaction of the mortgage.

COMMISSIONER SPARRAZZA: Great. So in a simple statement, because that's how I try to look at things, somebody making 60 percent of the AMI and somebody making 80 percent of the AMI, the family household that's making 80 percent is actually going to be paying more per month for their home to help offset the true costs of the 105- [sic] to \$115,000 [sic] home that they're purchasing.

MS. LEFKOW: You got it.

COMMISSIONER SPARRAZZA: So there is a little bit of a sliding scale throughout the entire AMI range up to 120 percent, correct?

MS. LEFKOW: Absolutely. Nobody will pay more than 30 percent of their monthly gross income for their housing payment.

COMMISSIONER SPARRAZZA: Oh, 30 percent is the max that they pay?

MS. LEFKOW: Max.

COMMISSIONER SPARRAZZA: Very good. Thank you.

CHAIRMAN FRYER: Very good.

Commissioner Klucik.

COMMISSIONER KLUCIK: Thank you. And let me just start by saying, I'm certainly not opposed to hearing from counsel when they think, you know, there's something we need to know. But in this case we have, you know, Commissioners that are, you know, waiting to ask questions, and I think it would be more appropriate for -- you know, for -- to give deference to the commissioners and to -- you know, in this case, I think we already had the information. But, you know, I appreciate that the attorney was trying to be helpful, and I don't want, you know, any misunderstanding of that.

What I would say to begin with, ma'am, is that your organization is certainly lauded for all the great work they do. And as you can hear from our questions, one of our concerns is that, you know, you're kind of one of the hopes for the people at the lowest end for housing and, you know, affordability for homeownership, and we're nervous, I guess, concerned that by inching it up, you know, that sort of -- that's not a good thing, because we all know how hard it is for people to buy homes.

And so we'd like -- you know, you're one of the primary, you know, providers to help make that American dream possible for people at the lower end. So that's -- you know, obviously, I think you -- hope you understand that's the genesis of, I think, our questioning on these income limits.

I would say, though, that I really need to understand better -- and I think this is actually what the counsel was trying to help us with. So the history here -- and, you know, maybe -- anyone on staff can jump in on this to clarify so that I can ask a better question, you know, of our applicant.

Is the history here that right now there is a no income limit, or there is an income limit in

its present form? Before we, you know, act on this petition, is there an income limit right now?

MS. LEFKOW: Do you want to answer that, Amanda?

MS. MARTIN: I think Mike wanted to --

CHAIRMAN FRYER: Sixty percent.

MR. BOSI: Mike Bosi, Zoning director.

As required by the PUD -- and this was a requirement that was initiated by the applicant when they originally rezoned this petition, that the income level be restricted to those making 60 percent of AMI or less.

COMMISSIONER KLUCIK: Is there a right to use this property for something other than what it's currently shown in the PUD? Is there a right to change that and to abandon that plan or no?

MR. BOSI: You have a -- any property owner has the right to request alternative land uses. I'm not sure --

COMMISSIONER KLUCIK: But right now -- right now, though, it actually -- there is a restriction?

MR. BOSI: Yes.

CHAIRMAN FRYER: It's a PUD right now, and the PUD has a 60 percent limitation in it, and there was no density granted in exchange for that very low AMI.

COMMISSIONER KLUCIK: So what we have right now -- because what I'm trying to get at is I'm assuming, then, that we actually can impose -- or the County Commissioners can impose an income limit, and could -- we have every reason under, you know, the restrictions that we have at our level, as well as, you know, the County Commissioners, we could impose an income restriction, and that's what I'm getting at. I'm assuming that's true.

CHAIRMAN FRYER: Well, we can make whatever recommendations that we see fit to make by majority vote. So the answer, I think, to your question is yes.

COMMISSIONER KLUCIK: Right. And then the County Commissioners could actually say, no, you can't go higher than 80, or you can't go higher than 100 percent?

CHAIRMAN FRYER: They could.

COMMISSIONER KLUCIK: Right. Okay. So that's -- what I'm inclined to do is to -- you know, to suggest that -- you know, I'm just not convinced that going up to 120 is a good thing because we all know that there's just such a need below that.

I certainly understand going higher than 60 because I think there's a lot of people that are hurting between 60, you know, and 120 or -- you know, and 100 or 80, and that's kind of what I'm thinking is that maybe -- you know, maybe the 120 is just too high. But -- and I'd like to hear from the applicant, you know, about that.

I mean, I know you've already addressed it in some degree, but do you understand that concern that you're kind of the great white hope for the people at the lower end?

MS. MARTIN: So I'll just reiterate again that these were voluntary commitments. Typically, the petitions you see before you are just a portion of the project. It is given bonus density in exchange for affordability commitments.

The applicant has dedicated all units in this project to these affordability commitments. So it's not just 10 units coming before you for affordability. It's every home built on this site. So it's a really large inventory.

And I also wanted to reiterate, the Immokalee community has requested a broader range of pricing in housing availability. The Immokalee Area Master Plan, I attended those meetings in the community. It was very clear that they're not looking to just only serve those lower income, but a mix of income levels. And Lisa has stated several times that the lower income levels, the below 60 percent, below 80 percent are still being served by this project. It's just having the flexibility that you don't have to turn somebody away who is making the area median income. You know, they have the flexibility to just offer homeownership opportunities to a wider range of people.

And as Lisa had mentioned, that historically that they have served those at 60 percent or

lower. Recently it's changed to 80 percent or lower is the Habitat International standard. I think Habitat is a trustworthy applicant. They historically have done this in the past, and they will continue to do it in the future.

CHAIRMAN FRYER: Thank you.

County Attorney Ashton.

COMMISSIONER KLUCIK: I wasn't done.

CHAIRMAN FRYER: I'm sorry.

COMMISSIONER KLUCIK: If you want to wait.

CHAIRMAN FRYER: Please, go ahead.

COMMISSIONER KLUCIK: I mean, if the attorney wants to inform the discussion, I'm happy to hear from her.

CHAIRMAN FRYER: I'm sure she does.

MS. ASHTON-CICKO: I just want to clarify the standards of review here. Unless the applicant agrees to change their request, this is a quasi-judicial proceeding based on substantial competent evidence, and should you decide to deny, I'm going to need a basis for denial based on the findings -- on the PUD findings and rezone findings in your staff report, because this is a quasi-judicial proceeding as opposed to a legislative action like a Growth Management Plan amendment that has a lower standard of review.

CHAIRMAN FRYER: I understand. Certainly, we are a recommendatory advisory body only to the Board of County Commissioners. And staff makes its recommendation. We can make our recommendation. And if it varies from the application, we will, indeed, state reasons for why that is the case. I think reasons have already been spread on the record, but we can go even further if needs be.

Commissioner Shea.

COMMISSIONER SHEA: Commissioner Klucik was --

COMMISSIONER KLUCIK: Well, as I said, I wasn't done.

CHAIRMAN FRYER: Oh, I'm sorry. Sorry.

COMMISSIONER KLUCIK: Yes.

CHAIRMAN FRYER: Please continue, Commissioner Klucik.

COMMISSIONER KLUCIK: So, ma'am -- the lady who just answered my question, are you with Habitat?

MS. MARTIN: No. I'm Amanda Martin. I'm with Johnson Engineering.

COMMISSIONER KLUCIK: Right. Okay. But you're representing the applicant?

MS. MARTIN: Yes, sir.

COMMISSIONER KLUCIK: Okay. Right. You're on their team. Got it.

Okay. So I guess the concern is, obviously, that, you know, you don't have to make a profit and you can serve these other communities.

A specific question, then, from me is, so let's say you have somebody at 70 percent or 80 percent or 90 percent of the income, and they buy the house. What happens 10 years down the road when they want to sell it? What actually is the process by which, you know, and the restriction that they have, you know, 10 years later?

MS. LEFKOW: So thank you. Thank you for your question. Lisa Lefkow.

So as I mentioned before, we have a variety of tools that we employ to make sure that all inventory remain in the affordable arena, but there are times that a home goes outside of that when Habitat waives the right of first refusal, would allow a homeowner to sell their home on the open market. I can tell you that that happens very rarely.

In reality, it happens very rarely that a Habitat homeowner even has a desire to sell their home. Where are you going to replace an affordable payment, and where are you going to replace an interest-free loan or buy a beautiful home like Habitat builds?

So it doesn't happen very often but there are, as I mentioned before, a couple of other tools that we employ, including the right of first refusal and the shared appreciation agreement that

would provide additional incentive to sell that home back to Habitat so that we can renovate and sell it to another qualified buyer, maintaining it in our inventory.

COMMISSIONER KLUCIK: Okay. Thank you. That's a -- that answers my question.

I guess what I would say to my fellow commissioners -- and, Counselor, I might even be inviting your comment. I guess I would like to know exactly what we're going to hang -- you know, if we're going to disapprove this because we think -- or recommend disapproval because we think, you know, there should be a different income cap, I would like to know precisely what -- you know, what those are since it is quasi-judicial, and it seems as though we have to be very clear about that so then the County Commissioners, you know, can hang their decision, you know, on -- you know, on -- you know, they already know exactly, you know, what they can make their decision on if they choose to go that route.

CHAIRMAN FRYER: Ms. Ashton, do you want to reply?

COMMISSIONER KLUCIK: Thank you.

MS. ASHTON-CICKO: Would you repeat the question, please.

CHAIRMAN FRYER: Commissioner Klucik, could you repeat the question, please.

COMMISSIONER KLUCIK: Yes. I guess I would simply want us to be clear if we're going to say, well, we recommend disapproval because -- you know, because we think there should be this other income cap scheme, you know, percentages or whatever we want to say. If that's going to be our recommendation, which is essentially a denial because we think the applicant needs to change, you know, their position, then I think we would need to be clear about the legal basis for that. And sometimes we are clear. Sometimes it is implicit. In this case I'm having trouble seeing what we would hang our -- since it's quasi-judicial, I would have trouble understanding what the basis to say -- you know, I understand the policy basis, that we think it would be better policy to limit -- you know, to have 60 percent be -- you know, half of the properties need to be 80 percent and below.

CHAIRMAN FRYER: Just to clarify before I turn to Ms. Ashton, I don't think anyone is at least voicing an intention to vote to disapprove. I think there are some comments being made about approval with conditions which is something we do typically very often.

Ms. Ashton.

COMMISSIONER KLUCIK: Right. But if we put conditions on it, then we're essentially disapproving what the applicant wants to do, and then they would have the basis, you know, to say, well, you know, what was the reason for not -- you know, for the lack of approval. It was -- if it was because the conditions weren't going to be agreed to, then what we would have is, you know, we would be acting outside of our quasi-judicial authority. And I realize that's -- you know, I'm kind of all of a sudden deciding that's really important when we vote on these things all the time.

The reason I'm bringing it up is because I'm kind of scratching my head wondering what our basis would be to say, no, you need to change it, other than trying to prod the applicant into agreeing to the modification.

CHAIRMAN FRYER: Ms. Ashton, do you want to have a word?

MS. ASHTON-CICKO: Sure. We have had situations where the Planning Commission has recommended approval with conditions, and the applicant did not agree to those conditions on the record, and the applicant did not agree with those conditions when it went forward to the Board.

CHAIRMAN FRYER: One Naples.

MS. ASHTON-CICKO: So in that instance, the Board makes its decision based on the substantial competent evidence before it.

If your question is when we make a recommendation and our recommendation -- is our recommendation going to be legally defensible, that's a little bit more tricky because if the record doesn't support that they have not met the conditions and criteria in the petition/staff report/testimony at the hearing, then we have a more difficult basis. We don't really have a valid basis for denying the petition.

So it's kind of tricky.

COMMISSIONER KLUCIK: Yes. And that's what I'm -- that's what I'm concerned about is here I understood with One Naples what the valid bases to say no were, and so we put conditions on there that -- you know, that I think -- you know, the idea was we suggested conditions because we thought those would help meet the legal requirement and take away that -- you know, that basis to say no or mitigate the basis to say no.

Here I look at this and I don't see any reason -- at this point I don't see any reason we could justify imposing conditions, you know, as part of our recommendation. And so I guess I would say that I would like us, then, as commissioners, to have a very specific discussion if we are going to do that.

I realize no one has actually said we want to do that, but right now if it was up to me and this was legislative rather than quasi-judicial, I would say, no, I want you to cap it at 100 or 80. You know, that's just what I feel. I think 120's too high.

But I don't feel like I have a basis to try to impose that on the applicant. I think the applicant is within their right under the rules right now, and that's all. And if I'm missing something, hey, you know me, if you help me understand that I'm wrong, I want to know. I don't want to make my decision based on my false understanding. And so I would love to have that discussion. That's all.

CHAIRMAN FRYER: Thank you.

Commissioner Shea.

COMMISSIONER SHEA: Wow. I'm not sure where to go with that.

I mean, I think we have a basis. The basis is we have an agreement, and somebody wants to change it. We don't have to agree to it, and we'll come to the reasons why if we make that decision.

But going back to what Heidi was saying, I guess I don't fully understand, when we approve a development that has, say, 20 percent affordable housing, there's an affordable housing agreement that's signed between the developer and the county; is that what I'm hearing? And that agreement becomes --

MS. ASHTON-CICKO: Not necessarily. You've seen a lot of different options. You know, in our LDC, there's currently a procedure to have an affordable housing agreement and get bonus density, okay, for affordable housing. You've also seen Growth Management Plan amendments that bypass that process and approve affordable housing in exchange for --

COMMISSIONER SHEA: Something.

MS. ASHTON-CICKO: -- getting density. So you're bypassing it. I think the current affordable housing that we have in our Land Development Code is too -- is restrictive, and that's possibly why the developers are trying to go an alternate route and, essentially, they're saying this is what I'm going to offer, and staff, you know, tries to get them to give as much as they can during the Growth Management Plan amendment process.

COMMISSIONER SHEA: So the enforceability is in the amendment. There's no separate agreement. I'm trying to -- I'm confused. There's no agreement that they have, because they are --

MS. ASHTON-CICKO: Correct.

COMMISSIONER SHEA: -- actually in that business of affordable housing.

MS. ASHTON-CICKO: Correct.

COMMISSIONER SHEA: So where's our guarantee that if it's -- if it's 120 percent, that it will be 120 percent? What's the county's guarantee like you would have a developer?

MS. ASHTON-CICKO: There is none. At this point they could do all of them at 120 percent if that's what the maximum is.

COMMISSIONER SHEA: What keeps them from going over, the fact that that's in the amendment?

MS. ASHTON-CICKO: Well, if they go over the 120 percent, then it's a code

enforcement case if somebody were to complain.

COMMISSIONER SHEA: Okay.

MS. ASHTON-CICKO: So I -- you see a lot of affordable housing in different forms. I mean, you've seen it in the three forms: One, the affordable housing agreement; two, the Growth Management Plan amendment; and the third that you're seeing now is you're seeing applicants come forward to place a restriction on themselves voluntarily. You've seen that with a couple projects now that have recently gone through. And so that's what this applicant has done as well is created their own restriction, and now they're asking to change it.

CHAIRMAN FRYER: Thank you.

COMMISSIONER SHEA: Okay.

CHAIRMAN FRYER: Anything further, Commissioner?

COMMISSIONER SHEA: No.

CHAIRMAN FRYER: Vice Chairman.

COMMISSIONER SCHMITT: Yeah. Let me go back to -- I want to just highlight on what Paul said.

2004, of course, I was the administrator of Community Development/Environmental Services, whatever it's called today, Growth Management Division or Growth Management Department.

But at that time -- I probably should have made that a matter of record -- my position in the county, I was responsible for when this first came through the rezoning process. There is not -- there is no affordable housing density bonus agreement on this. That's clear. It was stated on the record affordable housing, but there was never any question about whether it would be complied with or not, because that's the business model of Habitat. The Habitat has a board. They answer to the board. If they exceed those limits, that's a -- that's an operational issue that you, Lisa, would have to answer to your board, and there are certainly measures in place to preclude exceeding any of the requirements, number one. So the business model is clear, and it's been successful for 40 --

MS. LEFKOW: Forty-five years.

COMMISSIONER SCHMITT: -- 45 years.

The second piece, and Amanda stated it very clear and succinctly, Immokalee is not to be the recipient of 80 percent and below housing. That was -- it's not the intent. I'm looking about environmental justice, if you want to go down that road, economic diversity.

The 120 percent, I am confident that you and your board or those who screen applicants will take into account to ensure that there is diversity across the board.

I'm concerned about the fact that -- Habitat did focus on 60 and below, 80 and below. Yeah, it becomes a concentration of low-income housing, and I don't think we want that. I'm also concerned, and I've always been concerned, let's see you have a teacher and firefighter, they're not going to make -- and they're both making the income, they're not going to meet the requirement. They're at -- they're probably at 70 or 80 or 90 percent of the AMI or the average median income. So I don't want to mark -- I don't want them to be priced out of this market. There's sweat equity that's involved in this. There's a very clear process of going through applications, the amount of hours, typically, what, 60, 90, I can't remember the hours.

MS. LEFKOW: Five hundred.

COMMISSIONER SCHMITT: Oh, 500. Okay. That's just a small amount.

So I totally disagree with any adjustment to this. I think that Habitat has the capability to manage this to ensure economic diversity, and if there's a proposal to change it, I will not support it.

CHAIRMAN FRYER: Thank you. At this point, no one else is signaling, so I'm going to take an opportunity to ask a question or two, if I may.

There have been repeated publications of news stories over the Christmas holidays and new year about how you've broken ground, and it was clarified for me in my meeting with staff that

this was by authority of the current laws, which I understand.

But as you continue to complete your construction, you're going to have to make decisions about square footage, number of bedrooms, et cetera. Are you -- what I want reassurance on is that you're not asking to construct exactly the same products for twice the income level, are you? Are you going to change the internal composition of these units?

MS. LEFKOW: The model of Habitat for Humanity --

CHAIRMAN FRYER: Yes.

MS. LEFKOW: -- is to provide access to housing affordability. We do that through our financing model, not by adjusting the product.

So, yes, all homes in Kaicasa are slated to be very similar, three-bedroom or four-bedroom. There are only two models either in a triplex or quadruplex design. But, yes, all homes are slated to be exactly the same. What allows affordability is, again, our financing model.

CHAIRMAN FRYER: Okay. I understand that. My question, though, is, if you were completing this project based upon the current zoning, would these be exactly the same kind of dwelling units with the same number of bedrooms just reserved for people who have much less income?

MS. LEFKOW: Quite frankly, if we decide to -- if you decide to leave the PUD restrictions as they are, we would stop building. We cannot economically build and provide a deliverable with such a vast delta between access to affordability at 60 percent of AMI and the cost of construction today.

CHAIRMAN FRYER: Okay. So it has a lot to do, then, probably with inflation and sources of supply?

MS. LEFKOW: It has everything to do with the economics of construction.

CHAIRMAN FRYER: Okay.

MS. LEFKOW: And so just a reminder that allowing us to build for a higher-income family makes the opportunity more available for families at the lowest end of the income spectrum. So the economics make a huge difference when we have some families that can afford a higher monthly payment than families who are making \$30,000 a year.

COMMISSIONER SCHMITT: Right.

CHAIRMAN FRYER: So -- and I'm trying to deal with Commissioner Shea's question and his concern, which I think needs to be addressed.

If -- well, if the Board of County Commissioners for some reason -- I don't expect this would happen, but if for some reason they denied your application for this PUD amendment and you were stuck with 60 percent, would there be a way to construct a different product that was, perhaps, more modest and get greater density, perhaps ask for greater density in exchange for the 60 percent, which you would have every right to do; in other words, just a different program?

Now, maybe you'd say that's not the business you want to be in, but that's possible for you or for another owner, would it not be? But probably not 60 percent with three- and four-bedroom units.

MS. LEFKOW: I can't imagine.

CHAIRMAN FRYER: Okay.

MS. LEFKOW: We work very hard to find an appropriate balance between community desirability. We want to build a product that is desirable that will increase pride of homeownership and long-term success of associations and neighborhoods. We want to build a product that the community embraces that is not looked at upon as affordable housing. We don't want to provide something that the community 10 years from now is going to say, oh, that's turned into a slum.

So that's critically important to provide something that is desirable, but we also work very hard to provide the economics of construction. So value engineering. And I can tell you, sir, that we have gone over construction plans again and again and again in this PUD. I believe there was a request -- Commissioner Schmitt, you may recall that there was a request to include garages --

COMMISSIONER SCHMITT: Yes.

MS. LEFKOW: -- which is not our model. And so we have had to add a garage to this product based on earlier review and request.

CHAIRMAN FRYER: I think everyone in this room lauds the work you do, and we're all very, very grateful that you're here doing it. I just -- I wanted to be sure -- well, let me say it a different way.

Ordinarily when these affordable housing projects come in, as you very properly mentioned, they're being sponsored by for-profit organizations, and when someone in the for-profit world says, this is 80 to 120, we know that that means this is 120 flat. There are not going to be any 80s.

So, you know, we come with a predilection of sorts that doesn't clearly apply to a 501(c)3 charity like Habitat for Humanity. So I think the question gets down to whether we as a Planning Commission are willing to rely upon you being faithful to your charitable mission and you not being of the character of a for-profit developer to the degree that we do not have to suggest further conditions such as bracketing.

And I'm going to want to hear a little more about that. And I think at some point there are going to be some motions, and there will be discussion upon them, and we can have that discussion, and we can also revert back to Commissioner Klucik's concern about what the scope of our authority is. I think that might have been a little premature, but if and when we get a motion that puts that directly in place, I think it will be very important for us to dig a little deeper into the extent of our role.

Anybody else want to be heard on this?

(No response.)

CHAIRMAN FRYER: All right. Thank you, Ms. Lefkow.

Anything else from the applicant?

MS. MARTIN: I think that's it.

CHAIRMAN FRYER: Okay. Thank you. Then we'll turn to and ask for staff's recommendation, please. Mr. Bosi. Oh. Or Ms. Gundlach, whoever.

MS. GUNDLACH: Good morning, Commissioners, and Happy New Year.

CHAIRMAN FRYER: Happy New Year to you.

MS. GUNDLACH: For the record, I'm Nancy Gundlach, prin -- ooh, Planner III with the Zoning Division. And, Commissioners, staff is recommending approval of the Kaicasa PUD amendment.

CHAIRMAN FRYER: Thank you.

MS. GUNDLACH: You're welcome.

CHAIRMAN FRYER: Before I call for questions, and I know you haven't had time to really think about this or develop an official policy, but you've heard some comments up here about having -- having levels or brackets of affordability. Does staff want to take a position on that and, if so, what would that position be?

MR. BOSI: Mike Bosi, Planning and Zoning director.

The basis of this request related to the increasing the AMI to be served is based upon flexibility. If this was a profit developer, there would be market rate and affordable units. It's not the case. This is Habitat for Humanity. Maybe staff is guilty of being too generous in understanding the mission of Habitat. We understand that they serve under 60. We understand that they serve under 80. They're looking to expand the pool just because of availability to be able to occupy the housings.

Staff is comfortable with the flexibility that the 120 is providing within this -- within the request, but staff does understand the Planning Commission's concern of requesting, say, a minimum of 60 percent be at under 60 or whatever the stratification would be. And if you were -- if you were to make that type of a recommendation, the way that you would defend that is you would -- you would say that the Housing Element of the Growth Management Plan provides

for a policy to promote the provision of affordable housing at the various levels.

The material you've been presented over the years from staff that is the greatest of need is the low and the very low, and based upon that, based upon the connection between the GMP, the rational nexus to provide for the various levels, the recognition of the material that says that it's the very low and the low that are the most underserved and the most in need, you could justify that type of a recommendation.

So you're covered by the protection of the Growth Management Plan, which is your highest regulatory document, and you could also, like, you know, address your concerns that there will be attention to that under 60 at a 20 percent if that's what you feel that's appropriate.

But I would say that the more regulatory flexibility that you give to Habitat, I think, is probably a better approach at the end of being -- making sure that each one of these units can be served and be occupied on a regular basis and serve the greatest number of people.

CHAIRMAN FRYER: I think that -- that's an exemplary answer, because it gives us exactly what we want -- what we need if we decide to go to recommending stair steps. I'm not there yet, but at least I think you've hit it squarely on the head. We have a legal justification, as you so articulately put forth, if we want. But I'll say it again, I'm not there yet.

Commissioner Schmitt. Vice Chair, sorry.

COMMISSIONER SCHMITT: Yeah, I'm trying to -- because we closed the public hearing, but I just have one other question, because Lisa just brought it up on the affordability, of the economic viability of the constructing this project. And so can I ask again -- ask her a question?

CHAIRMAN FRYER: Sure. We haven't closed public hearing yet.

COMMISSIONER SCHMITT: Oh, I'm sorry. Lisa, at a 60 percent level, factually, I guess I'm trying to understand, how many people can actually qualify to meet the mortgage requirements at a 60 percent level? I would have to assume at today's prices -- I'm not sure what these home sales are going for. And, yes, we did -- I can recall mandating the garage and other things that drove up your costs, and those were concerns raised by commissioners because of the, quote, perceived appearance of these communities. But at a 60 percent level, is it -- is it -- I would assume it's pretty much a struggle for someone to meet the payments to qualify.

MS. LEFKOW: So, again, at 60 percent of AMI --

COMMISSIONER SCHMITT: Yeah.

MS. LEFKOW: -- the only avenue for a buyer to get into affordability is for us to provide some sort of subsidy.

COMMISSIONER SCHMITT: That's correct. That's what I thought.

MS. LEFKOW: So sometimes it comes from you through county down payment assistance --

COMMISSIONER SCHMITT: Yes.

MS. LEFKOW: -- SHIP, HOME. Sometimes it's through the work that we do with a CDBG grant or other grant opportunities that assist in offsetting the cost. Sometimes it comes right out of the Habitat's pocket. In most cases that is true.

So for a family making 60 percent of AMI, they cannot afford a \$300,000 home purchase without subsidy.

COMMISSIONER SCHMITT: Yeah. Because I would say -- I mean, I'm thinking 20 years ago your average cost was about 125,000.

MS. LEFKOW: Oh, less than that. Twenty years ago we were at under 100,000.

COMMISSIONER SCHMITT: Yeah. So today you're at 300,000?

MS. LEFKOW: Today our cost of construction is between 235- and 250,000, but our model is to sell at the appraised value, but we use that forgivable loan to lock up the equity.

COMMISSIONER SCHMITT: Yeah, again --

MS. LEFKOW: The delta there.

COMMISSIONER SCHMITT: -- that just further enhances my -- or at least my argument

of broadening the scope so that you have diversity in the community. We've talked for years about inclusionary zoning, all the other types of things that we've talked about, and my good friend back there Cormac remembers those days. And I think just broadening the opportunity for people to qualify is better for the Immokalee area. I just don't want Immokalee to be entirely a 60-percent-and-below community. That's not what we want. And I would trust that Robb would agree, because it's right out his back door of Ave Maria. So, again, thanks.

CHAIRMAN FRYER: Thank you.

MS. LEFKOW: Yeah, so thank you, Commissioner. If I may --

CHAIRMAN FRYER: Go ahead.

MS. LEFKOW: -- just to reiterate, our mission is to provide access to affordable homeownership --

COMMISSIONER SCHMITT: Right.

MS. LEFKOW: -- to families making less than 80 percent of AMI. That has been our mission for 45 years and will remain our mission for the next 45 years.

COMMISSIONER SCHMITT: The door will not shut.

MS. LEFKOW: The door will not shut.

COMMISSIONER SCHMITT: They can still come in and ask.

MS. LEFKOW: We are simply forward thinking and responding to what we've been hearing from you and from the wider community that there is nobody providing access to homeownership to that missing middle income. And so we were saying, let's see if this is the moment when Habitat may be able to expand its ministry, may be able to offer greater economic diversity in a neighborhood bringing long-term success.

Our mission remains exactly the same. We've done this for 45 years. We are going to continue to focus on serving those with the greatest need. And the way we evaluate need is based on income, ability to repay the mortgage, willingness to partner, and determining where they are currently living and the quality of current housing, which I can tell you in Collier County today is heartbreaking.

COMMISSIONER SCHMITT: Yeah.

CHAIRMAN FRYER: Ms. Lefkow, I'm glad you used the word "ministry." It reminds me, of course, that you're an ordained clergy person --

MS. LEFKOW: Yes, sir.

CHAIRMAN FRYER: -- and that this is truly a ministry of yours, and we have the utmost respect for that.

In effort -- and I don't believe I'm interested in falling on my sword over this, but if there is an opportunity to bring everyone together on something that would be by consent of the applicant and would meet the approval of the applicant and also garner, perhaps, a unanimous vote up here, you've mentioned the 80 percent number. Would there be a percentage that Habitat would agree to offer to 80 percent and under?

MS. LEFKOW: So, respectfully, you would not be asking the same of a for-profit builder.

CHAIRMAN FRYER: We wouldn't even get to this point. A for-profit builder would have been thrown out of the door on this stuff, believe me. We are bending over backwards because of your charitable mission. But if you say no, you say no, and we'll just take a vote and see how it goes.

MS. LEFKOW: Once again, it is our mission. And I can tell you that my vision is that the vast majority of buyers in Kaicasa will be making less than 80 percent of the area median income. Respectfully, I would like to ask for the flexibility to allow some of those buyers to be of slightly higher income. I really don't want to put a cap or a percentage rate on that because I don't want to be tied to the fact that I'd have to deliver some number of homes to higher income families.

CHAIRMAN FRYER: Well, I'm not asking that, no.

MS. LEFKOW: So --

CHAIRMAN FRYER: What I'm asking --

MS. LEFKOW: So let's just move forward with the flexibility that we're asking for with the understanding that our mission is unchanged. Our mission remains to work with families making less than 80 percent of the area median income.

CHAIRMAN FRYER: Commissioner Shea.

COMMISSIONER KLUCIK: Mr. Chairman?

CHAIRMAN FRYER: Commissioner Klucik, then Commissioner Shea.

COMMISSIONER SHEA: The challenge is --

CHAIRMAN FRYER: Let Commissioner Klucik go first, because I can't tell -- I mean, I don't know when he's signaling.

Go ahead, Commissioner Klucik.

COMMISSIONER KLUCIK: Thank you. And on that point, what I would say -- I appreciate that last dialogue.

What I'm hearing -- and maybe -- you know, maybe you can, you know, confirm -- that what you're really asking for is while you're focusing on your 80 percent and below you also have the reality that sometimes it would be, you know, both for -- to make the project more viable as well as to serve, you know, another portion, another segment of the community that also has housing affordability needs, that you also want that flexibility, and you also don't want it to be cumbersome. You want it to be simple.

So if you just make it 120, then because you have a -- Habitat has a track record of serving, you know, the lower end of the bracket, that we would be trusting you with your track record to keep it focused on the lower end of that bracket, and I think that's what I'm hearing and, I guess, if you could speak to that.

MS. LEFKOW: Well stated.

CHAIRMAN FRYER: Yeah.

COMMISSIONER KLUCIK: Thank you.

CHAIRMAN FRYER: I agree. I think you accurately summarized what the witness said.

Commissioner Shea.

COMMISSIONER SHEA: I guess to me if you were a developer, we would be asking a lot more of you, in my mind.

CHAIRMAN FRYER: Mine, too.

COMMISSIONER SHEA: And, again, it has nothing to do with the organization. It's one of the best things that has happened to the county in terms of affordable housing.

But your mission is 80 percent. Your goal is 100 percent of the houses will be below 80 percent AMI. So what if we just said you agreed that at least 35 percent of them would be below 80 percent.

MS. LEFKOW: I would not be uncomfortable with that. But once again --

COMMISSIONER SHEA: It seemed like it would give you a lot of diversity.

MS. LEFKOW: -- you know, we're complicating a very simple request. I am asking for the trust of our 45-year track record and our work together in this community, reminding you that we are at this time the only provider of access to affordable homeownership for low- and very-low-income families.

And so I respectfully -- you know, we put a lot of time and effort into this request and into the determination of what the request would be. It may not be that the economics of Collier County will continue as they are where we have no inventory for that missing middle. If somebody else comes to town and starts building and targeting the 100 to 120 or 80 to 120, I'm out. I have much more important work to do. So, absolutely, you have my commitment that our focus -- and if you want to put a percentage cap on it, I'm resigned to that.

CHAIRMAN FRYER: Okay. Thank you.

Let's see. Anything further from the Planning Commission for staff, because that's where

we were?

(No response.)

CHAIRMAN FRYER: If not, Mr. Youngblood, anybody in the public wish to be heard?

MR. YOUNGBLOOD: Mr. Chairman, I don't have any registered speakers for this item.

CHAIRMAN FRYER: Thank you.

With that, we will close the public comment portion of the hearing, and now the matter falls into our hands for deliberation, discussion, and ultimately a vote. And --

COMMISSIONER KLUCIK: Mr. Chairman?

CHAIRMAN FRYER: Before we start that -- and I'll call you first, Mr. Klucik. It's 10:19, and whatever we do, I want us to have a break at 10:30. If we can get a vote by then, fine; if we can't, we need to come back.

Go ahead, Commissioner Klucik.

COMMISSIONER KLUCIK: So you already said that there was nobody in the room that wanted to speak?

CHAIRMAN FRYER: Correct.

COMMISSIONER KLUCIK: Okay, great, great.

Well, you know, at whatever point I'm happy to make a motion when -- but I don't want to do it prematurely.

CHAIRMAN FRYER: Okay. Well, let's open the door for discussion up here at the dais. Commissioner Shea and then Vice Chairman Schmitt and then Commissioner Sparrazza.

COMMISSIONER SHEA: Although I do have the total amount of confidence that they will follow their mission, I think if other people were dealing with them a little differently and relying on the trust of their track record, which is fine, I would propose we modify it to a maximum of 120 percent and a minimum of 35 percent below 80 percent, not 60 percent. Go to their mission of 80 percent. Their mission is 100 percent. All I'm saying is do 35 percent below their mission goal. I mean, 35 percent.

CHAIRMAN FRYER: Thirty-five percent below 80?

COMMISSIONER SHEA: Below 80, not 60; 80.

CHAIRMAN FRYER: Okay. Okay. Are you putting that in the form of a motion?

COMMISSIONER SHEA: Yes, sir.

CHAIRMAN FRYER: All right. Is there a second?

(No response.)

CHAIRMAN FRYER: All right. It's going to fail for a lack of second.

Anything further, Commissioner Shea?

COMMISSIONER SHEA: No.

CHAIRMAN FRYER: Vice Chairman.

COMMISSIONER SCHMITT: Yeah. Again, by putting the restrictions on, I just don't know how it will be enforced other than put the burden on the county to try and -- through PUD monitoring or any other type of entity, to assure some kind of compliance. I trust the mission of Habitat. I believe their board is going to make sure that it is diverse as far as applicants and those who qualify. I think, for some reason, if we try and put it -- impose some kind of restriction, again, it sounds great, but how will you enforce it?

CHAIRMAN FRYER: Mr. Bosi.

COMMISSIONER SCHMITT: Do you want the reports, yearly reports?

MR. BOSI: Housing and Human Services has a monitoring component within their staff, and each one of our PUDs -- it's not through our PUD monitoring of Growth Management. It's through our housing staff that regularly monitors the PUD commitments that we've seen in a number of our projects that have the 20 or 22 percent of affordable housing.

But, you're right, it does become a little bit more of a burden, and it becomes cumbersome. But we have staff that regularly maintains and calls to make sure that the percentage that is mandated within our individual PUDs are being maintained.

CHAIRMAN FRYER: Commissioner Sparrazza.

COMMISSIONER SPARRAZZA: Thank you.

I'd just like to make a simple statement that I'm not sure there's a better assembled set of folks, a body, than Habitat for Humanity to self-govern what their mission is. They have done an amazing job previously, just as fellow Commissioner Schmitt had said. There's probably not a better body of people assembled to continue on their path. I believe what they've put forward is what we should agree with.

Thank you.

CHAIRMAN FRYER: Thank you. No one else is signaling at this time. I'd entertain another motion if someone wishes to make one.

COMMISSIONER SCHMITT: I make a motion.

COMMISSIONER KLUCIK: Mr. Chairman?

CHAIRMAN FRYER: Go ahead, Commissioner Klucik. He had asked. Commissioner Klucik.

COMMISSIONER KLUCIK: Yes. I would move that we approve this as petitioner -- in its current form we recommend approval.

CHAIRMAN FRYER: Thank you.

COMMISSIONER SCHMITT: I second the motion.

CHAIRMAN FRYER: It's been moved and seconded that the petition be approved and recommended to the Board of County Commissioners in its current form without change.

Any further discussion?

(No response.)

CHAIRMAN FRYER: If not, all those in favor, please say aye.

COMMISSIONER SHEA: Aye.

CHAIRMAN FRYER: Aye.

COMMISSIONER SCHMITT: Aye.

COMMISSIONER KLUCIK: Aye.

COMMISSIONER SPARRAZZA: Aye.

CHAIRMAN FRYER: Opposed?

(No response.)

CHAIRMAN FRYER: It passes unanimously.

Thank you very much.

And congratulations. Thank you to Habitat. Thank you, staff. Thank you, Planning Commission.

It's 23 minutes after 10. Let's take a 10-minute break until 10:33, please. We're in recess.

COMMISSIONER SCHMITT: Lisa, put in double time for that. We were supposed to be done at 9:30.

(A brief recess was had from 10:23 a.m. to 10:33 a.m.)

CHAIRMAN FRYER: Ladies and gentlemen, let's reconvene, please.

We've moved our way through Section 9 of our agenda. That takes us all the way to old business, Section 10.

***We have a second draft of the 2022 Comprehensive Administrative Code amendments before us for another review on our part. You will recall, at least all of us except Commissioner Sparrazza will recall, that we reviewed and commented on the first draft back on December 17 of 2020, and at the conclusion of that review and comment, we unanimously passed a resolution giving staff some points of guidance and asked that the amendments be brought back for our further review and comment, which is where we are today.

I'm not sure whether my colleagues were able to review the minutes of our December 17, 2020, meeting, but I did so, and earlier on I'm going to offer some excerpts from those minutes to perhaps -- so we can remind one another of at least what our thinking was back over two years ago.

So after Mr. Henderlong provides a brief opening presentation and before we begin

discussion or ask questions on the second draft, I'm going to exercise the prerogative of the Chair and just read some brief excerpts of our previous meeting that I think will help refresh all of our recollections of what we said and what we did back then. And having said that, Mr. Henderlong, a brief opening introduction, please, sir.

MR. HENDERLONG: Good morning, Commissioners, and Happy New Year. My name's Richard Henderlong. I'm a Planner III with the Growth Management Department of the Planning and Zoning Division.

The comprehensive Administrative Code that is here before -- to be presented to you today, it was last reviewed, as the Chairman indicated, in May of 2020, and it represents the efforts of numerous divisional staff members ever since 2019. So we're moving rapidly into the fourth year.

Before we begin the review, we thought it would be -- a brief PowerPoint presentation would be given for the benefit of particularly new commissioners and on the comprehensive Administrative Code background. There's multiple slides on that, and that's how I'd like to begin the presentation.

CHAIRMAN FRYER: Okay. Please proceed.

MR. HENDERLONG: Okay. Whoop, whoop, whoop, I already messed up. Bear with me for a minute. I've got it right up here. I was trying to open it and make it enlarged. How do I enlarge that? Right up there. That's what I did. There we go.

Thank you, Andrew.

All right. As mentioned, this is the 2022 comprehensive Administrative Code update. Four years ago it was shown to you and represented as the 2019 comprehensive code update.

All right. The Board adopted Ordinance 2004-66 on October 12th -- I've got a typo there -- of 20 -- 2004, which created the Administrative Code pursuant to Section 125.74, Florida Statutes, 2004, that is maintained by the County Manager. It was subsequently amended by the ordinance through Ordinance 2013-57, which established the comprehensive Administrative Code for Land Development Code. It is comprised of 14 chapters. There have been 12 amendments since the Board adopted it in 2013, with the most recent change by Resolution 2022-06 -- 036 in order to establish a review process for the limited density bonus allocation.

These amendments occur as a result of -- which have been updated or modified by the LDC, and represent specific procedures for various land-use petitions.

The Administrative Code serves to consolidate and identify those procedures for the approval to develop under the Land Development Code. It further describes the application contents, the review process that is followed by county staff and the advisory boards and, if required, a public notice requirement and the associated approval process for it.

On April 28th, 2020, the Board directed staff to review the 2019 comprehensive Administrative Code update with the Planning Commission prior to the Board adoption.

So on September [sic] 17th, 2020, the Planning Commission reviewed the comprehensive update, offered several recommendations, and requested staff to bring it back and address points of discussion which are listed in our -- in your memorandum that we submitted as Attachment 1. After the CCP's [sic] review since 2020, the Board had initiated COVID-19 protocol, organizational changes, and then Hurricane Ian occurred in 2022 which contributed to the delay in bringing it back to the Planning Commission.

So the way the formatting is for all the chapters, you'll notice, of the 14 chapters, are primarily procedures. Overwhelmingly, they're all related to procedures, and I won't go into the detail, but this lists for you the headings for each of the sections of the -- or each of the chapters.

Next, we like to talk about amendments and conflicts, how they work. Pursuant to the ordinance, all amendments, additions, revisions, or modifications are made by resolution to the Board and adopted by majority vote of the Board at a regular or special meeting. Ever since 2004, this has been the same approval process followed by the County Manager for more than 18 years.

Next, changes to reviewing agencies and contact information and website are all allowed by the code administratively by the County Manager. Typographic errors, scrivener's error,

corrections which do not affect the intent of the code provision are authorized by the County Manager or the designee, being staff, without the need of further public hearing by filing a corrected copy of the same with the Clerk of the Court.

So you will see updates on the website periodically for -- that occurs, but the original -- there will always be an indication on the first page of that comprehensive Administrative Code to see that you've got the current update. We always file that with the Clerk of the Board.

When the Administrative Code conflicts with the LDC or GP -- Growth Management Plan, the LDC -- and as we all know, the GMP always shall and will prevail.

So what is new in our presentation today is that I've highlighted -- there are three chapters that are highlighted in bold. Those are the new ones that you have not seen before or reviewed before. So the first one back on Chapter 1 D.2, GMD public portal, that you saw and was reviewed in May of 2020. So I'm just -- rather than repeat them all here, all the others -- we did make a change under Chapter 4 P, landscape plans, on Page 158 from the rewrite, and now that's in your packet, is a process that deals with -- the landscaper plans are to utilize the county's native tree and plant list that was added since you had last seen it.

Going back above -- I jumped ahead of myself -- under Chapter 3 C.4, conditional-use/comparable-use determination, Page 46, you reviewed that on August 18th, 2022, and it is now scheduled for the Board on January 24th, later this month.

In particular, under subsection applicability, staff is now proposing adding the words "at a specific [sic] location" after these words, "a conditional-use/comparable-use determination shall be used to determine at a specific [sic] location," et cetera. Further in that subsection identified as application contents 11D on Page 47, we're adding the word "parcel" after the word "subdivision unit lot and block."

On Chapter -- I already talked about Chapter 4 P. Chapter 4 Q is a brand-new section. It's nonresidential boat-dock construction identified on Page 187. This is a new section that was relocated from Chapter 3 B, subsection under -- for initiation. It is intended to and does clarify, at the time of an SDP, its own separate application contents, the evaluation of criteria, and the procedural requirements pursuant to the Land Development Code 5.03.06 I.3.

Next, Chapter 5 D.2 is construction plans and final subdivision plat amendments. That was added in the rewrite and had been reviewed by the Planning Commission.

The next chapter is 5 I, easement-use agreement, identified on Page 233. That was added in a rewrite and reviewed by the Planning Commission. Its purpose is to provide for the application contents, the review process, and the recording of easement-use agreement.

Next, Chapter 8 G is the agent letter. You had seen that and reviewed it in May 20 -- yeah, May 20 -- got the dates wrong there.

Chapter 9, the Hearing Examiner has been modified. That is a new section, and we focused on that because we added textual changes to multiple sections based upon recommendations from the Hearing Examiner that need to be addressed today immediately and are approved by the County Attorney's Office.

The last chapter is Chapter 14, Appendix B. In there we have a new flowchart that at the last meeting the Planning Commission had asked that we add to provide guidance for how the process works for the Hearing Examiner's Office.

So since the review in 2020, a general description and the list of all the specific chapters and sectional editions, be they substantive or not substantive, are highlighted in yellow and included by attachment in the memorandum identified as Attachment 2. We also had identified since May of 2020 that staff -- there were certain inconsistencies between the LDC text and the Administrative Code text, and we determined to remove any of the ambiguity or the misinterpretations of it, that the Board has to resolve that in a future LDC amendment. They involve a -- usually -- typically a respective reviewing agency, a decision maker, and public notice and public hearing requirements. They are identified in your memorandum as Attachment 3.

So our recommendation is that staff would move forward with the support of the

comprehensive Administrative Code amendment and accept them as presented today. And I do have some tweaking language after our meeting with Chairman Fryer to carry forward these suggestions to the Board as depicted in the staff memorandum on Attachments 1 and 3, meaning that 3 is primarily the document that we will use for making LDC changes in the future, and that will be brought back before the members of the Planning Commission at a later date. And then in Attachment 1 I'll go over a couple of comments there, or however you'd like to proceed, Chairman Fryer.

CHAIRMAN FRYER: Well, let's -- before we get into greater detail -- and I appreciate the way you've laid out the predicate for us -- I would like to, again, exercise the prerogative of the Chair to quote briefly some of the comments that we up here made indicating what our feelings were about this at the time. And, even more importantly, County Attorney Jeff Klatzkow made some very significant guiding comments in those -- that meeting, and it appears in that transcript that I want to have particular emphasis on when I read these to you. So I'll be brief, but I'd like to proceed at that time. And then we can get into the details of the proposed changes. And I must say I have a number of concerns about those, but I'm not going to get into them until I open it up for all planning commissioners to comment on.

So this goes back to the December 17, 2020, Planning Commission meeting and that -- this presentation was led by Jeremy Frantz who, of course, is no longer with us, but that's for the benefit of those who are new, that's who Mr. Frantz is.

So quoting Mr. Frantz: Good morning. Jeremy Frantz, for the record. What we're doing with this update is really just trying to bring the 2013 version of the admin code up to date. We're updating a lot of references, titles, citations. We're correcting processes that have changed over time, end quote.

So that was why that came before us. And I'll just say parenthetically now, I have no problem with any of the changes that have been made at that level. The problem I have is when they get into substantive changes.

Back to the minutes. Commissioner Vernon: So why did the Board of County Commissioners delegate it to us to sort of analyze this?

Commissioner Klucik: The Board was just being prudent. They prefer when staff brings things through the Planning Commission to get filtered here and then go to them rather than the staff going directly to the Board of County Commissioners. It's not just this item. It's everything.

Commissioner Vernon: Perfect. Thank you.

Commissioner Fry: I think because it was remanded to us by the BCC, that implies they would like us to look at it at some level of detail.

Commissioner Schmitt: I, again, commend the Board. Every one of these procedures are the underpinnings of what we do in our review process. And I think -- I think for that reason, probably, is why the Board said, let's have the Planning Commission look at it, because every one of these are elements that we deal with.

Then Commissioner Fryer, Chairman Fryer: My question has to do with the relationship or the scope of jurisdiction of the Planning Commission versus the Hearing Examiner, and that is my main concern today.

I go on: First of all, the conflict that exists with 10.02.13.E of the Land Development Code, this will create a conflict between an existing Land Development Code provision and a brand-new junior document if we approve this and the Board of County Commissioners does. Going back to the way Mark Strain handled this, as I recall, he was conservative and would err on the side of sending something to the Planning Commission if it seemed to him to be controversial or something where a more full and formal hearing should be held by a greater number of recommenders or decision makers, and that seemed to work pretty well.

Mr. Frantz: 10.02.13, as you mentioned, doesn't identify the Hearing Examiner there for the PUD insubstantial changes.

And I will say parenthetically that that section right now of the LDC gives that authority

exclusively to the Planning Commission.

Going back to the transcript. Mr. Frantz: I don't want to speak for the current Hearing Examiner, but my understanding is that unless he -- something is abundantly clear that it shouldn't be heard by him or that he hears something from a particular commissioner, the commissioner of that district says, then he's inclined to hear all items -- all items that come before him.

Commissioner Vernon: The Planning Commission doesn't seem to have any influence on him.

Chairman Fryer: But based upon Mr. Frantz's reporting, it sounds like a new hearing examiner is looking for a conflict of interest and that that may be the right standard. But what I want to point out is that that's not the standard that Mark Strain used. Mark erred on the side of caution. If Mark felt that a matter was controversial, he would -- he would send it over to the Planning Commission, and I think that worked pretty well.

Now, here's the most important stuff coming from County Attorney. Mr. Klatzkow: The issue does fall under your powers -- and he was talking to the Planning Commission -- because at the end of the day it derives from the LDC, all right. If you want to relook at the issue as to what a hearing examiner does and what you do, that's your prerogative. That's part of the LDC. That's what you do. And you can direct staff on this issue to come back, and then you can have a full discussion of it -- what you guys want to look at. What do you think the Hearing Examiner should be doing?

Then Commissioner Shea said: How would we ever know whether we think we should be looking at it is part of my point. It seems like an awful lot of power to put in the hands of one individual.

Commissioner Vernon: Yeah.

Commissioner Vernon continuing: If it's a discretionary issue it almost, in my mind, should be staff with the power of Planning Commission to override the decision.

The staff's probably going to have a better sense than anybody of whether it's going to be controversial. They should probably make that first call, and there should be a baseline. Like, hearing officer hears these, and we hear these. That should exist. But in the middle ground -- in the middle ground, it seems like the staff should give it its thought if maybe we should be hearing it or not, but we have the final decision.

Mr. Klatzkow, the County Attorney: If you want, staff can simply, before bringing a matter to the Hearing Examiner, just say, okay, these are the matters that we tend to bring to the Hearing Examiner. You could review them. If you want to hear any of them, you can pull it from a hearing examiner and hear it yourself. And those -- stuff that you don't want to hear, because they're minor, would just move on to the Hearing Examiner. I mean, I can give you a history of the Hearing Examiner if you want, but, you know, it was never meant to supplant the Planning Commission.

Commissioner Vernon, he expressed: A little bit of concern, all that decision making is in one hearing examiner.

Commissioner Schmitt: The Hearing Examiner was really created for items that were pretty much noncontroversial, you know, kind of binary. It's yes or no.

Chairman Fryer: I think we would like staff to come back with a recommendation perhaps with more specific criteria when something goes to the Hearing Examiner and when something comes to the Planning Commission.

Mr. Klatzkow: And keep in mind, I would want a fail-safe built into the LDC because there may come a point in time when the Board of County Commissioners decides it no longer wants a hearing examiner, and so a lot of this stuff you'll see is either you or the Hearing Examiner.

Commissioner Shea: I don't see why we can't approve the agenda. In other words, if there's an agenda going to the Hearing Examiner of items, why can't we see it and say we agree or don't agree so at least we have notice and we can look? Because we're -- right now we're operating in the dark. We don't know what the Hearing Examiner's doing, and that scares me.

Mr. Frantz: Well, I think that when we come back, we could show you all the items that the Hearing Examiner currently hears.

Then Commissioner Homiak: I sometimes look at what goes to the Hearing Examiner, and I have seen a few times when there's things that we have heard not that long ago in a PUD, and they're going there for a change, and sometimes it's something that we specifically put in that PUD as a stipulation.

And Mr. Eastman: And my sense was that Mr. Strain was trying to reduce the amount of work that this body had to do and that some of these things that the Hearing Examiner would hear were ministerial, binary, noncontroversial, and that when Mr. Strain found something where even one member of the public raised an objection, he knew that there was some type of controversy, he would bring it to the Planning Commission.

Chairman Fryer: I think he had a very good intuition about that and was able to flag things that should be heard by us. The vast majority of things that the Hearing Examiner hears really are noncontroversial and don't need our attention, but I think -- it sounds to me like the Hearing Examiner, perhaps, has a different view of his role that may not be 100 percent in sync with how we see our responsibilities.

And I'm coming to the end here.

Commissioner Schmitt: I'll go back to the origin of the NIM. The perception that the developers were getting away with everything, and the public wasn't informed, but understand that the NIM is the applicant's responsibility. It is the applicant's meeting. Staff is in no way, shape, or form supposed to carry the water for the applicant. It's not a staff-run operation. It's the applicant, and the applicant's responsibility alone, because they are informing the public, and it's to prevent any perception by the public that the staff is a proponent of the proposal.

They were not meant to be the moderator. They were only meant to -- well, I guess what is the word you could use? But just to make sure that it was conducted in accordance with the procedures as outlined in either the LDC, the Land Development Code, or the administrative procedures.

Commissioner Vernon: My point is the written transcript. As long as the applicant and not the government or the staff is paying for it, the written transcript, I completely agree with Commissioner Fry, is the best. A video is a nice supplement because sometimes things do not appear in the transcript.

Chairman Fryer: I'm going to try to tick those off and be sure that we're all on the same page.

With respect to future amendments to the administrative procedures, that the CCPC be built in as a layer of review before it goes to the BCC. Number 2, two points with the HEX. Somehow correct the inconsistency or ambiguity between the LDC and the administrative procedures as to who has what role. And the third point, also having to do with the HEX, is how do we decide which matters would come to us and which to the HEX?

Now, of course, the Hearing Examiner is not allowed to sit on the Planning Commission anymore, so there's more distance between us and him. So those first three points, the third point dealing with speaker identification -- the fourth point rather.

We call the staff person -- we call the staff person the facilitator, but the emphasis is on neutrality and to enforce the Land Development Code or to see to it that the administrative procedures in the LDC are being followed by the applicant. Finally, there's a strong preference for a written concept -- transcript, rather, as between an audio and a video. A preference for video. Did I cover anything lost?

Then I'd entertain a motion that we ask staff to address those points with a revised proposal. All those in favor, please say aye. It was unanimous. And that's what I wanted to bring to everyone's attention to perhaps refresh recollection.

And at this point, I'd ask the Planning Commission if they want to in any way address or correct the history of this before we move forward and deal with where we are today, now would

be a good time to do that. Planning Commission?

COMMISSIONER SCHMITT: Nope.

CHAIRMAN FRYER: Mr. Henderlong, back to you, sir.

MR. HENDERLONG: Thank you, Chairman.

I'd like to put up on the screen the Attachment 1 which talks about staff response to Planning Commission recommendations. Give me a minute.

I'm not that technologically smart. Okay.

I think Attachment 1, yep, here we are. It's coming up. Let me enlarge that a little bit. Okay. Thank you.

On the first question that we had, build in a layer of review with the Planning Commission before it goes to the Board/BCC. We agree on that. We would carry that request to the Board for their direction.

CHAIRMAN FRYER: Would that, then, be staff recommendation as well?

MR. HENDERLONG: Yes.

CHAIRMAN FRYER: Okay. Thank you.

MR. HENDERLONG: Two, on the correct -- correct the inconsistency and ambiguity between the two codes. That was the purpose and the intent of the Attachment 3 that identifies where we are inconsistent. We went through an exhaustive analysis of looking at the LDC code and seeing where those inconsistencies were, and we have identified that for you in Attachment 3. So we will bring that to the Board and tell them we need to move forward with a future LDC amendment to correct that. And that will be brought back to the Planning Commission --

CHAIRMAN FRYER: Here's my issue --

MR. HENDERLONG: -- after it's heard by DSAC and the other entities that are required.

CHAIRMAN FRYER: Thank you. Here's my issue with that. We're being asked to approve a junior document now that conflicts with the senior document, and it's going to continue to conflict with the senior document. And I -- I am uncomfortable with that approach. I think that we should be seeing both the LDC amendments and the Administrative Code at the same time with a final reading to come back when you have the language. And, obviously, you're very close to the LDC language. I understand you've got to go through DSAC and its subcommittee, and there need to be publications. I get all that. But I just feel very uncomfortable about approving a junior document that is facially inconsistent with a senior document and leaving the senior document in place. We should do all these at the same time. It's been two years; another few months isn't going to hurt. Anybody else want to be heard on that?

COMMISSIONER SCHMITT: I would agree.

COMMISSIONER SHEA: Me, too.

COMMISSIONER SCHMITT: I would agree. I mean, this is an administrative document. That's all it is. It's the Administrative Code. The LDC still carries legally; is that correct? I mean, this is nothing more than administrative. They would have to follow the LDC.

MS. ASHTON-CICKO: Correct. And there is something that says if there's a conflict, the LDC prevails.

COMMISSIONER SCHMITT: Right.

MS. ASHTON-CICKO: But I think the issue of what Mr. -- Chairman Fryer's objecting to is the role between the HEX and the CCPC which is just simply not addressed, which it goes to, in the LDC.

CHAIRMAN FRYER: That's certainly my main issue, but --

COMMISSIONER SCHMITT: That needs to be cleared up, and that needs to be succinctly defined in the LDC because, again, to use the words that you used -- I mean, the HEX was to be nothing more than to do minor --

MR. HENDERLONG: Commissioner Schmitt, we're on the same page with that.

COMMISSIONER SCHMITT: Yeah.

MR. HENDERLONG: I think the fundamental concern is that, being at four years on this,

that that is such a substantive discussion. It's going to take quite a bit of time to work out the relations between how the HEX and the Planning Commission look and decide what elements of each land-use petition that you want to see as opposed to what he has been in the past looking at, and we believe that's a big --

MS. ASHTON-CICKO: See, I think there's some confusion on the procedural history of this comprehensive Administrative Code that staff did in 2019 that went to the Board in 2020, was continued several times, and, ultimately, it resurfaced during COVID. You actually voted on it and wanted staff to come back and address all the issues that you've raised.

So I think there's a mixing of expectations because Commissioner Taylor remanded it back and didn't want to proceed. I don't know what the outstanding issue was, because it was during COVID, and the people that the conversation was among are not here.

So this was voted on, and -- but then it never went through approval for the Board. So your expectation is they addressed all those issues, and they're still trying to just get that original amendment through.

CHAIRMAN FRYER: Yeah. And I think -- the reason that I made the effort of reading excerpts from the transcript is to try to clarify what our expectations were and, as the County Attorney points out, my main concern is over allocation of responsibility between the HEX and the Planning Commission.

And just to cut to the chase, my recommendation is going to be that it lie with the staff, not the Hearing Examiner. The current language has the Hearing Examiner, in his discretion, deciding, which I think is not a good idea at all. And if I were the Hearing Examiner, I would not want that responsibility, because the Hearing Examiner's paid by the hour, the number of hours he works on a job, and if he's creating work for himself, if that's not the appearance of a conflict, I don't know what is. So, I mean, that's the bottom line on where I am.

But getting back to process, what I want to see -- it's been two years. It can be a few more months. And it can be -- I realize it can be delayed or it can be hastened, and that's in the hands of staff. And I think what I'm hearing, at least, is the Planning Commission wants you to move as hastily as you can with all deliberate speed, as the expression goes, take it through DSAC, do what you have to do, bring back LDC amendments and a third draft so that we can see how these things interplay rather than having to approve this junior document that's less significant and just hope for the best on the senior document when it comes rolling down the pike.

MR. JOHNSON: Mr. Chairman?

CHAIRMAN FRYER: Yes, sir, go ahead.

MR. JOHNSON: May I just offer you a few thoughts?

CHAIRMAN FRYER: Go ahead.

MR. JOHNSON: Oh, for the record, Eric Johnson, planning manager.

So we have a document before you that's over 300 pages. I think if I -- if I could interpret everything correctly, you have an issue with a minority number of the pages. And with -- we will want -- we want to address everything that the Planning Commission has an issue with.

CHAIRMAN FRYER: I'm going to interrupt you to cut to the chase.

MR. JOHNSON: Sure.

CHAIRMAN FRYER: If you want us to approve changing department, division, typos, things that are strictly procedural, I'm all about doing that today, but a lot of stuff in here is not at that level. It's higher than that level.

MR. JOHNSON: Understood. That's what I was suggesting is that --

CHAIRMAN FRYER: Okay. I can live with that.

MR. JOHNSON: Okay.

CHAIRMAN FRYER: I don't know about the planning commissioners.

MR. JOHNSON: And also -- also -- again, sorry to interrupt.

With respect to our conversation the other day about the NIM and the audio and the visual and the video transcript, we're going to have a future LDC amendment coming through the system

pretty soon. So a lot of that discussion will be addressed in the very near future. I just wanted to kind of just suggest, you know, we have a lot of pages here that could go forward in a draft resolution to the Board of County Commissioners. So I just wanted to offer that suggestion. That's all.

CHAIRMAN FRYER: I am fine with that conceptually. The problem is, I want to be sure that we are in agreement as to what is absolutely uncontroversial like changing "department" to "division," and vice versa, and changing nomenclature like that versus things which in any sense someone could reasonably argue is significant.

And I have a suggestion. If it -- if the Planning Commission would give me leave to take a look at what you're going to submit to the Board of County Commissioners, and if I agree with you that it's all stuff that is noncontroversial, if the Planning Commission would allow me to have that authority, I think we could take something to the Board of County Commissioners in January. And I ask the planning commissioners to weigh in. It's kind of unusual, so I'd like to hear from you.

COMMISSIONER SCHMITT: I would agree with that, because those are just administrative changes. The other -- some of the ones I think we need to make sure that the LDC matches was the compatible-use issue. You do have an LDC amendment coming back for that, as I understand?

MR. JOHNSON: The comparable-use determination, that actually was reviewed by this commission back in August, and we're bringing that LDC amendment forward to the Board of County Commissioners on January --

COMMISSIONER SCHMITT: But we have a significant change -- those are the significant changes I think we've got to hold until we have the LDC amendment codified.

CHAIRMAN FRYER: And I'm of one mind with you, Vice Chair.

COMMISSIONER SCHMITT: I agree, so -- but these other --

COMMISSIONER SHEA: But he's saying we already saw those, though.

MR. JOHNSON: Yes, you have.

MR. HENDERLONG: You already passed on it.

CHAIRMAN FRYER: I know, but they belong in the LDC, not in the administrative procedures.

MR. HENDERLONG: In terms of timing, with all due respect -- okay. Wait a minute.

MR. JOHNSON: Yeah. Let me just clarify. Eric Johnson, for the record.

The LDC amendment related to the comparable-use determination, that was brought forward at a nighttime hearing in August. It included a Land Development Code amendment as well as the Administrative Code amendment that was kind of a companion item. You voted on it, recommended approval. It's going to the Board of County Commissioners January 10th for first reading. The second reading is January 24th, which will include a resolution for the Administrative Code amendment that you already reviewed on August 18th.

CHAIRMAN FRYER: All right. Let me hear from you, then, the definition of comparable use.

MR. JOHNSON: Well, that --

CHAIRMAN FRYER: Three parts to it.

MR. JOHNSON: I understand where you're going.

CHAIRMAN FRYER: So, please, I want to hear it from you. So if we -- if we're in agreement, then I'll concede the point.

MR. BOSI: The question that I have for the Planning Commission is there was LDC amendments and associated land -- and Administrative Code changes that were unanimously approved by the Planning Commission in August. Do you feel that those somehow are no longer supportable?

CHAIRMAN FRYER: I want to be sure that we're talking apples and apples. And I have asked staff to tell me the three points of this document that you believe we agreed. And if I agree,

then I'll concede the point.

MR. BOSI: We can pull --

CHAIRMAN FRYER: But the language in this material is vague. It's -- in some places you only use two points.

MR. BOSI: The language in this -- the language in this material doesn't reflect the changes being proposed within the proposed LDC amendments and Administrative Code amendments that were already approved by the Planning Commission going to the Board of County Commissioners on the 24th.

Pulling this back, I think what we can most certainly recognize, anything that requires an LDC amendment, we can't move forward and propose the modifications to the Administrative Code. That's Attachment 3. Attachment 3 in your materials correlates the Administrative Code changes that will require LDC amendments. Those are the ones that we could hold in abeyance, work the issue between the HEX and the CCPC that you have your concerns with, and move these other clerical, procedural, straightforward changes to the Board of County Commissioners while we work those other issues if that's where the Planning Commission's real concerns are.

CHAIRMAN FRYER: I will -- I will read the definition, and then you can tell me if you agree with it, all right.

When one says something is comparable, they really mean it has to do with similarity, compatibility, and consistency. And as I said in the transcript, that definition hits it on the head. Now, does staff agree? Is that the definition of comparable use: Similarity, compatibility, and consistency? Because if you're going with that, you got my vote.

MR. BOSI: If you focus in on Point No. 6, the recommendation would be -- and staff is agreeing to the change -- recommend to state that the use has to be similar, compatible, and consistent with the listed permitted issues?

CHAIRMAN FRYER: Yes.

MR. BOSI: That's the issue?

CHAIRMAN FRYER: Yeah. Do you agree? Is that definition agreeable to staff?

MR. BOSI: Staff has no objection.

CHAIRMAN FRYER: Okay. Now I'll ask other members of the Planning Commission.

COMMISSIONER SCHMITT: I have no objection. I was just concerned about the most recent case. I'm not -- I didn't really read into it all, but I understand there was some issue with compatible use here recently.

COMMISSIONER SPARRAZZA: Is that the medical building?

COMMISSIONER SCHMITT: No, no. There was a petition -- I'm trying to think. It was -- Attorney Tony Pires had an issue that was something with compatible use and a disagreement between staff that had to do with a recent petition. I don't even think it came to us. I just heard about it. I just want to make sure that those differences have been ironed out. I agree with the language as proposed.

CHAIRMAN FRYER: And if this is all -- if this language, three points have already been approved by the Planning Commission, I'm not asking to revisit. So that can be in the document that would go to the Board of County Commissioners, as far as I'm concerned, in January. I just want to be sure that we were -- the apples you were talking about were the same apples I was talking about.

MR. BOSI: I believe they're the same apples.

CHAIRMAN FRYER: Okay. Thank you very much.

Okay. No one's signaling at this time, so back to you, Mr. Henderlong.

MR. HENDERLONG: Okay. We have two documents to work off of, and that I'll get back to a little bit later. Let me get back to this screen here. Let me scroll up, back to there.

So, No. 3, how does the CCPC -- how does the Planning Commission decide what matters come to it versus the HEX? In staff's judgment, what the CCP [sic] -- and also you had stated what should the CCPC focus on, pay careful attention to, and what is the great concern or public

(unintelligible).

For each of the land-use petitions, the focus is on the standards and criteria set forth in the GMP and LDC. Both the HEX and the CPC [sic] have to retain authority to decide the nature and the circumstance of a specific land-use petition that warrants a greater public concern for a legitimate public purpose.

You'll find that we modified that a little bit in Chapter 9 under the Hearing -- HEX to talk a little bit more, and I'll get to that later, and we can revisit that.

On No. 4, we're in agreement with the --

CHAIRMAN FRYER: Well, I'm not ready to leave No. 3.

MR. HENDERLONG: Okay. All right. Do you want to go to it right now?

CHAIRMAN FRYER: Yeah, I do. I don't see how possibly the CCPC and HEX should both retain the authority to decide who gets what. I'll go back to my original proposition, and that is that we and, ultimately, the BCC should announce clear, objective criteria such as number of acres, number of dollars, number of opposing members of the public, whatever they may be, I don't know. But there need to be objective criteria. But in the first instance, they need -- the decision needs to be staff's, not the CCPC or the HEX.

Now, in language that I'm going to quote in a moment from the Florida Statutes, I think that CCPC has the plenary authority, but whether it wants to exercise it or not, my view is that we, in the first instance, should vest in staff the authority to allocate matters based upon objective criteria.

COMMISSIONER SCHMITT: Can I add something because --

CHAIRMAN FRYER: Please.

COMMISSIONER SCHMITT: -- I think one of the things that need to be clear with the HEX are the insubstantial changes. They tend to go to the HEX, and sometimes they do conflict. I know I look at them. But I think the decision has to be with staff and not at the HEX. And if there's an insubstantial change that overrides or negates or does something that was originally approved by the Planning Commission, it needs to come back to the Planning Commission, and the staff needs to make that decision.

MR. BOSI: Mike Bosi, Zoning director.

There's clear criteria for an insubstantial change that satisfies. And in our staff report and in our evaluation, we evaluate those criteria, and if it meets the criteria for an insubstantial change, then the item would go to the HEX. What you're asking for is a subjective determination from staff beyond the written criteria that if there is heightened public concern, which is a nebulous term, that staff would make a determination to send an item from the HEX to the Planning Commission? Staff --

CHAIRMAN FRYER: May I?

COMMISSIONER SCHMITT: Essentially. Yes, go ahead.

CHAIRMAN FRYER: The definition of insubstantial change -- and you know this as well as I do, Mike. It's anything that's neither a minor change nor a substantial change. So if you have -- if you have criteria, great public importance or whatever, I think you probably ought to publish those in the procedures, in the Administrative Code. But the exercise of discretion in applying those criteria should reside with staff, certainly not the HEX, because I think he's got the appearance of a conflict of interest, and probably not the Planning Commission, because we're trying to focus on the bigger things.

MR. JOHNSON: This is Eric Johnson, planning manager.

So you're correct, the insubstantial change is anything that isn't a substantial or a minor change. Staff routinely reviews and makes an evaluation of the 11 criteria that are involved with the PUDA -- or a substantial change.

CHAIRMAN FRYER: Eleven criteria?

MR. JOHNSON: There's 11 of them, yeah, A through K, if my memory is correct, and then also with a PDI, staff has to make sure that it meets -- or there's no issue with the original

evaluation of the PUD.

CHAIRMAN FRYER: Well, I think since you've got those points in the definition of "substantial change," and I guess there's a definition of minor change that doesn't link back to the other two the way the insubstantial definition does, that by the process of elimination, staff can exercise its discretion and properly categorize things into insubstantial for HEX or insubstantial for Planning Commission.

MR. BOSI: And that's the current process that staff follows.

CHAIRMAN FRYER: Good, good. So that does not involve a HEX determination.

MR. BOSI: No.

CHAIRMAN FRYER: And it shouldn't.

MR. BOSI: It shouldn't.

CHAIRMAN FRYER: Okay, okay. Well, that's not what this says. That's the only reason I'm hammering on it.

Okay. I'm ready to go to 4 unless anybody else has anything else on 3. Go ahead.

COMMISSIONER SCHMITT: Well, where are we with your proposal to go through some of these administrative? I would -- I would certainly support that. Do you want a motion from us, or do you -- because --

CHAIRMAN FRYER: Well --

COMMISSIONER SCHMITT: I want -- I don't want to hinder this -- some of these minor changes from going to the Board, and I think they can clear up probably 80 percent of this thing.

MR. HENDERLONG: And we just want to be clear, Commissioners, that the insubstantial change, the PUDAs that go before the HEX, there is a staff report that goes through that criteria that basically makes a recommendation to the Hearing Examiner.

CHAIRMAN FRYER: Yeah.

MR. HENDERLONG: So the question I think Heidi was alluding to, do you want that responsibility moved from there back to the Planning Commission? Is that what I'm hearing?

CHAIRMAN FRYER: The Planning Commission, I believe, wants to delegate the discretionary authority to decide whether it or the HEX gets an insubstantial change; insubstantial because it's not substantial but, nonetheless, is controversial. Put your Mark Strain hat on and try to make the decisions the way he used to do, because I think he had a marvelous intuition about that. And when he had any doubts, in order to protect himself as the Hearing Examiner, he said, I'm taking this to the Planning Commission, and it always seemed to work.

MR. HENDERLONG: We have five examples of that under No. 5 since we met with you, Mr. Chairman. These are some of the examples of the insubstantial changes that were sent back to the Planning Commission by the HEX. And this was in November 2020, Rockedge PUD. Here's what was revised. All of these -- I'm not going to go into all the details of it but, basically, that is a lot of information that he determined in his wisdom that needed to come back to the Planning Commission.

CHAIRMAN FRYER: Which HEX?

MR. HENDERLONG: This is the Hearing Examiner sent this back for --

CHAIRMAN FRYER: Excuse me. Which Hearing Examiner?

MR. HENDERLONG: This is Mark.

COMMISSIONER SCHMITT: 2020.

MR. HENDERLONG: Mark Strain's back in 2020.

CHAIRMAN FRYER: Okay. Thank you.

MR. HENDERLONG: He did that.

COMMISSIONER SCHMITT: Good point.

MR. HENDERLONG: Falling Waters is another one. A third one is Sabal Bay PDI, 2018; Pelican Lake and Livingston Village both in 2017; and then the Heritage Bay in 2016. So that's how Mark basically exercised that authority.

CHAIRMAN FRYER: Yeah. And I would -- I haven't gone back to look at these and to

substitute my judgment, but I think that would be a useless act on my part, because Mark's intuition was just so good, I'm sure that he did it exactly right.

Now, I've had the opportunity of contact with our new Hearing Examiner, and he seems to be an outstanding gentleman, a great lawyer, and is going to do great work for the county. But if I were he, I would not want to be exercising discretion over what I get to hear if I'm being paid by the hour. So it really has to be staff, and staff has the expertise. Staff doesn't have a dog in that fight; not going to make any more or less money based upon who hears it. It should be staff's decision.

MR. HENDERLONG: So you'll look for some language coming back in a future change to correct.

MS. ASHTON-CICKO: I don't think anyone's saying it, but the process that I understand is that all PDIs are going to the HEX because they don't want to waste your time on things that are more of a minor nature. And now if the HEX can't hear it, then it would go to you.

CHAIRMAN FRYER: That conflicts with the current Land Development Code. The current Land Development Code says all insubstantials come to the Planning Commission.

MS. ASHTON-CICKO: That's not correct.

CHAIRMAN FRYER: Oh, yes, it is.

MS. ASHTON-CICKO: Take a look at 10.03.06.H where it says that it can be heard by either. Now, perhaps, there's a conflict --

CHAIRMAN FRYER: There is a conflict.

MS. ASHTON-CICKO: -- that needs to be addressed --

CHAIRMAN FRYER: Yeah.

MS. ASHTON-CICKO: -- that staff needs to put on their list, but --

CHAIRMAN FRYER: I can find it or, staff, you can --

MS. ASHTON-CICKO: It's under 10.03.06.H.

MR. BOSI: It's 10.03.13.E.

MS. ASHTON-CICKO: No, 10.03.06.H.

CHAIRMAN FRYER: That's yours.

MR. BOSI: No, the conflict.

MS. ASHTON-CICKO: Oh, the conflict is there, I'm sorry.

CHAIRMAN FRYER: Yeah.

MR. HENDERLONG: Yep, I got it.

CHAIRMAN FRYER: All right. So -- but -- well, I'm going to go to this right now, because it keeps coming up, and I think it's relevant. And, again, I want to compliment Rich Henderlong for excellent work on this. And he prepared a spreadsheet that was very, very helpful. He gave it to me two days ago, and I looked at it. And thank you for doing that. It's good work, and I hope you'll share it with the whole Planning Commission.

MR. HENDERLONG: We're going to for the next meeting.

CHAIRMAN FRYER: Thank you.

MR. HENDERLONG: But you're spot on, because I got the sheet right here. I'm looking at it. And you're correct, it says the first hearing for 10.03.06.H is either the HEX or CCPC.

CHAIRMAN FRYER: Yeah. And Heidi pointed that out, but then there's another provision that says insubstantial changes go to the Planning Commission.

MR. HENDERLONG: Correct.

CHAIRMAN FRYER: It doesn't mention the HEX.

MR. HENDERLONG: Let me look on the list there. I thought we had that on our list. It's under -- it's under 10.02.13.E-2 --

CHAIRMAN FRYER: That's it.

MR. HENDERLONG: -- is your section --

CHAIRMAN FRYER: Yeah.

MR. HENDERLONG: -- for insubstantial change.

CHAIRMAN FRYER: Yeah, okay.

Now, I want to detour just a little bit here. And I want you, please, respectfully, planning commissioners, to remember the quotations from County Attorney Klatzkow with respect to our authority, and I want to point out where that authority comes from. It doesn't come from county ordinances. The only operative county ordinance in this issue is the one where the BCC appoints the Planning Commission to be what is called the local Planning Commission agency, the LPA. Now, once we're appointed the LPA, we inherit certain statutory prerogatives, and the statute in question is 163.3174; 163.3174.

COMMISSIONER SCHMITT: Florida Statutes.

CHAIRMAN FRYER: Florida Statutes. And I'm going to excerpt a little bit. It will be brief. And so here's what that statute says that's relevant to what I'm talking about. The local planning agency shall be a local Planning Commission or the Planning Department of a local government. In other words, and particularly for small counties, Florida legislature recognized that maybe, like, in Hendry or someplace, the staff should be the Planning Commission, but that's not -- that's not the case in this county and probably shouldn't be the case in larger counties. So here we are.

Now, the local planning agency shall have, and I'm quoting, the general responsibility for the conduct of the Comprehensive Planning Department. Think about that. The general responsibility for the conduct of the Comprehensive Planning Department, unquote. That's the Florida Legislature.

And it goes on to say that the local planning agency has authority to, quote, review proposed land development regulations and Land Development Codes. And it seems clear to me that our Administrative Code is a land development regulation. So it's a regulation that is certainly junior to the code and, by this reference, I believe, each and every amendment that pertains to planning and zoning should either first come to us or we should have, in advance, delegated, if it's something very, very minor, perhaps a CO or a plot plan or whatever, that that gets delegated to the staff, but that's our authority in the first instance since we're the local planning agency.

And, of course, it goes on to say, the LDA [sic], local planning agency, has the authority to perform any other functions, duties, and responsibilities assigned to it by the governing body. And the BCC specifically remanded looking at these procedures this time around to us. My point is is that whether it had done so or not, the Florida state legislature says we should either do it or clearly delegate some part of that for direct transformation from staff to the BCC if we, in our judgment, decide to do that, but it's our judgment because we're the local planning agency.

MS. ASHTON-CICKO: May I provide some --

CHAIRMAN FRYER: Go ahead. Turn your mic on.

MS. ASHTON-CICKO: So the Land Development Code is clearly the land development regulations. We also have the Code of Laws. Those are all our ordinances, the Land Development Code and the Code of Laws.

CHAIRMAN FRYER: Okay.

MS. ASHTON-CICKO: The Administrative Code, while adopted by ordinance, is not intended to provide new substantive regulations. The sole purpose of the Administrative Code is to say, hey, you need to provide five copies, you need to submit in different ways. So that kind of information that was in the Land Development Code was moved over to the Administrative Code.

CHAIRMAN FRYER: And that's where it belongs. And I take your point that regulations in the statute refers to the Land Development Code rather than -- I thought it was otherwise, but it really doesn't matter, because general responsibility for the conduct of the Comprehensive Planning Department is so broad. And, you know, you -- well, I won't elaborate on it. I've made my point.

COMMISSIONER SCHMITT: What that meant was that we are the agency that oversees the Comprehensive Plan, Comp Plan and Comp Plan amendments, to make recommendations to the Board.

CHAIRMAN FRYER: But it says "department."

COMMISSIONER SCHMITT: Yeah, I understand that. But I think that was a generic. I mean, we don't run the department. I guess maybe you can conclude we do, but I believe the intent there was that we oversee the Comprehensive Plan. The local planning authority owns the Comprehensive Plan.

MS. ASHTON-CICKO: I mean --

CHAIRMAN FRYER: If I may. No, certainly, I'm not saying that we are the bosses of staff.

COMMISSIONER SCHMITT: Yeah.

CHAIRMAN FRYER: Because all we do, our only role, is to recommend to the BCC.

COMMISSIONER SCHMITT: Correct.

CHAIRMAN FRYER: BCC's the boss of staff.

COMMISSIONER SCHMITT: Correct.

CHAIRMAN FRYER: But we have a responsibility to be involved in this stuff. That's all. It says general responsibility. It doesn't say general control. But it says general responsibility for the land planning department. And that's -- certainly, you know, I'm not going to recommend that we issue directives to staff. That's not our role. But as we formulate advice that we give in our advisory role to the BCC, we need to be a very significant part of the flow of information, and that's why I believe that the Administrative Code should always come through us for amendments.

Now, from my point of view, things that are absolutely ministerial, like changing names to "department" and "division" and the like, I would say we can delegate that to staff and take ourselves completely out of that, but the trouble is is that the Administrative Code has evolved into something more than just what Jeremy Frantz described as ministerial. And we can cut it back and put stuff back in the Land Development Code, or maybe it's easier to just leave it where it is, whether it's arguably substantive or procedural but, just, we need to be involved in it. That's all.

MR. JOHNSON: Mr. Chair, may I speak?

CHAIRMAN FRYER: Mr. Johnson.

MR. JOHNSON: Great. Thank you. Eric Johnson.

Would it be the pleasure of the Commission to kind of extract what the issues are here that are spoken of today and move forward with the non-substantive, the ministerial changes to move forward?

CHAIRMAN FRYER: Yeah, I think that's where we were headed, and maybe the Vice Chairman was getting to a motion. But I've asked for your authority to sign off on staff's version of what it believes to be totally ministerial, not controversial, and it probably is probably 80 percent of this.

MR. JOHNSON: We could bring back something even next meeting and, kind of like on consent agenda, just show you the changes.

CHAIRMAN FRYER: That would be fine, too, except we're not -- our next meeting is late February.

MS. ASHTON-CICKO: Do you want to read off the pages that you're removing from your proposal?

MR. JOHNSON: I'm not prepared to do that today.

CHAIRMAN FRYER: No. Let's -- is there a motion? I mean --

COMMISSIONER SCHMITT: I make a motion that, based on your recommendation, we delegate to the Chair to work directly with staff to make a judgment -- or to make a recommendation and pass on to staff all changes that are deemed to be administrative in nature, and then the substantive issues we will identify to come back for a discussion.

CHAIRMAN FRYER: Thank you. Is there a second?

COMMISSIONER SHEA: Second.

CHAIRMAN FRYER: Any further discussion?

(No response.)

CHAIRMAN FRYER: If not, all those in favor, please say aye.

COMMISSIONER SHEA: Aye.

CHAIRMAN FRYER: Aye.

COMMISSIONER SCHMITT: Aye.

COMMISSIONER KLUCIK: (No verbal response.)

COMMISSIONER SPARRAZZA: Aye.

CHAIRMAN FRYER: Opposed?

(No response.)

CHAIRMAN FRYER: It passes unanimously. Thank you.

So now, going forward, I still have other points, and as the Vice Chairman identified, my main point has to do with jurisdiction between the HEX and -- but we're going -- I think we're going to get to that, and that clearly shouldn't be pronounced in the procedures. It should be in the LDC.

So we're at .5, I believe, Mr. Henderlong, are we not?

MR. HENDERLONG: Yes. We just talked about the PUD insubstantial change.

CHAIRMAN FRYER: Yeah. All right. So I'm going to say what I think is the consensus of the Planning Commission, and then I'll stand corrected if I'm wrong. But I think the consensus is that the HEX will hear insubstantial changes as determined by staff following its objective criteria over matters that are truly insubstantial, uncontroversial, and ones that are arguably not just ministerial, arguably not binary, yes or no, arguably involving public disagreement, arguably involving more dollars, more acres. Those insubstantials, in staff's discretion, would come to the Planning Commission.

I'd entertain a motion on that or contradiction.

COMMISSIONER SCHMITT: Well, again, I make a motion to approve as you stated. But I -- to clarify, let me give an example. I don't know if this is an insubstantial change. In a PUD, let's say you have a tract of land that is identified as residential single-family tract or multifamily tract in a PUD, and then the developer wants to come in and use that tract for something else for temporary use, like a construction trailer or storage or some other type of activity. Who makes that determination? Is that an insubstantial change? Does that go to the Hearing Examiner, or is that a staff -- I'm just trying to understand.

MS. ASHTON-CICKO: Mike, I'm going to answer that. Any use changes require CCPC and BCC approval.

COMMISSIONER SCHMITT: Even if it's a temporary use?

MS. ASHTON-CICKO: Unless it's allowed somewhere else in our LDC as a temporary use under the temporary-use procedures.

MR. BOSI: That would be correct. If it's a temporary use that's authorized by the LDC, then it could move forward. But if it was a temporary activity that wasn't endorsed by the LDC that was being sought within that PUD through an insubstantial change, staff would say that's a land-use change, and because of that, that would require full CCPC and BCC hearing.

COMMISSIONER SCHMITT: And the only reason I ask, because sometimes those temporary uses are -- what is temporary; 20 years, 25 years? And it turns out to be a parcel that people thought was going to be developed as a residential of some form or fashion, and all of a sudden now it's a construction trailer lot or some other type of lot for 20 or 25 years. To me, that is something that is not insubstantial. That should be a change that goes through some kind of a hearing process.

I'll talk to you off-line. I do have a question about a PUD, so I want to get clarity on that, so I'll ask you that after the meeting.

MR. BOSI: And the motion that the Planning Commission was just initiating, that -- to me those sound like what the content of the Land Development Code changes that would be forthcoming would be based upon. I'm not sure how that motion reflects anything -- or maybe it's

just guidance for us.

CHAIRMAN FRYER: Okay. What I had intended is that we are giving you direction to what should be in the next draft.

MR. BOSI: Okay.

COMMISSIONER SCHMITT: Okay. Got it.

CHAIRMAN FRYER: All right. Mr. Henderlong, anything else on 5?

MR. HENDERLONG: No, sir.

CHAIRMAN FRYER: I had nothing on 6 unless -- you could go to 7 unless somebody wants to talk about 6.

(No response.)

CHAIRMAN FRYER: Let's go to 7.

MR. HENDERLONG: Okay. Staff is in agreement that we mentioned in discussing this yesterday, or the other day, that when -- the rules of decorum for the neighborhood information meeting, which is a current, being worked, vetted publicly as an LDC amendment, that only the applicant and the applicant's agents would be required to identify themselves by their names and that all other speakers would be encouraged to identify themselves, and it would be a written transcript and a video or audio. The applicant would have the option as to whether it's a video or audio. That's my understanding.

CHAIRMAN FRYER: Thank you. And I don't think there was consensus reached in 2020 on that. I'll just lead off by telling you what I think we ought to do, and then others can weigh in.

To me, the applicant should have the choice of providing a written transcript and, if they do that, they offload the responsibility for accuracy onto the court reporter, or to provide an audio or video, not both, but audio or video instead of a written transcript. But if they do that, they retain the liability for incomprehensible or inaudible audios and videos.

COMMISSIONER SCHMITT: I agree.

MR. HENDERLONG: I'm clarifying the written transcript. I want to make sure, you said the operative word, a court appointed recorder.

CHAIRMAN FRYER: I didn't say appointed.

MR. HENDERLONG: Not necessarily appointed, but you want a -- because we had one -- I'm aware of one situation where the applicant themselves wanted to write their own written transcript.

CHAIRMAN FRYER: Well, that's out.

MR. HENDERLONG: Okay.

CHAIRMAN FRYER: Yeah. It has to be a --

MR. HENDERLONG: That's what I wanted clarity on.

MS. ASHTON-CICKO: Mr. Chairman? Mr. Chairman?

(Simultaneous crosstalk.)

CHAIRMAN FRYER: Let me finish, and then I'll -- to my way of thinking, it has to be someone who has the skill sets of a court reporter and who is neutral.

MR. HENDERLONG: Very good.

CHAIRMAN FRYER: Ms. Ashton?

MS. ASHTON-CICKO: Staff has already drafted the LDC amendment and the proposed Admin Code change. If you'd like to see it as a read-ahead before it goes through the DSAC and the other departments, staff could certainly share that with you if you'd like to see it.

CHAIRMAN FRYER: Planning Commission?

COMMISSIONER SCHMITT: On the recorder, frankly, if the applicant wants a court reporter, that's fine, but I -- it was my understanding that back when we looked at this again, it was someone who would be a recorder, but it could be just a summary report. Sometimes in other types of meetings -- the DSAC, for example, you do not have a court reporter. You have a summary report, but that's an independent person. In fact, I don't even think those are recorded.

The neighborhood information meetings, if there's a recording, you could certainly provide a summary report or just have somebody convert the recording into a written report. Is that what -- that was the intent, I thought.

MR. BOSI: That was the original intent. The Planning Commission will be -- and within the next couple months you're going to be brought forward amendments related to the neighborhood information meeting. All these comments and all these issues are going to be part of what our discussions will be.

COMMISSIONER SCHMITT: All right.

MR. BOSI: You could give us some premature -- or you could give us some advanced kind of direction on that but you're going to have an opportunity to hash all of these specific issues related to neighborhood information meetings and the specificity of what's required, what isn't required, what's required of the applicant, the rules. All those will be part of the discussion points that you'll hear at a future hearing item.

COMMISSIONER SCHMITT: Because the NIM was not meant to be a public hearing. It's an information meeting, and that's -- that was the intent of it.

MR. JOHNSON: Right now I have it written so that it would require an audio and a video.

CHAIRMAN FRYER: That's not necessary.

COMMISSIONER SCHMITT: Not necessary.

CHAIRMAN FRYER: In my judgment.

COMMISSIONER SCHMITT: Don't need a -- I don't think we need a video. If you have an audio, it has to be audible.

CHAIRMAN FRYER: Audible.

MR. JOHNSON: Coherent.

COMMISSIONER SCHMITT: And I put somehow the burden on the staff to make sure the applicant understands that, or they will have to redo their NIM. If it's not audible, they redo the NIM.

CHAIRMAN FRYER: I agree.

MR. JOHNSON: Well, again, I will be bringing that forward --

COMMISSIONER SCHMITT: Okay.

MR. JOHNSON: -- sooner rather than later, so we'll have a great time discussing it.

COMMISSIONER SCHMITT: Yeah.

CHAIRMAN FRYER: And there had been some -- well, again, Chairman Strain had -- to him it was very important for members of the public to identify themselves. It's not important to me. If they want to say I'm just a member of the public or I'm anonymous, but it is important to me when an applicant or the applicant's agents are speaking that they identify themselves as such.

COMMISSIONER SPARRAZZA: Agree.

COMMISSIONER SCHMITT: I mean, the public has the right to remain anonymous, I believe.

CHAIRMAN FRYER: Yeah, yeah.

COMMISSIONER SCHMITT: And they can do so.

MR. JOHNSON: Mr. Chair, I think there was a motion by Commissioner Schmitt.

CHAIRMAN FRYER: I thought we voted on it.

COMMISSIONER SCHMITT: We never voted.

CHAIRMAN FRYER: Okay. Would you restate it then.

COMMISSIONER SCHMITT: Oh, that was the motion to delegate to you the authority --

CHAIRMAN FRYER: Oh, yeah.

COMMISSIONER SHEA: We did.

COMMISSIONER SCHMITT: Did we vote on that?

MR. HENDERLONG: You voted.

MR. JOHNSON: Yeah, there was a vote on that, certainly. I think -- I thought

Commissioner Schmitt had made another motion. I could be wrong.

CHAIRMAN FRYER: Well, I think I did ask for a motion.

COMMISSIONER SCHMITT: You did ask for a motion. I can't remember what it was. Terri, we have to go back to the record.

THE COURT REPORTER: You started to make one.

(The court reporter read back as follows:

"COMMISSIONER SCHMITT: Well, again, I make a motion to approve as you stated. But I -- to clarify, let me give an example.")

MR. BOSI: I believe the motion was to give the Chair the ability to work with staff on --

CHAIRMAN FRYER: That one already passed. There was a second one.

COMMISSIONER SHEA: We approved that; we approved that.

CHAIRMAN FRYER: Well, since none of us can remember it, I guess it's gone with the wind.

COMMISSIONER SCHMITT: Short-term memory. There it goes.

MR. JOHNSON: Well, I look forward to --

MR. HENDRICKS: Next item I have, Commissioner, is on the screen here, Agenda Packet 1538, I think we already talked about that, 10.03.06.H identifies Hearing Examiner or Planning Commission. I think your position's very clear that, if it's truly insubstantial, it still remains with HEX but, otherwise, it would come back to the Planning Commission and that we're to work out some more objective and greater criteria as to give guidance that staff will assume that role, and then also try to come back at a future date on more clarity as to how that's going to work out.

CHAIRMAN FRYER: I think you got it, yeah.

I go to Page 4 of 9 of your summary, which talks about Chapter 3 L, comparable-use determination and PUDs.

MR. HENDERLONG: Page -- I only got three pages. Which document?

CHAIRMAN FRYER: This is Attachment 2.

MR. HENDERLONG: Attachment 2? Let me get out of this screen.

CHAIRMAN FRYER: Okay.

MR. HENDERLONG: Figure out how to exit this. Just escape.

CHAIRMAN FRYER: While you're doing that, I'll -- if you don't mind, I'll summarize what I'm seeing in this and point out my question. But Chapter 3 L, we're talking about comparable-use determinations in PUDs, which is a little bit different than --

MR. HENDERLONG: Excuse me. You're in Attachment 3, correct?

CHAIRMAN FRYER: No, it's Attachment 2.

MR. HENDERLONG: Two, sorry. Okay. Page -- all right. We're pulling it up now.

CHAIRMAN FRYER: It's Chapter 3 L, comparable-use determination. Yeah, there you go.

All right. So my question is: This is -- this is proposed to be a different standard or different definition of comparability when it concerns a PUD, and in this situation, it's the -- comparability is defined to mean comparable and consistent rather than the three points that we had in the conditional use, and I'm wondering why we don't have the same three points.

MR. JOHNSON: Mr. Chair?

CHAIRMAN FRYER: Sir.

MR. JOHNSON: Could you clarify the context?

CHAIRMAN FRYER: Yeah, I'll read the language. We're talking about comparable-use determinations in PUDs.

MR. JOHNSON: Okay.

CHAIRMAN FRYER: And staff's comment says, this section's text will become existing text and subject to the final form, BCC January. It was revised to comply with the Board directive October 2021 that a CUD shall be used if a PUD ordinance contains the phrase "any other use

which is comparable in nature with the foregoing uses and is consistent with permitted uses and purpose and intent statement of the district." So my question is -- I realize -- you got it? Okay.

MR. BOSI: This is what was approved -- recommended for approval by the Planning Commission in August. What you want us to do is modify -- the Board of County Commissioners is going to hear this and approve this probably in January. What you're looking for is a further modification to the comparable-use section to clarify that it's similarity, compatibility, and consistency?

CHAIRMAN FRYER: Exactly.

MR. BOSI: So if we would have made that request in August, it wouldn't show up that way. We did -- we got a later -- this is something we'll have to make a modification to after the Board of County Commissioners.

CHAIRMAN FRYER: I understand completely, but if we approve the trifurcated definition, we could leave it in what the Board of County Commissioners is going to see along with the other 80 percent of the inconsequential stuff that staff and I are going to wave a wand of blessing over. Does that make sense? Does staff disagree with including that in the PUD?

MR. BOSI: I'm not sure what you're talking about included in a PUD.

CHAIRMAN FRYER: Well, the PUD comparable use is set up right now with two -- it's a different definition of comparability than we apply in the case of a conditional use. Conditional use has the three things that you just ticked off.

Now, here on this page, the PUD ordinance contains the definition, any use which is comparable in nature with the foregoing uses and is consistent with permitted uses.

So I'm proposing that we define "comparable" as that word is used in PUDs, which we can redefine it without changing the word. The word's going to stay in the PUD. We're not amending all the PUDs, but we would define comparable to mean those three things.

MS. ASHTON-CICKO: That would be done not through the Administrative Code but through an LDC amendment.

CHAIRMAN FRYER: I agree completely.

MS. ASHTON-CICKO: Okay.

CHAIRMAN FRYER: I agree completely.

MS. ASHTON-CICKO: Okay. So --

CHAIRMAN FRYER: But I'm trying to get Planning Commission consensus on this so that we can move forward when we come back with the third draft of the admins and the first draft of the LDCs.

MS. ASHTON-CICKO: Yeah. When the Administrative Code comes, whatever the Board approves in January is what will go forward as existing text. So I think staff highlighted this section as being changed, but it's really going to be changed based on what the Board does in January, if the Board does anything.

CHAIRMAN FRYER: Yeah. Well, our responsibility is to make recommendations, and I'm asking the Planning Commission and staff why we would have different definitions for comparability whether we're talking about a conditional use or a PUD.

MR. BOSI: A conditional use and a comparable use are two separate processes. A conditional use is a use that's permitted within a zoning district, but it's conditionally approved, meaning that it has to be reviewed to make sure that the conditions of compatibility are provided for.

A comparable use is a use that's not provided within a PUD or a zoning district that's evaluated against the existing uses within that zoning district based upon a set criteria, and if those criterias are met, that use could be added to that PUD or to that zoning district based upon those evaluations.

CHAIRMAN FRYER: So why wouldn't we decide that we recommend to the Board of County Commissioners that that definition have those three prongs?

MR. BOSI: It's the purview of the -- if the Planning Commission would like to make that

recommendation.

CHAIRMAN FRYER: I guess what I'm struggling with is why we would have two different definitions of basically the same subject. Because even -- I mean, it's called something different in conditional use, but what we're getting at is essentially the same thing: Similarity, consistency, and compatibility.

COMMISSIONER SPARRAZZA: Mr. Chairman?

CHAIRMAN FRYER: Yes.

COMMISSIONER SPARRAZZA: Are we looking at the fourth line up from the bottom where it says "or similar phase" in this list? I mean, you went for the three words, compatible, consistent, or similar.

CHAIRMAN FRYER: Yeah, except instead of compatible we've got comparable.

COMMISSIONER SPARRAZZA: Comparable. Consistent. And then the third one is similar phase?

CHAIRMAN FRYER: Similar is -- well, I don't know if phase -- yeah, that may not -- I'm just -- I'm trying to give -- yeah, I'm trying to give staff guidance as to what our thinking is if we can arrive at a consensus of thinking so that they have the benefit of that when they draft the Land Development Code amendment. And if we don't have consensus, then we can move on. If there's a reason to have different definitions when we're talking about essentially the same thing, then we can move on. What say you?

(No response.)

CHAIRMAN FRYER: Well, let's move on.

MR. HENDERLONG: Still on Attachment 3?

CHAIRMAN FRYER: Yes. And this is a point that I raised with staff on Tuesday in my meeting. Chapter 5 F, it says, clarify "The decision maker provides a recommendation to the BCC." And my point was -- is that I think it's a little bit imprecise use of language because a decision maker makes a decision. And in this case the person or entity in question is making a recommendation to the BCC, so that person or entity is not a decision maker.

MR. HENDERLONG: Got it.

MR. JOHNSON: We can change that to Board of County Commissioners if the Board of County Commissioners is, in fact, the --

CHAIRMAN FRYER: Yeah, that was tentatively what we had talked about on Tuesday, but I just want to put it out there and see --

MR. HENDERLONG: Let me turn to that page. Let's take a look at that.

MR. JOHNSON: It's on Page 226.

MR. HENDERLONG: Yep.

CHAIRMAN FRYER: Yeah. It's also on Page 301 of our agenda packet.

MR. HENDERLONG: Yeah. It's on page also -- it's actually -- the section starts at 226, but it's Page 227. It says, decision maker, County Manager or designee. That's how it currently reads, but we were adding "will provide a recommendation to the BCC."

CHAIRMAN FRYER: Yeah. I mean, it's not a big point.

MR. HENDERLONG: And that's okay with you? That's currently how it's --

CHAIRMAN FRYER: You know, honestly, it's okay with me if you leave it as it is. It just -- to me, it's at war with the common meaning of the expression "decision maker."

MR. HENDERLONG: Okay.

CHAIRMAN FRYER: I'm making people's hair hurt, I can tell. I'm sorry.

MR. HENDERLONG: So, really, the decision maker will be the BCC, right?

CHAIRMAN FRYER: It's always the case.

MR. HENDERLONG: Not the County Manager or designee?

CHAIRMAN FRYER: Well, some entities, like the County Manager or designee and the HEX, make preliminary decisions. Everything can be appealed to the BCC but, for the most part, the Planning Commission only makes recommendations. It's advisory only. There are certain

limited exceptions but, for the most part, we're not a decision maker.

MR. JOHNSON: We'll make sure it's clear.

MR. HENDERLONG: It was brought to my attention by another director that typically what happens is the designee is that staff has to be approved, makes a decision, and they provide that recommendation to the Board.

CHAIRMAN FRYER: Okay. Okay. And I think -- I'm looking to be sure, but I think I could continue and address additional points, but I've already raised these issues, and if they appear in subsequent places, you'll pick it up.

MR. HENDERLONG: Yes.

CHAIRMAN FRYER: Okay. There was a -- there was a typo under the comparable-use determination. I suggested that you'd crossed out the word "to" under applicability. I'm not going to take up any more time. We talked about that on Tuesday. The Planning Commission doesn't -- I'm sure won't disagree. Just reinsert the word "to."

MR. HENDERLONG: Got it.

CHAIRMAN FRYER: And we talked about CD-ROMs.

MR. HENDERLONG: Yes. I've got a brief update with you on that.

CHAIRMAN FRYER: Oh, good.

MR. HENDERLONG: I talked with both -- John Houldsworth, who's back from his cruise/vacation. Been around longer than most of us, other than Joe.

COMMISSIONER SCHMITT: No, he's been longer than me. He was here when the Indians first arrived. I got here when Columbus landed.

MR. HENDERLONG: Anyway, he basically said that that's been there. It's usually required as a result of GIS. But as far as they're concerned, the Engineering Department, so forth, your proposed language, some other acceptable electronic mechanism for the master plan file is acceptable, and we'll bring that back for an LDC amendment.

CHAIRMAN FRYER: Okay. For the benefit of the Planning Commission, just -- a CD-ROM is already yesterday's technology, and so, you know, why not put in general language like --

COMMISSIONER SCHMITT: Digital.

CHAIRMAN FRYER: Yeah, electronic, digital, something like that.

COMMISSIONER SCHMITT: Digital transcription.

MR. HENDERLONG: We'll do that.

CHAIRMAN FRYER: Good. That's it. That's all I've got.

MR. HENDERLONG: Okay. I just want to make sure that -- in recognition of that, we proposed on -- we were going to come back to you with all these changes for Attachment 3. I have a blank sheet here where I was -- what we talked about today. We'll bring that back so that you have that.

CHAIRMAN FRYER: Let's talk chronologically. First --

MR. HENDERLONG: All right. Let's go to Attachment 1 because that's --

CHAIRMAN FRYER: Staff is going to bring back to me its proposal of what is ready for approval by the BCC in its January meeting.

MR. JOHNSON: Yes.

CHAIRMAN FRYER: And we'll get that done before Tuesday, or before the second January meeting?

MR. JOHNSON: Wait, wait, wait. I'm sorry. I said yes too quickly. We were going to give you what we think is the non-substantive, not changing the intent of the Administrative Code so that way that could go forward to a future Board of County Commissioner meeting.

MR. BOSI: There's no scheduled meeting for the Administrative Code for the commissioners yet.

CHAIRMAN FRYER: Well, Mr. Henderlong's material has it January 23rd.

MR. HENDERLONG: No, that's for the comparable use.

MR. JOHNSON: That's for the comparable-use determination.

CHAIRMAN FRYER: All right. Okay. So I'm sorry. I thought that that was the first thing to occur. I shouldn't have interrupted.

Go ahead, Mr. Henderlong.

MR. HENDERLONG: No, that's fine.

No, so we would bring back revisions for you listing all the LDC amendments and your recommendations for the Administrative Code amendments that we talked about today, and we'll follow up with you prior to the next Planning Commission meeting to make sure that you're comfortable that they're insubstantial.

CHAIRMAN FRYER: Next board meeting.

MR. HENDERLONG: Next board meeting. Got it. Sorry.

CHAIRMAN FRYER: Is everybody on the same page?

(No verbal response.)

CHAIRMAN FRYER: Okay. That's what we want.

Thank you very much, Mr. Henderlong.

MR. JOHNSON: Mr. Chair, I'm still confused -- I'm sorry. I'm confused about the next board meeting. We don't have this packet scheduled yet for the Board of County Commissioners, and it was my understanding that staff was going to work directly with you to extract the controversial issues.

CHAIRMAN FRYER: Yes.

MR. JOHNSON: And that you would say yes, hopefully, to the noncontroversial issues that we could eventually bring to the Board of County Commissioners.

CHAIRMAN FRYER: Absolutely, and as soon as you're ready. I mean, I thought the date was the 23rd. But, yeah, I don't want to -- there's no reason to hold up changing the name of "department" to "division."

MR. JOHNSON: Thank you.

MR. HENDERLONG: And we can agree on that and move the document forward.

CHAIRMAN FRYER: Yeah.

MR. JOHNSON: And we'll work directly with you on that?

CHAIRMAN FRYER: Please. Thank you.

MR. HENDERLONG: Got it.

CHAIRMAN FRYER: Okay. Anything else from staff on this?

MR. HENDERLONG: No, sir.

CHAIRMAN FRYER: Okay. Well, you guys did a great job, and I -- and I appreciate it. And I'm sorry that I was making people's hair hurt. I don't have sufficient hair to hurt anymore, but if I did, it would be hurting as well. Thank you.

MR. HENDERLONG: You're welcome.

CHAIRMAN FRYER: All right. New --

MR. JOHNSON: New business.

CHAIRMAN FRYER: Yeah. Is there any other old business before we go to new business?

MR. BOSI: No new -- or no old business that I am aware of.

CHAIRMAN FRYER: Okay. New business?

MR. JOHNSON: Mr. Chair, Eric Johnson, planning manager.

In the -- in the near future, we're going to have an LDC amendment that would require a nighttime hearing.

CHAIRMAN FRYER: Uh-huh.

MR. JOHNSON: The old lovely nighttime hearing. And I'm trying to gauge the interest of the Board of having a nighttime hearing possibly in March, maybe March 2nd. And, as always, if we have a nighttime hearing, we could always schedule the regularly scheduled agenda later in the day.

CHAIRMAN FRYER: Yes. Well -- so March 2nd is a Thursday.

MR. JOHNSON: Correct.

CHAIRMAN FRYER: And as far as I'm concerned, that works for me. What about other planning commissioners for a nighttime meeting, evening meeting?

COMMISSIONER SHEA: It works for me as well.

COMMISSIONER SPARRAZZA: Are you stating that we'd have our normal day meeting, take a break for dinner?

CHAIRMAN FRYER: Maybe a late start on the day meeting, depending upon how much volume we have, and then the night meeting has to start at five minutes after 5:00.

COMMISSIONER SPARRAZZA: Very good, yep.

COMMISSIONER KLUCIK: Mr. Chairman?

CHAIRMAN FRYER: Yes, Mr. Klucik.

COMMISSIONER KLUCIK: Well, I would just say that, boy, my beard, all that hair on my face hurts, just --

CHAIRMAN FRYER: Well, my apologies to you.

COMMISSIONER KLUCIK: Don't have much on the top.

I'm fine with that date.

CHAIRMAN FRYER: Okay. Good. Other planning commissioners?

COMMISSIONER SPARRAZZA: Fine.

COMMISSIONER SCHMITT: I will probably -- I will be at that -- the morning meeting, but I don't think I'll be able to make the night meeting.

CHAIRMAN FRYER: Okay. So --

COMMISSIONER SCHMITT: On the 2nd of March.

CHAIRMAN FRYER: We have every expectation to have our seventh Planning Commissioner seated by then, so that shouldn't be a problem.

COMMISSIONER SCHMITT: I mean, if you did it on the 22nd -- wait a minute. Correction -- 16th or the -- but March 2nd, yeah. Okay. You'll have enough to do it.

CHAIRMAN FRYER: We'll have enough, yeah. Thank you.

MR. JOHNSON: Thank you, Mr. Chair.

CHAIRMAN FRYER: Thank you.

Now, any other new business? And, Commissioner Klucik, I guess I'm looking to you. You know, my job is primarily to be a traffic cop. And, by tradition, we have always encouraged and allowed the County Attorney to kind of jump in pretty much whenever he or she deems it appropriate. And by comparison, we are very generous in allowing staff to jump in even if it's not a time of staff report. But if this conflicts with what the Planning Commission wants me to be doing, I don't have -- I don't have to do it that way. I can do it -- I mean, you know, the Planning Commission makes -- go ahead, Commissioner.

COMMISSIONER KLUCIK: Yeah. No. Here's what I think triggered my, you know, just reaction, I guess I would say. And you know me, I tend to not withhold a reaction, which, you know, sometimes I work to -- you know, work on that, but I also think it's good sometimes to go with my reaction. And the reaction was really to the format of the -- you know, our counsel's participation and that she was querying the witness, and I think that was really my main concern, not to add to our understanding, but to be taking on, you know, the questioning of the witness. And, you know, I mean, it's -- I guess, you know, her goal was to make sure that the information came out, and she chose to do it by asking a question, and I understand that. But that's what took me aback.

CHAIRMAN FRYER: I understand. And I know Ms. Ashton very well, and I know that she is not seeking to enhance or enlarge the County Attorney's role in having a series of direct or cross-examination type questions for witnesses, but sometimes that's a -- that's a good way to save some time to get a quick answer to an immediate question. And I don't mean to be putting words in your mouth, Ms. Ashton, but I have a feeling that's why you were doing it.

COMMISSIONER SCHMITT: I welcome her opinion anytime, so -- even if she has to wave and scream and yell.

MS. ASHTON-CICKO: Yeah, if you'd prefer I jump up and down to get your attention.

CHAIRMAN FRYER: Well, I've often thought maybe you should have a button to push, but I'll -- you know, somebody will see that you've got your hand up and will let me know, and we'll call on you.

And I'm -- I'm confident -- I'm confident that the County Attorney knows its proper role. And if I thought the County Attorney were seeking to start direct or cross-examining witnesses in a more general way, I would not approve of that, but I don't think that's even under consideration by the County Attorney's Office, so it's just not an issue.

MS. ASHTON-CICKO: The reason I chose the format of asking the question is I didn't want to be the one who was testifying, so that's why I went that avenue, but --

CHAIRMAN FRYER: Yeah, and that makes sense. No objection.

All right. Well, it seems as though -- it seems as though we're all more or less satisfied. There's nothing wrong with having brought it up, Commissioner, and certainly, as I say --

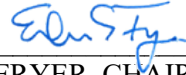
COMMISSIONER KLUCIK: Yeah. I'm not -- I'm not suggesting we need to take any action at all. And, you know, I raised the concern, you know, on the fly and in the middle of it, and we kind of resolved it that way, and that's fine.

CHAIRMAN FRYER: Thank you.


All right. Any further business to come before the Planning Commission? There are no members of the public in the room that I can see and so, without further ado, we're adjourned.

There being no further business for the good of the County, the meeting was adjourned by order of the Chair at 12:03 p.m.

COLLIER COUNTY PLANNING COMMISSION



EDWIN FRYER, CHAIRMAN

These minutes approved by the Board on 3/2/23, as presented _____ or as corrected  _____.

TRANSCRIPT PREPARED ON BEHALF OF FORT MYERS COURT REPORTING BY TERRI L. LEWIS, RPR, FPR-C, COURT REPORTER AND NOTARY PUBLIC.