

TRANSCRIPT OF THE MEETING OF THE
COLLIER COUNTY PLANNING COMMISSION

Naples, Florida
March 2, 2023
1:00 P.M.

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 1:00 p.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 (attending remotely)
Robert L. Klucik, Jr.
Paul Shea
Randy Sparrazza
Chuck Schumacher
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

P R O C E E D I N G S

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

CHAIRMAN FRYER: Thank you, Mr. Bosi.

Good afternoon and welcome to the afternoon session of the March 2, 2023, Board of County Commissioners meeting.

Everyone please rise for the Pledge of Allegiance.

(The Pledge of Allegiance was recited in unison.)

CHAIRMAN FRYER: We have two preliminary matters before I'll ask the secretary to call the roll. First of all, I believe Vice Chairman Schmitt is online.

Are you there, Vice Chairman?

COMMISSIONER SCHMITT: Chairman, thank you, and thank you for allowing me to participate remotely. I'm going to try and stay on for at least an hour and 20 or 25 minutes, and then I have to head out of town. So thank you.

CHAIRMAN FRYER: Understood, and thank you for participating. We'll take a quick perfunctory vote. Is there a motion to permit the vice chair --

COMMISSIONER KLUCIK: So moved.

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 SCHUMACHER: Aye.

COMMISSIONER SHEA: Aye.

CHAIRMAN FRYER: Aye.

COMMISSIONER SCHMITT: Aye.

COMMISSIONER KLUCIK: Aye.

COMMISSIONER SPARRAZZA: Aye.

CHAIRMAN FRYER: Opposed?

(No response.)

CHAIRMAN FRYER: Welcome, Vice Chairman.

The next announcement I have to make is to welcome our new commissioner, Chuck Schumacher, appointed by Commissioner Saunders to represent the third commission district.

Welcome, Commissioner Schumacher.

COMMISSIONER SCHUMACHER: Thank you, Chair. I appreciate it, sir.

CHAIRMAN FRYER: Would you say, perhaps, a word or two about yourself. One or two sentences is all we need.

COMMISSIONER SCHUMACHER: One or two sentences? I reside in District 3. I have my wife as well, who's a teacher at Gulf Coast High School. We have three kids; two in Oak Ridge and one in Gulf Coast. And I work locally here in a high rise over on the beach. So my schedule's been full of sand, basically, but other than that, it's been good. Thank you.

CHAIRMAN FRYER: Warm welcome to you, sir.

Now will the secretary please read the minutes -- call the roll, rather. Do something.

COMMISSIONER SHEA: Commissioner [sic] Lockhart.

MS. LOCKHART: Here.

COMMISSIONER SHEA: Commissioner Schumacher?

COMMISSIONER SCHUMACHER: Here.

COMMISSIONER SHEA: Commissioner Sparrazza?

COMMISSIONER SPARRAZZA: Here.

COMMISSIONER SHEA: Commissioner Klucik?

COMMISSIONER KLUCIK: Present.

COMMISSIONER SHEA: Commissioner Vernon is absent with an excused.

Commissioner Shea is here.

Commissioner Schmitt is online.

COMMISSIONER SCHMITT: Here.

COMMISSIONER SHEA: And Chairman Fryer is here.

CHAIRMAN FRYER: Here.

COMMISSIONER SHEA: So we have a majority, sir.

CHAIRMAN FRYER: Thank you. And we have a -- let's see. We have a quorum of seven, do we not? Did I count right?

COMMISSIONER SHEA: No, we're missing Chris.

CHAIRMAN FRYER: Oh, Chris. So we have a quorum of six.

COMMISSIONER SHEA: So we've got six.

CHAIRMAN FRYER: Yeah.

COMMISSIONER KLUCIK: Mr. Chairman.

CHAIRMAN FRYER: Yes, Commissioner.

COMMISSIONER KLUCIK: If I might ask staff, the website is still not allowing me to download. I'm online, but the page isn't working. So if someone could email me at my personal web address the agenda.

MR. BOSI: The agenda packet?

COMMISSIONER KLUCIK: Right. I have nothing. I can't access anything.

COMMISSIONER SPARRAZZA: If not, I have it. I can do it.

CHAIRMAN FRYER: Okay. So that will be taken care of for Commissioner Klucik.

COMMISSIONER KLUCIK: Thank you.

CHAIRMAN FRYER: Thank you.

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

MR. BELLOWS: I have no changes to the agenda.

CHAIRMAN FRYER: Thank you.

Planning Commission absences, our next meeting is March 16, 2023. Anyone know if he or she cannot be in attendance for that meeting?

(No response.)

CHAIRMAN FRYER: That's good. Looks like we'll have a quorum.

The same question for the meeting after that, which is scheduled for April 6th, 2023. Will everyone be there at that meeting as well?

COMMISSIONER SHEA: Yes.

COMMISSIONER KLUCIK: I actually am probably not going to be at the 16th.

CHAIRMAN FRYER: The 16th, okay. All right. So noted. It looks like we'll still have a quorum, but thank you. Okay. So there we are on that.

Approval of the minutes. We have one set of minutes for action today, those of our January 5, 2023, meeting. And I've got some errata from staff. Why don't I just read these, and then we'll see if there are any further corrections, and then we'll vote on them.

On the agenda packet -- and, Mr. Henderlong, if I don't get this right, please come up to the podium and straighten me out. But on Packet Page -- on Agenda Packet Page 35 and Minutes Page 31 of 48, add the word "draft" before the word "resolution" in the following sentence where it states, Mr. Johnson, quote, the second reading is January 24th, which will include a draft resolution. And Mr. Henderlong assures me that actually the word "draft" was stated; it just didn't make it into the minutes.

MR. HENDERLONG: Yes.

CHAIRMAN FRYER: So that will be the first correction.

The second, on Packet Page 38 and the Minutes Page 38 of 48, Chairman Fryer's statement was decimal point 5, and it needs to read p-o-i-n-t five, the word spelled out, and that's, obviously, nobody's fault, but that's -- that's what was intended by the speaker. So decimal point five will read p-o-i-n-t five.

And that's -- then on Page 45 of the agenda packet, Minutes Page 41, correct the name Mr. Hendricks to Mr. Henderlong.

Thank you. We got them all. So from the dais, any further corrections on the minutes? (No response.)

CHAIRMAN FRYER: If not, I'd entertain approval -- entertain a motion for approval of the minutes as revised.

COMMISSIONER SHEA: So moved.

CHAIRMAN FRYER: Is there a second?

COMMISSIONER SCHUMACHER: Second.

COMMISSIONER SCHMITT: Second.

CHAIRMAN FRYER: Any further discussion?

(No response.)

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

COMMISSIONER SCHUMACHER: Aye.

COMMISSIONER SHEA: Aye.

CHAIRMAN FRYER: Aye.

COMMISSIONER SCHMITT: Aye.

COMMISSIONER KLUCIK: Aye.

COMMISSIONER SPARRAZZA: Aye.

CHAIRMAN FRYER: Opposed?

(No response.)

CHAIRMAN FRYER: It passed unanimously.

Thank you very much.

BCC report, recaps, Mr. Bellows.

MR. BELLOWS: Yes. On February 14th, the Board of County Commissioners heard the PUD rezone for the behavioral health center. That was approved 4-1 subject to an additional condition regarding the applicant preparing a security plan to be worked out with the Board of County Commissioners and the Sheriff's Office.

CHAIRMAN FRYER: Thank you. Pardon me for springing one on you, but there were other conditions that we had spoken about, some of which I think were refused by the applicant and by the BCC, but were there any other conditions that we had suggested that the Board approved, if you can recall?

MR. BOSI: There was the condition for additional patrolling that the Sheriff's Department would provide for the David Lawrence Center as well as the monthly meeting with the -- with the neighborhood. That was imposed as well as part of the approval process.

CHAIRMAN FRYER: Okay. I see Mr. Yovanovich is here. Do you want to add to that?

MR. YOVANOVICH: Yes. For the record, there was also the additional fencing --

MR. BOSI: Yes.

MR. YOVANOVICH: -- that we had agreed to. That was part of the motion to approve.

CHAIRMAN FRYER: Okay. Thank you. Thank you all very much.

All right.

COMMISSIONER SCHMITT: Mr. Chairman?

CHAIRMAN FRYER: Yes, go ahead, Vice Chair.

COMMISSIONER SCHMITT: Also since we last met, I believe the Isles of Capri petition was approved by the Commissioners with several changes. We have not met since that approval; is that correct?

MR. BOSI: I do believe you are correct; sorry. It's been so long since we did have our meeting that we forgot that you guys hadn't been convened. Yeah, the Isles of Capri was approved as well with a reduction to 80 -- I believe 80 feet or -- no, a reduction to 125 feet but also a reduction in overall intensity to, I think, 80 units as well, with some additional stipulations,

meaning -- of extending the water line from Collier Boulevard to be able to serve the capacity of the entire -- of the four islands on the Isles of Capri as well as the two flushing culverts that was discussed with the Planning Commission.

CHAIRMAN FRYER: Thank you. And I apologize; you're doing that from memory. Mr. Yovanovich, did he get all the points? You can just nod if you want.

MR. YOVANOVICH: I don't remember the exact height or the exact density we agreed to but, yes, there was a reduction in height and, yes, there was a reduction in overall density. I just don't remember the exact numbers right now.

CHAIRMAN FRYER: Okay. For some reason I have 113 feet in my head.

MR. YOVANOVICH: I just don't remember.

CHAIRMAN FRYER: Well, it is what it is.

Any further reports, then?

MR. BELLOWS: On the summary agenda, the Board approved the Kai Cassia PUD, and then on February 28th, the LDC amendment for the comparable-use determination, that was approved along with the Walgreens PUD amendment on the December agenda.

CHAIRMAN FRYER: Thank you.

Chairman's report, none today.

Consent agenda, none today.

***Public hearings. For this afternoon, our first advertised public hearing is on PL2020002302, and this is the Forest Glen of Naples PUDA.

All those wishing to testify in this matter please 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 starting, please, with Ms. Lockhart.

MS. LOCKHART: Staff materials.

CHAIRMAN FRYER: Thank you.

COMMISSIONER SCHUMACHER: Staff materials and -- with staff.

COMMISSIONER SHEA: Staff materials.

CHAIRMAN FRYER: Staff materials, matters of public record, and a communication with the agent of the applicant and staff.

COMMISSIONER KLUCIK: Staff materials and a meeting with staff.

COMMISSIONER SPARRAZZA: Staff materials and a call with the agent's attorney.

CHAIRMAN FRYER: Thank you.

COMMISSIONER SCHMITT: Staff materials and a discussion with Mr. Yovanovich.

CHAIRMAN FRYER: Thank you.

All right. With that, we'll begin with the applicant's presentation. Mr. Yovanovich, you have the floor.

MR. YOVANOVICH: For the record, Rich Yovanovich. I'm looking for our PowerPoint, but I do not see it.

CHAIRMAN FRYER: Here comes Mr. Youngblood.

MR. YOVANOVICH: Phone a friend. Oh, that was easy.

CHAIRMAN FRYER: Okay. We're getting it on our TV screens up here, so...

MR. YOVANOVICH: Can you see it okay?

Again, good afternoon. For the record, Rich Yovanovich on behalf of the applicant and property owner.

With me today I have David Bartley who is the owner's representative basically for both entities that own the property; myself; Mr. Arnold; Mr. Banks; and Marco Espinar is our environmental consultant.

I'm going to do a brief overview of the project. Obviously, our team is here to answer any questions you may have regarding the project. But before I get too much into the project, we worked very closely with the Forest Glen Property Owners Association and their representatives to

bring to you a project today that -- I don't know if you've received an email that was sent to Mr. Bellows --

COMMISSIONER SHEA: We got it.

MR. YOVANOVICH: -- but it essentially attaches the agreement we worked out with the property owner representatives. And what I'll be presenting today is consistent with that memorandum and the email you received, so --

CHAIRMAN FRYER: If I may ask, Mr. Yovanovich, is the -- is counsel present, counsel for the property owners?

MR. YOVANOVICH: Yes, he is. He's in the back.

CHAIRMAN FRYER: Okay. Thank you very much. Sorry to interrupt.

MR. YOVANOVICH: I'm sure -- I'm sure Mr. Rinaldi will correct me if I get anything wrong. But barring some surprise, I don't expect any adverse testimony today.

But the property is located at the southeast quadrant of Collier Boulevard and Beck Boulevard. You can see it up on the screen. It's approximately 9.6 acres. It's part of the Forest Glen PUD. And this particular piece of property has always been identified as a commercial piece of property and has always been permitted at 100,000 square feet of commercial uses. We're not changing -- we're not changing the size of the property. We're not changing the amount of square feet that's authorized. We're just basically adding flex warehouse space as an allowed use on this particular property.

Flex warehouse, basically, is -- contractor office spaces is generally what goes in there. They have their office up front, and they have their storage in the back, and there's not a whole lot of that space available in Collier County. So there's quite a -- quite a need for this type of use.

If the project is built as flex space, there will actually be a reduction in traffic related to this project, and this is an older PUD. So we're including a trip cap, but the trip cap is based upon the existing uses that are allowed on the property. But if we do the flex space, there will actually be a reduction.

This is the current master plan for the PUD. All we're doing is adding an alternative master plan should we go forward with the flex space use. And you will note that we'll have vehicle storage along here, and this will be the flex warehouse space along here, and our access will be from Beck Boulevard.

These are the additional uses that are being added to the PUD and that section of the PUD. We can go through these if you need us to, but these are the flex space uses that have been added to the PUD as part of this proposed project.

The development standards have -- there's one modification that we work -- this project is basically patterned after another product -- project that my clients have done. The way they measure height is a little bit different. We had originally structured a definition that staff said we don't want to approve a deviation from how we measure height. So you'll note that we have a very specific height here of 30 feet, 8 inches as the zoned height that's allowed in the project. Currently, the zoned height is 50 feet, so the warehouse use will actually be a reduction in height.

We made some other minor modifications with regard to the PUD. I don't know how much detail Mr. Rinaldi's going to get into that, but it was set forth in his letter to you -- and to Mr. Bellows that's been provided to you.

With that, that's a brief overview of the proposed changes, and obviously staff's recommending approval, and we're requesting that the Planning Commission recommend to the Board of County Commissioners approval of the proposed PUD amendment.

MS. ASHTON-CICKO: Rich, you might want to put the height back up, because it's not in the ordinance that's attached.

MR. YOVANOVICH: I have -- I have -- I can put on the visualizer how that will be changed, if you would like me to, and I'll give it to you, Heidi, but -- I'll get that to you, but that -- essentially, you'll see how we changed the wording. It goes to 38 feet -- I'm sorry, 30 feet, 8 inches, until it went dark -- for the flex space or warehouse uses in Section 6.2 instead of the way

we previously wrote it.

And with that --

COMMISSIONER SCHMITT: Mr. Chairman?

CHAIRMAN FRYER: Go ahead, Vice Chair.

COMMISSIONER SCHMITT: Yes. I just want to make sure that my fellow colleagues understand that one of the principal -- one of the key components of this was that -- and I'm not trying to, from a standpoint, say support or against it, but to clarify that this entire area was removed from Activity Center No. 9. I'm very familiar, of course, with my former role in Collier County with Activity Center No. 9.

Between Ray and Mike, they could probably highlight, but the key is this is not encumbered now by the design criteria for Activity Center No. 9, and that was a request as a result of the residents, as I read in the staff report, and Mr. Yovanovich, if he wants to expound on that -- but I just wanted to make that clear.

And one of the key things I asked about, Rich, during our conversation, I wanted to make sure that though this is not encumbered by the architectural standards under Activity Center No. 9, I wanted to make sure this is not just a simple-looking steel building warehouse; that there is an appearance of this that -- since it's going to be at that corner, which is a major intersection here in Collier County and soon to be one of the major interchanges right there at the I-75/Collier Boulevard. Thank you.

CHAIRMAN FRYER: Thank you.

Any other comments or questions? The deliberator is not lit up, so I'm assuming that there are none.

(No response.)

CHAIRMAN FRYER: I want to commend both the applicant and the homeowners association for their flexibility in working together in coming up with a mutually agreeable solution. We up here like to see that, and I wouldn't want to let that pass without an acknowledgment and a word of thanks and commendation.

One thing I will ask Mr. Yovanovich -- I would have asked staff this, but I might as well just get it on the record now. The TIS which has come in at 193 peak p.m. trips, that would still apply, of course, in the event you went all retail because under the pre -- no, it would not?

MR. YOVANOVICH: No. If he can go -- I don't think I have that language up, but I can pull it -- the PUD -- and I just, let me -- the exact language for the trip cap -- and let me read it into the record -- is the maximum total daily trip generation for the commercial tract within the PUD shall not exceed 389 new two-way peak-hour net trips based upon the use codes in the ITE manual on trip generation rates in effect at the time of application for the SDP/SDP-A or a subdivision plat approval. That is tied to the current uses that are allowed in the PUD. If we build the flex space, it will actually be less, so we did the -- you see the analysis of what the reduction would be.

CHAIRMAN FRYER: I do, yeah. And I had a brief conversation on Tuesday -- yesterday, rather, with Mr. Sawyer and other members of staff, and they assured me that the trip cap -- and I see now that there are really two trip caps based upon the use. But in the event you went all retail, which you could, you'd have the higher trip cap, but you would come within that trip cap.

MR. YOVANOVICH: Within -- yes, within the -- yes, within the 389.

CHAIRMAN FRYER: Okay, got it. Any other questions or comments?

(No response.)

CHAIRMAN FRYER: If not, we'll ask for staff to give its report, please.

MR. BOSI: Staff has reviewed the proposal, and we are recommending approval.

I do want to provide a clarification related to Commissioner Schmitt's comments. What's being eliminated is not -- this isn't being removed from Activity Center No. 9. This is being removed from the CBIIZO overlay that is being proposed within Activity Center No. 9. So the uses that are being allowed for or permitted within that overlay within the individual PUDs and

zoning districts within the PUD, that's what this is exempted from, and that was exempted from at the request of the Forest Glen membership when the transmittal hearing for the CBIIZO was before the -- before the Planning Commission.

CHAIRMAN FRYER: Okay.

MR. BOSI: Just a slight clarification.

CHAIRMAN FRYER: Yeah, and we talked about that.

COMMISSIONER SCHMITT: Mr. Chairman.

CHAIRMAN FRYER: Go ahead.

COMMISSIONER SCHMITT: Thanks, Mike -- thanks, Mike, for that clarification. And then that does clarify the requirements to remain with the standards as described by Activity Center No. 9 as far as the architectural standards, so that's clear now, thank you, for the record.

CHAIRMAN FRYER: Thank you.

And from my perspective, it was not totally clear to me what the future of Activity Center No. 9 was going to be, the way it was worded, but after my meeting with staff, I see that the activity center itself will remain. But as you said, this will be carved out, and the Innovation Zone will be the overlay that governs for the area in question.

There was a -- I had a question for staff. Here it is. The part -- the affected part of the 635-acre PUD is stated in the application to be 9.6 acres and, yet, when we look at the I-75/Collier, the other matter that we've got coming before us today, what's being carved out is 13.89 acres, and I'd appreciate an explanation of the discrepancy.

MR. BOSI: Would you like that as part of this, or would you like that as part of the presentation for the next item?

CHAIRMAN FRYER: Well, if it doesn't take too long, I'd like to hear it now. If it does take long, we'll do it then. Is it a right-of-way or --

MR. SABO: Mr. Chairman?

CHAIRMAN FRYER: Yes.

MR. SABO: James Sabo, Comprehensive Planning manager.

The parcel that they are talking about is 9.64 plus-or-minus acres. The -- there are areas of right-of-way around this parcel, and there is an adjacent parcel that is excluded from their project. It's about 3.6 acres or 3.8 acres. So if you add that all together, that right-of-way, all that, it comes to about 13.8. That number comes from our GIS, which does an outline and an overlay, and that plugs into their system.

CHAIRMAN FRYER: Okay. That explains it. Thank you very much.

MR. SABO: You're welcome.

CHAIRMAN FRYER: Before you step down, Engine House 72, is that -- I know that's not part of this application, but is it part of the 13.89?

MR. SABO: It is not.

CHAIRMAN FRYER: It is not?

MR. SABO: It is not.

CHAIRMAN FRYER: Okay. All right. Thank you.

Any other questions or comments from the dais?

(No response.)

CHAIRMAN FRYER: If not, anything further from staff?

MR. BOSI: Nothing from staff other than any questions that you -- additional questions you may have.

CHAIRMAN FRYER: It sounds -- it appears as though there are none. With that, we'll turn to public speakers.

Mr. Youngblood, do we have any registered public speakers?

MR. YOUNGBLOOD: Mr. Chairman, we have three registered public speakers in the audience with us today. David Doyle is going to be our first speaker. He's going to be followed by John Salina.

CHAIRMAN FRYER: All right.

THE COURT REPORTER: Have you been sworn in?

MR. RINALDI: I'm not sworn in.

THE COURT REPORTER: Do you swear or affirm the testimony you will give will be the truth, the whole truth, and nothing but the truth?

MR. RINALDI: I do.

And for the record, my name is Tom Rinaldi. I'm speaking for Mr. Doyle at this time.

CHAIRMAN FRYER: Okay.

MR. RINALDI: We're going a little bit out of order because I represent Forest Glen, and we discussed it. And if Mr. Doyle doesn't have anything to add, then he will relinquish his right to provide public comment to you.

I appreciate your time, Commissioners. This is, of course, very important to the Forest Glen community.

Mr. Yovanovich, his representations were 100 percent accurate. I just want to make sure that the staff is aware, as well as the government officials and yourselves, that there is an MOU between Forest Glen and the applicant in this matter, and it seems that you are well aware of that.

As it relates to vice-chair's inquiry related to the development standards, specifically to the architectural concerns, you should also be aware that the community itself, as part of the MOU, has worked with the applicants on those architectural standards, because there is a project out there that is similar in the uses.

And we discussed and came to an agreement as to what the project would ultimately look like, the development itself would look like, and it was aesthetically pleasing to the community and the residents of Forest Glen. And so there would not be an objection in that light.

Now, as it relates to the MOU itself, I just want to make sure that all of you are aware of two important factors. One, that, of course, the building height is controlled. And we're happy to see that there's been amendments or revisions to the submittals bringing it down to that 30-foot, 8-inch requirement. That's very important to the residents at Forest Glen.

There's a second part of the MOU that I would also like you to be well aware of, and that is at the southern portion of the development of the parcel itself that -- I'll call it the area between the parcels, that -- if you look at the master plan, we are looking as a community jointly with the applicants overall to have that designated as a preserve, which should be favorable to the county in general. And we're going to be working with the appropriate regulatory bodies to have it be designated as a preserve to protect that area in perpetuity for the residents of Collier County.

So that's just -- those are two important factors that I would like to bring to light to you. But I appreciate all of the comments that have been made, the submittals that have been made. There was a staff report that was provided to you prior to the hearing before it was continued that did not have the height requirements correct, but everything that's been submitted to you since then has been correct.

And we look forward to the ultimate vote on the matter. Thank you.

CHAIRMAN FRYER: Thank you.

Commissioner Klucik.

COMMISSIONER KLUCIK: Yes. So just to clarify, what you were saying about this preserve is not anything we're adopting; you're just making everyone aware that that's something that is privately being -- it's a private action that's in --

MR. RINALDI: Correct. I don't think as a Planning Commission -- I'll defer to Rich on that. I don't think you can adopt that in this hearing today. That is going to be efforts undertaken by us to have that designated, but it's a separate process in itself.

COMMISSIONER KLUCIK: No. I just want to make it clear we're not doing anything about that. It sounds like that that's not what we're voting on, that particular slice.

CHAIRMAN FRYER: Ms. Cook.

MS. COOK: Jaime Cook, director of Development Review at Growth Management.

So the master plan for the entire PUD requires preservation. This particular area does not have a designated preserve; however, if the homeowners association and this applicant would wish to pursue that, they would do it through the Site Development Plan or the platting process.

MR. YOVANOVICH: Can we go back to the PowerPoint? Because we did dedicate it.

MR. RINALDI: I think it would be Slide 6.

MR. YOVANOVICH: We do dedicate or designate this area as preserve with the agreement of -- obviously, it was the request of the property owners association that we do that. So you are, in fact, dedicating this area or designating this area as a preserve. Obviously, the Site Development Plan will respect that when it comes through. But you are, in fact, designating it as a preserve.

CHAIRMAN FRYER: Question -- well, for either one of you. Who has the right of enforcement of the MOU?

MR. RINALDI: Actually, both parties would have a specific right of performance, but it would be through the court system that the MOU would be enforced.

CHAIRMAN FRYER: Private -- it's like a contract?

MR. RINALDI: Correct, it's a contract.

CHAIRMAN FRYER: And also, correct me if I'm wrong, but if this were to relate back to the preexisting zoning and say it was done up as a retail establishment, then it would go to a zoned height of 50, correct?

MR. RINALDI: That's -- that's my understanding based on how the ordinance is written, that this height requirement is a restriction for these specific uses that we're agreeable to, and so that's the give and take.

CHAIRMAN FRYER: Is that correct, Mr. Yovanovich?

MR. YOVANOVICH: Yeah. Just like this master plan right here where the preserve gets dedicated is -- if we move forward, which we're going to, with the alternative plan.

CHAIRMAN FRYER: Is there -- and maybe this is a question for the County Attorney also. But when we ask -- when the developer asks for alternative options, can they do a blend, or does it have to be one or the other?

MR. YOVANOVICH: One or the other. It's one or the other.

CHAIRMAN FRYER: One or the other, okay. I just want to make that clear.

All right. Anybody else have questions?

COMMISSIONER SHEA: Probably a procedural question. What do we -- what do we approve? If -- do we have to incorporate the MOU into our approval process?

CHAIRMAN FRYER: No.

COMMISSIONER SHEA: But it's key to our decision that the MOU has been established.

CHAIRMAN FRYER: It's going to be part of the ordinance because of the depiction.

MR. YOVANOVICH: The agreement itself is not part of the PUD.

CHAIRMAN FRYER: No, but the depiction is part of the ordinance.

MR. YOVANOVICH: Some of the provisions in the MOU have actually made their way into the PUD document, but the MOU itself is not an exhibit to the PUD.

COMMISSIONER SHEA: Okay. So it's just between the two parties?

MR. YOVANOVICH: Correct.

COMMISSIONER KLUCIK: Mr. Chairman?

CHAIRMAN FRYER: Go ahead, sir.

COMMISSIONER KLUCIK: For instance, if, for whatever reason, you go down this route and you implement this plan that we're seeing here with the proposed alternative tract master plan, and then there is no -- there's clearly no preserve, then the county could, then, assert, hey, you know, you're not in compliance?

MR. YOVANOVICH: There is more than enough preserve in the PUD. The existing PUD meets all the preserve requirements.

COMMISSIONER KLUCIK: Right, right, right.

MR. YOVANOVICH: So this is additional.

COMMISSIONER KLUCIK: Well, I'm saying, if for whatever reason we see that that land was excavated and it isn't a preserve and it's just torn up, the county would have a right to say, hey, this has to be a preserve, so whoever the owner is has to bring it into --

MS. ASHTON-CICKO: Correct, and it could be a code enforcement action --

COMMISSIONER KLUCIK: Right, right.

MS. ASHTON-CICKO: -- because it's in the ordinance as opposed to the MOU.

COMMISSIONER KLUCIK: Right. Because it has nothing to do with the private agreement.

MS. ASHTON-CICKO: Correct, correct.

COMMISSIONER KLUCIK: Because it's incorporated into what we're approving.

MS. ASHTON-CICKO: Yes.

MS. COOK: And, Commissioner, just for some additional clarification, if the applicant chooses to move forward with this site plan, when they come in with their Site Development Plan for it, we will look for that preserve. And if they aren't in compliance, we'll be having conversations with them.

CHAIRMAN FRYER: Any further questions?

COMMISSIONER SCHMITT: Mr. Chairman?

CHAIRMAN FRYER: Go ahead, Vice Chair.

COMMISSIONER SCHMITT: Yeah. And I'm very familiar with that area, and I'm sure that the residents are going to closely watch for that preserve, because that will, essentially, serve as a screen between the golf course hole that is right along that area and those buildings. If you look at the aerial, you'll see. So I'm sure that's going to be a very significant standpoint from the standpoint of the residents in the community watching to make sure that that preserve and that buffer is in place.

Thank you.

CHAIRMAN FRYER: Thank you, sir.

Anything further from the Planning Commission?

(No response.)

CHAIRMAN FRYER: If not, thank you, Mr. Rinaldi. Do you have anything further?

MR. RINALDI: I was just going to reiterate what was just said, that the association will be keeping a close eye on that, and there would be a specific performance action filed pretty quickly in the court related to that, not only county issues.

MR. YOVANOVICH: I could testify to that under oath.

CHAIRMAN FRYER: All right. Thank you, Mr. Rinaldi.

MR. RINALDI: Thank you.

CHAIRMAN FRYER: Mr. Youngblood.

MR. YOUNGBLOOD: David Doyle. And then David will be followed by John Salina.

THE COURT REPORTER: Do you swear or affirm the testimony you will give will be the truth, the whole truth, and nothing but the truth?

MR. DOYLE: I do.

Good afternoon. I'm David Doyle. I'm an owner at the Forest Glen. I'm also on the board of directors at Forest Glen.

One other thing we actually talked about prior that I thought Tom was going to bring up, one of the key features that this current plan -- that the developer worked with us in creating this development plan was, if you notice the third building that runs horizontal on that plan, actually, it's a much less intensive use. It's garage storage, essentially, or storage -- vehicle storages, and we really appreciate that feature. We believe it's a nice buffer, and it sets up good against our thing. So we value that as a component that has been presented to us and a means of integrating into our community.

CHAIRMAN FRYER: Thank you very much, sir. And, again, my compliments to you and the applicant for working together on this.

MR. DOYLE: Thank you.

CHAIRMAN FRYER: Mr. Youngblood?

MR. YOUNGBLOOD: Our final speaker is going to be John Salina.

MR. SALINA: Ladies and gentlemen, I yield to Mr. Rinaldi. He said everything.

CHAIRMAN FRYER: Not from back there, sir. That's all you have to say. You've yielded. Thank you.

Anybody else register?

MR. YOUNGBLOOD: (Shakes head.)

CHAIRMAN FRYER: Okay. Do we have any members of the public in the room who have not registered but wish to be heard on this matter? Now would be the time to raise your hand.

(No response.)

CHAIRMAN FRYER: Seeing no hands raised and nobody on the Planning Commission signaling, we will close the public comment segment of this hearing and without further ado will begin our application.

COMMISSIONER KLUCIK: Mr. Chairman?

CHAIRMAN FRYER: Go ahead, Commissioner Klucik.

COMMISSIONER KLUCIK: I guess, I mean, it seems like there's really not much to discuss because, you know, we've seen that the staff supports it, and the parties, nobody is opposed to it, and it appears that everything is in order, so I'm happy to make the motion to approve it, but, of course, I don't want to cut off any discussion.

CHAIRMAN FRYER: Thank you. There's a motion on the floor. We can take a second, and we can still have discussion, if there is any. Anybody wish to second that motion?

COMMISSIONER SHEA: I'll second it.

CHAIRMAN FRYER: It's been seconded.

Now, any further discussion before we take a vote? I agree that it's not controversial, so I think the motion was certainly in order. And no one is asking to be heard, so at this point we will vote on the resolution. And I don't think there are any conditions that are extrinsic to the paperwork at this point, are there?

MR. YOVANOVICH: You've got the modification on the height.

CHAIRMAN FRYER: On the height, yeah, the 30 feet, 8 inches. We do, thank you.

All right. All those in favor, please say aye.

COMMISSIONER SCHUMACHER: 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, applicant.

MR. YOVANOVICH: Thank you.

CHAIRMAN FRYER: Thank you, homeowners, staff. This matter's concluded.

***Next, the second matter for this afternoon is PL20190000821. It's the Collier Boulevard and I-75 Innovation Zone. It's a Large-Scale Growth Management Plan amendment, and we're going to hear the companion LDC at our evening session today. Both matters being purely legislative in nature, no quasi-judicial component, so there's no need for swearing of witnesses or ex parte disclosures.

And so without further ado, I'll turn it over to Mr. Sabo.

MR. SABO: Mr. Chairman, Commissioners, James Sabo, Comprehensive Planning manager.

Here we go. This before you is the Collier Boulevard Innovation Zone Overlay. It's part of action taken by the Board of County Commissioners in 2018 creating the interchange Activity Center No. 9 Innovation Zone. It's an economic development tool. It creates the Economic Development Trust Fund through tax increment financing. There are two others in the county. I'm not going to read these uses to you, but manufacturing, logistics, finance, research, technology, those types of use, high-pay, high-quality employment.

Action to date, you heard this and transmitted it at your August 18th, 2022, meeting. The Board of County Commissioners acted to transmit at their October 25th, 2022, meeting. At that meeting, we talked about this earlier, the removal of that nine plus-or-minus acre parcel from the CBIIZO at the Forest Glen, and then the Board moved to transmit to the DEO.

This is what it looked like before the County Commission action. This is how it looks now. This is the proposed overlay zone. This is what it looks like with the uses on the ground currently.

Advanced type of manufacturing. This is corporate headquarters, things like that, orthopedics, surgical supplies, aircraft equipment, things of that nature, equipment testing and metering. Public information meeting on August 2nd.

Today is the adoption hearing for you, October -- April 25th, excuse me, is the adoption for the Board of County Commissioners. Our recommendation is to forward it to the Board with a recommendation to approve and adopt the amendment, send it to the Florida Department of Economic Opportunity and other statutory agencies.

That's it for me, and I'll entertain any questions.

CHAIRMAN FRYER: Thank you. No one is signaling at this time.

Go ahead, Ms. Ashton.

MS. ASHTON-CICKO: I'd just like to clarify for the record that there's two innovation zones. One's an Innovation Zone that was created in the past by the Board as an Economic Development Zone for financing and encouraging economic development, okay. That's not something that you-all have seen or been involved in. What you're being asked today is to now allow economic development uses in that area, and it's essentially the same as what was created for the financing tool in the past. So I just want to make sure you understood there are two zones. Sometimes there's a little confusion.

CHAIRMAN FRYER: Thank you. And there's no taking issue or downzoning or Bert Harris or anything like that that we would need to worry about, I assume?

MS. ASHTON-CICKO: I don't believe so. We're adding uses.

CHAIRMAN FRYER: Thank you. Good. Thanks.

Any other questions or comments --

MS. LOCKHART: I do.

CHAIRMAN FRYER: Yes, ma'am.

MS. LOCKHART: I was just curious as to whether adult education is included, training, public schools, private schools. Just -- it seemed like an ideal place for any kind of industrial innovative training.

CHAIRMAN FRYER: That's a good thought.

MR. SABO: The education and training services are -- educational services are listed in our GMPA.

MS. LOCKHART: Thank you.

MR. SABO: You're welcome.

CHAIRMAN FRYER: That's considered an Innovation Zone desirable use?

MR. SABO: Yeah. We talked about McDonald's at one point. Mr. Shea brought up them being an innovative use. But the state identifies qualified target industry businesses, and we

took that list from the State of Florida and plugged it into our GMPA.

CHAIRMAN FRYER: So training for those uses -- a training facility would also be considered an innovative use that we would be looking for?

MR. SABO: Correct.

CHAIRMAN FRYER: Thank you. Anything else?

(No response.)

CHAIRMAN FRYER: Mr. Bosi.

MR. BOSI: I did want to add that this is the GMP adoption hearing to create the overlay within the Growth Management Plan. Your night meeting requirement, the one that we're going to have to come back at 5:05 to hear, is the actual zoning district -- or zoning overlay that will be implementing the GMP that you're hearing today, just so the relationship is understood.

So with the approval of this, it will set up and allow the Board -- or allow the Planning Commission to make a recommendation on the zoning overlay which will be heard at 5:05 today.

CHAIRMAN FRYER: Thank you.

Commissioner Klucik.

COMMISSIONER KLUCIK: Sure. If we could just go back and look at the map where we see -- the parcel that we just took action on, I believe, is on there, correct?

COMMISSIONER SHEA: Yep, one back.

COMMISSIONER KLUCIK: Right where the blue arrow is, yeah. So how does this relate to what we just did?

MR. BOSI: That is --

COMMISSIONER KLUCIK: How does it impact -- I'm assuming that it was integrated and, you know, it --

MR. BOSI: When we first brought this back -- and it was August of last year, correct, James --

MR. SABO: Correct.

MR. BOSI: -- the Planning Commission, the folks who spoke at -- the members of Forest Glen asked the Planning Commission and then asked the Board of County Commissioners to remove that 9.3-acre parcel, which is within their PUD, to remove them from the overlay because they did not want all these industrial uses that they haven't had time to study to be included as a permitted use within their PUD.

So the reason why you see that parcel circled -- because originally we had that, because it was part of the Innovation Zone, part of the Activity Center No. 9. Based upon the recommendation of the Planning Commission, the direction of the Board of County Commissioners, we've removed that from the Innovation Zone so these uses will not be -- will not be automatically permitted within the Forest Glen PUD, so -- and it will most -- the uses that you just heard and just approved will be approved, and those are the industrial uses they felt were appropriate.

COMMISSIONER KLUCIK: Right. So in other words, we're not changing anything that we just did, and the limitations that we just approved won't be touched by what we're doing.

MR. BOSI: They will not be affected.

COMMISSIONER KLUCIK: We've deliberately coordinated -- what we're doing now, what we're voting on now has been coordinated to not interfere with that?

MR. BOSI: Correct, correct.

COMMISSIONER KLUCIK: Okay. I just wanted to make sure.

MR. BOSI: Yes.

CHAIRMAN FRYER: Thank you.

Other questions or comments?

COMMISSIONER SHEA: So if we don't approve this, we don't have to come back at 5:00?

MR. BOSI: Correct. If you --

CHAIRMAN FRYER: Move to strike that from the record.

MR. BOSI: This is required for you to take action on the zoning action, which is at 5:05.

COMMISSIONER SHEA: I understand. I'm just being a wise -- you know, he left. Somebody's got to be smart.

CHAIRMAN FRYER: Just to -- without beating a dead horse, the reason this has to come up again this evening is because -- there is no applicant other than the county. It is -- and so we have to give people who are employed during the day an opportunity to come in and be heard on the zoning side, and that's -- you know, that's why we do these five minutes after 5:00 things.

Okay. Mr. Johnson.

MR. JOHNSON: For the record, Eric Johnson, LDC planning manager.

The main reason why we're coming back at 5:05 is because we're going to be modifying eight zoning atlas maps as well as introducing nearly 600 permitted and conditional uses. That requires the nighttime hearing.

CHAIRMAN FRYER: Thank you.

Anything further? Yes, Commissioner Schumacher.

COMMISSIONER SCHUMACHER: I just had one question. The industrial area that is currently -- the best way to put it, it's on the north side of 75. It's going to be east of 951 there, that's currently there. That zone would then -- those uses in that park would then be opened up to more industrial, correct?

MR. BOSI: The industrial uses within the Innovation Zone will be expanded to include all of those -- all the parcels within red, that City Gate PUD will have those additional uses added to that as well. And all of those property owners have been notified of this action, and we have -- we haven't had -- we haven't received any -- any commentary requesting -- other than the Forest Glen, to request that they be excluded from the overlay.

COMMISSIONER SCHUMACHER: Thank you. That was going to be my second question. Perfect. Thank you.

CHAIRMAN FRYER: Anything else from staff?

MR. SABO: Thank you, Mr. Chair.

CHAIRMAN FRYER: Thank you.

Mr. Youngblood, any public speakers?

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

CHAIRMAN FRYER: Thank you.

Anybody in the room who wishes to be heard on this matter, now would be the time to raise your hand.

(No response.)

CHAIRMAN FRYER: Seeing none, we will close the public comment portion, and we will take a vote on this, which is a GMPA.

Any discussion or a motion?

COMMISSIONER KLUCIK: Oh, I'm happy to make the motion to approve as we discussed.

COMMISSIONER SHEA: You're sitting in the motion chair.

COMMISSIONER KLUCIK: Yes.

CHAIRMAN FRYER: Motion chair. And there's no EAC component. So this is on the Large-Scale Growth Management Plan amendment. It's been moved. Is there a second?

COMMISSIONER SPARRAZZA: I'll second.

COMMISSIONER SCHMITT: Second.

CHAIRMAN FRYER: Thank you.

Any further discussion?

(No response.)

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

COMMISSIONER SCHUMACHER: 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, staff. Thank you, Planning Commission.

***So now I think we go to 10A, which is old business. It's the Comprehensive Administrative Code amendments for 2022. We're just a little bit late, that's all.

And we'll recognize Mr. Henderlong when he's ready.

MR. HENDERLONG: Good afternoon, Commissioners, Richard Henderlong, Planner III, Growth Management and Community Development Department working in the Zoning Division and specifically on the Land Development Code and Administrative Code.

Pursuant to your last Planning Commission meeting, which was January 5th of this year, you directed -- the Commission directed staff to work with the -- Chairman Fryer to identify what was insubstantial changes in the Administrative Code versus what was substantial changes.

The document before you today represents the insubstantial changes that the Chairman and staff have agreed upon. And this is going to -- this is your first group -- we're seeking your amendment -- first group to amendments to the 2022 Administrative Code for land development in order to be forwarded to the Board.

A second group of amendments will be coming forth to you in the future at a date that you will determine to address concurrently the substantial issues, which will be amending the Land Development Code and the Administrative Code concurrently.

So having said that, we seek the Commission's approval today of these insubstantial changes with one other caveat along with seven additional text edits and clarifications that I have on the visualizer in front of you as discussed with Chairman Fryer yesterday.

So we're happy to answer any questions or any comments you may have on the document today.

CHAIRMAN FRYER: Thank you. And the fact that I've been working with staff was at your direction but certainly in no way binding upon the Planning Commission, but we thought it might advance the cause. What we've endeavored to do was to identify some insubstantial changes, and we -- there were a few more that we discussed and were incorporated in the material.

Mr. Henderlong, do you want to touch on those?

MR. HENDERLONG: I'd be happy to talk to you a little bit about the seven. You'll see on the first one there it's just the cover sheet. We've got a new title. The second item deals with a minor strikethrough taking a word out. The third item is basically a clarification as distinguished that a member of the Board of County Commissioners can request a change in the use under Chapter 3.1.

So when you see the yellow highlight, that's going to be your new language for the most part with the exception of the first item, which is amending -- going to appear on the cover sheet.

Item 4 talks about how the NIM waiver is not applicable to matters coming before the Planning Commission. We needed to clarify that when it's deemed to be a decision maker.

CHAIRMAN FRYER: Mr. Henderlong, before you go to 5, the new language says the NIM waiver authority is not applicable to "the" matters, and I want to strike "the," please.

MR. HENDERLONG: Okay.

CHAIRMAN FRYER: It's just not applicable to "matters" coming before the Planning Commission.

MR. HENDERLONG: That's fine. We'll strike that. Thank you.

CHAIRMAN FRYER: Thank you. Number 5.

MR. HENDERLONG: And No. 5 is adding the Growth Management/Community Development Department back in. We had missed that. We had changed throughout the entire text. Since we last met, all the Growth Management Departments have been replaced with the new title, and this comports with the County Manager's organizational chart.

And just for the new members, there are two new divisions that have been added to the Growth Management Department: Housing and Economic and Community Resilience. That's in the document itself as well.

Number 6 is to delete the words "identifying each speaker by name." The NIMs are handled by the applicant. They're not handled by the county planning staff or directed through the LDC.

CHAIRMAN FRYER: Let me interrupt again, if I may.

MR. HENDERLONG: And Commissioner Fry will be happy to talk about it.

CHAIRMAN FRYER: Would you -- what I want to be sure that this does is it still requires the applicant's agents to identify themselves by name, but members of the public are not required to name themselves. They can simply say "member of the public." I can't tell you -- I mean, you've got some ellipses here, so I can't see what's been taken out. Would you read the full language?

MR. HENDERLONG: I'll be happy to. Let me turn to that page.

CHAIRMAN FRYER: I don't want the identifying each speaker by name coming out to also refer to it's coming out for the applicant's agent, because we do want them to identify themselves by name.

MR. HENDERLONG: Okay. The sentence would read this way -- and this is under the conduct of meeting -- the applicant is expected to make a presentation of how they intend to develop the subject property. The applicant is required to provide a written transcript or, in lieu of the transcript, an audible audio or video recording. What we're deleting -- we're ending it with a period, and we're deleting "identifying each speaker by name." So we'll say, "It will be the proceedings of the meeting and to provide that to the Zoning Division."

CHAIRMAN FRYER: That doesn't work.

MR. HENDERLONG: All right. Let me repeat it. Provide a written transcript --

MR. BOSI: I think what the Chair is asking is, with the elimination of requiring the speakers to identify their names, we need to put clarification that the applicant's team will identify themselves by name when they speak.

CHAIRMAN FRYER: Exactly.

MR. HENDERLONG: Got it. We'll add that.

CHAIRMAN FRYER: Okay. Thank you. Seven?

MR. HENDERLONG: And 7 is just to say that on -- under the office of the Hearing Examiner's procedure, we will retain the text without any change currently, that the Hearing Examiner may have ex parte communications with any party or person. There is some recommended language that the Hearing Examiner has submitted, but we deem that to be substantial and to be -- the further discussion to be carried forward in the future LDC Administrative Code amendment.

CHAIRMAN FRYER: And the HEX already has his own personal standard of practice that he does not engage in these types of ex parte discussions. So nothing will change for him. He'll continue to follow his own self-imposed professional standard. And then when we come to the "substantial changes" tranche, then we'll put it in the administrative procedures.

MR. HENDERLONG: That's our understanding.

CHAIRMAN FRYER: Exactly. Okay. Good.

All right. Any questions so far?

COMMISSIONER KLUCIK: I'm sorry, Mr. Chairman.

CHAIRMAN FRYER: Go ahead, sir.

COMMISSIONER KLUCIK: So what you're saying is his personal practice is not

required --

CHAIRMAN FRYER: Well --

COMMISSIONER KLUCIK: -- based on this language?

CHAIRMAN FRYER: Well, I didn't -- he has a preexisting personal practice of not engaging in ex partes with anybody, including staff.

COMMISSIONER KLUCIK: But we're saying here that's not -- he actually is able to if he wanted to.

CHAIRMAN FRYER: We're taking it out here, but it's going to come back when we do the "substantial." It's just that this round was unsubstantial changes only.

COMMISSIONER KLUCIK: I'm confused then.

MR. BOSI: This the --

COMMISSIONER KLUCIK: Is the yellow part being deleted?

MR. BOSI: This is existing language. We had proposed to eliminate this language based upon the request of the Hearing Examiner, but we've determined that that was substantial -- that would be a substantial change, which you guys will hear later, so we're going to leave this language that says the Hearing Examiner may have ex parte communication with any party.

COMMISSIONER KLUCIK: Okay. That's what I thought. Based on just reading the paragraph, that's what I thought.

CHAIRMAN FRYER: Yeah. It gives him more latitude than he wants to exercise.

COMMISSIONER KLUCIK: Sure.

CHAIRMAN FRYER: Okay. There are a few things that I want to touch upon. No one is signaling. Before I go ahead -- okay.

I want to tee up for preliminary observation, at least, and any discussion that you might want to have, the substantial changes that are going to come to us at a later hearing, not -- we're not going to be making any decisions on those at this time. But I just want to plant some seeds, some idea seeds in your head, and if you have some ideas that staff also ought to be thinking about with respect to substantial changes, that we verbalize those today as well so that when staff comes back some weeks or some months from now for our definitive action, we will have all had the advantage of this sort of precursor, if you will.

And so the first substantial change that I think we're going to want to address has to do with who flags insubstantial conditional uses -- or minor conditional uses.

MR. BOSI: Minor.

CHAIRMAN FRYER: Minor conditional uses. And the language is somewhat confused at this point, but -- there's a practice in place. And the -- I think -- I think what we want to get at is a situation that is somewhat like what HEX Mark Strain, my predecessor in the previous HEX, was doing. He had the advantage of being both Chairman of this commission and the HEX, but when he had any misgivings about whether a matter was of substantial importance or not, if he felt that it could arguably be considered of substantial importance, he would kick it to the Planning Commission. And he would still get to hear it as Chairman of the Planning Commission rather than just as the HEX. And it worked out, to my way of thinking, quite well.

My belief was, is that when he had any doubt at all, he would just kick it to the Planning Commission, and that worked really well.

Now the question comes, we've got a new Hearing Examiner with a new outlook on things. There are potentially some legal issues that need to be looked at. And I spoke with Ms. Ashton yesterday about these, and it's premature to get into any detail at this point. But some potential issues about the Hearing Examiner himself deciding whether or not, in his discretion, he's going to hear additional matters versus kicking them over to the Planning Commission. So we don't have -- we don't have a recommendation for you today, but we will in due course, and it will take account of that open legal issue that is yet to be resolved.

COMMISSIONER KLUCIK: When you're saying an open legal issue, meaning that if we make it so vague, then we might be creating a legal issue, potentially?

CHAIRMAN FRYER: Yes. If -- yes. Well, I'll go as far as to say this, without saying that I know the answer to this legal question; I don't. But there is a concern that if the Hearing Examiner, who gets paid by the job, gets to decide which jobs he hears, does that, perhaps, create the appearance of a conflict of interest? And I'm not saying it does. And, certainly, we're all going to defer to both the County Attorney and our staff to advise us on that, but it's premature at this point.

I don't want to put Andy, our Hearing Examiner, into a situation where he is creating the appearance of a conflict of interest, because I know he wouldn't want to do that. So we're just not quite ready to get that one resolved.

Did I say that correctly, Ms. Ashton? Anything you want to add?

MS. ASHTON-CICKO: Yes. Those are your concerns, yes, your concerns.

CHAIRMAN FRYER: Yeah. And that's all they are at this point, my concerns. They may or may not be shared by anyone else, but we need to deal with them.

Go ahead, Commissioner.

COMMISSIONER KLUCIK: Then, I guess, this is for everybody but certainly for counsel, if you want to weigh in. Is there any problem with not having specific criteria, Counsel?

MS. ASHTON-CICKO: I'm sorry.

COMMISSIONER KLUCIK: Is there any problem with not having very, you know, easily understandable criteria for whether or not it's the Hearing Examiner or the Planning Commission that hears something? Are we creating a problem where someone could object because it seemed like it was arbitrary and capricious as --

MS. ASHTON-CICKO: Well, I don't know that it's unclear. If the minor condition -- if the conditional use comes in and staff, you know, thinks it's not of -- you know, they just send it over to the Hearing Examiner, and he hears it. I mean, he's under no obligation to say I'm not going to hear it. I don't --

(Simultaneous crosstalk.)

MS. ASHTON-CICKO: You know, what comes to him, he hears unless he's got a conflict.

COMMISSIONER KLUCIK: -- very criteria so that it's not -- it's not something that someone can say --

CHAIRMAN FRYER: Let me interject, and I'll ask Mr. Bosi. What it says is "in the discretion of the HEX," and there are some criteria floating around such as EAC approval --

MR. BOSI: Correct --

CHAIRMAN FRYER: -- being necessary.

MR. BOSI: -- that's -- one of the criteria is if it requires EAC, it automatically goes to the Planning Commission.

CHAIRMAN FRYER: And there's also some language in some of these provisions that talks about great -- matters of great public importance.

So I agree -- I share your concerns, because I don't think those are sufficient criteria to guide the exercise of discretion, so that's my first concern. My second concern is -- and Mr. Bosi can speak to this or, if he wishes not to, he doesn't have to. But there is an aversion or a lack of appetite, let's say, on the part of staff to be getting directly involved in being the gatekeeper and sending to the Planning Commission, sending to the HEX. So in other words, we've got to bake this pie a little bit more before we slice it.

COMMISSIONER SHEA: Yeah, because even though you feel there may not be a conflict of interest, there's going to be a perceived conflict of interest, which is just as bad.

COMMISSIONER KLUCIK: Well, I think the issue as well is if you're a petitioner and it's not clear why the HEX heard it or why the Planning Commission heard it and you don't like the result, if you have a good attorney, they're going to -- they're going to say, wait a second, this was arbitrarily HEX or Planning Commission. It doesn't really matter which. The point is, we don't have a way to say with -- you know, where you could justify it legally that, like, well, no,

this -- this clearly was a HEX matter or this clearly was a Planning Commission. I don't know if it matters. It seems to me, though, that a good attorney would make it matter.

MS. ASHTON-CICKO: Well, usually the way it works is, you know, the petition gets filed. At the pre-app it's discussed where it's going to go. If the agents don't agree with where it's going, then they let us know, and it's reevaluated before it even gets set for hearing to anybody, so --

COMMISSIONER KLUCIK: So we avoid that --

MS. ASHTON-CICKO: -- it's not the petitioner who's, I don't think, going to object to where it's going.

COMMISSIONER KLUCIK: So we avoid the concern that I had that the petitioner getting -- him thinking that they have a complaint if -- because we're letting -- we're letting the petitioner -- let's put it this way: If the petitioner was adamant that the Planning Commission needed to hear it, you probably would defer to that or vice versa if they didn't want the Planning Commission?

MS. ASHTON-CICKO: Sure, but it's very unlikely they're going to want to have two hearings instead of one hearing and pay the extra costs and delay but, yeah, I'm sure -- you know, staff schedules the matters. They consult us when there's an issue, so they would have come to us if there was a problem.

CHAIRMAN FRYER: So these are good questions, Commissioner Klucik. And they're -- I have those and a few others as well. They're just going to require some further work on our part, and when this matter's brought back, I hope we'll have real solid answers for all these good questions.

Mr. Bosi.

MR. BOSI: And let me frame it specifically so I think people could understand of why this ambiguity -- and it does -- there would be a benefit for us to address it. Straight from the Code of Laws and Ordinances related to the Hearing Examiner it says, a minor conditional use is one which does not require Environmental Advisory Council review and which is not a case of great public interest or concern as determined in the discretion of the Hearing Examiner.

So when we have a pre-application meeting, the Hearing Examiner's not even involved. He doesn't even -- he doesn't know that a pre-application meeting has been submitted. So staff doesn't know if it's great concern. We wouldn't know if public are opposed to it or not. Until there is a neighborhood information meeting, until there is an actual public hearing, we wouldn't know -- the Hearing Examiner wouldn't -- couldn't know if there's great public concern. So it is a little nebulous, and to determine at the start -- you're saying if they make that -- the determination that it is of great concern, that would have -- that's made at a later point.

So I think we have to adjust when that determination is made and how that determination is made in a way that we can modify it clearly so the ambiguity is taken out of it.

And one of the other things I brought up yesterday, sometimes the great public concern's not known until the actual hearing. They may not show up for the neighborhood information meeting. They may not put their objection letters to the planner so the planning -- so the Hearing Examiner would know about it.

If they just show up, and there's four or five and then we say, okay, well, this has to go to the Planning Commission, so then the petitioner at that time, well, that adds three to four months onto their timeline. So we need -- that's some of the other complications that we're all going to have to kind of put out on the table to see if we could -- if we could propose some better language that's clearer as to when the -- when they go which route they should follow.

MS. ASHTON-CICKO: And I think it's fair for the Planning Commission to say we think that this language needs to be clarified, that it might be too discretionary. I think that's fair, and the Board will appreciate the recommendation.

CHAIRMAN FRYER: Thank you. All right. So that's one that I wanted to plant a seed of interest in everyone to be thinking about, but it's not for action today.

The next one under the same category -- and it's a little confusing because the word "substantial" and "insubstantial" get used in two different contexts. But we're talking about now PUD insubstantial changes, and there is a -- there is some -- there is a location in our substantive ordinances that says that is -- that insubstantial changes are in the exclusive jurisdiction of the CCPC, and there are other substantive ordinances that say that they are in the exclusive jurisdiction of the HEX. So that's just -- that's simply a conflict on the face of the LDC. But we're not dealing with the LDC today, so we're going to take a punt on that one for today and try to resolve that when it comes back to us.

All right. So that -- and since that is -- since it is substantial -- even though it's an insubstantial change, it's a substantial language change, we'll deal with that at a later time.

Then -- let's see. Bear with me here.

I've got one or two more that I want to point out. Okay. We've had -- we've had discussions about whether future administrative procedures will be reviewed by the Planning Commission as a matter of routine. The reason these came to us is because they were specifically flagged by the BCC, which said -- let's hear what the Planning Commission has to say first.

And I think -- well, I know it's my point of view that I believe that as a matter of routine for consistency, anytime there's a change to the administrative procedure, since they are so integrally connected to what we do with planning and zoning, that we should have a crack at them, and they should come to us.

So I'm going to be recommending that, when we come back on our substantial changes, that having a layer of review by us is not optional; it's mandatory.

Then -- oh, the role of the staff representative at a NIM, and there has been a lot of thought and conversation about this, and I've learned some over the last however many years I've been up here. But it's clear that the current language, which says that the staff person there is the facilitator of the NIM meeting, that's not accurate, and it's not intended. The NIMs are the applicant's show. But there is an important role for the staff person to play. It's just not a facilitator role. And that role has to do with being sure that the applicant doesn't do something or say something that is contrary to Collier County substantive law or administrative procedures. And so that will be added to the substantive materials when they come back to us at a later time.

COMMISSIONER KLUCIK: Mr. Chairman?

CHAIRMAN FRYER: Commissioner Klucik.

COMMISSIONER KLUCIK: So the point of what your concern is there is that -- or the point of what -- the role of the staff member is not to prevent them from doing it, but if someone is misleading the public as to what the law is or the regulations or the code is, that the staff member would be there to make sure that an accurate representation -- so if the petitioner says X, which helps them, but X is false and misleading, the staff member would be there to otherwise make sure that anything that's done that's misleading to the public, the county is there to help the public understand what's what.

CHAIRMAN FRYER: Yeah, that's exactly right. And it clarifies the misapprehension -- the misapprehension that I had when I first looked at that that the NIMs were really being run by/overseen by staff, and that's not the case.

COMMISSIONER KLUCIK: Because then the county would be responsible for what the meeting accomplishes, and they're not. The county is there to be a witness to what's happening and to help the public -- to prevent the public from being misinformed, essentially.

CHAIRMAN FRYER: Yeah. And I think further -- go ahead, Vice Chairman.

COMMISSIONER SCHMITT: Mr. Chairman, just for clarity and to follow up what Robb said, just a note that that -- the staff person is there because they serve as the point of contact, for the public to contact -- if they want any information from the county staff. That person typically is the person whose name is on the advertisement as the point of contact, and that is typical as well is that person is also on the sign that is posted out in front of any type of advertisement for a PUD or any other type of zoning action.

So -- and they are -- Robb, they -- that person serves as, frankly, nothing more than the point of contact for any public to inquire as to staff procedures or documents or any other types of things.

And the Chairman is correct, the staff is not there to run or be perceived to be taking ownership of that meeting.

Thank you.

COMMISSIONER KLUCIK: And in that light, they also wouldn't -- I kind of maybe misstated that they're not responsible for making sure misinformation is corrected. They're there to answer questions and provide the public with the information to the extent they can or a conduit for further -- further communication, and then the record itself -- the minutes or the -- or the video or the recording would allow us to know whether or not any misrepresentations -- because that would be too much onus to put on that staff member to be there to call out any misinformation.

CHAIRMAN FRYER: Yeah. And further to that, I think, we -- it would not be a sign of a well-run NIM if staff was there doing most of the talking.

Ideally, the staff would be seen and not heard. And most of the time I think that's how it goes.

Mr. Bosi.

MR. BOSI: I will let the Planning Commission know that tentatively right now for your April 6th meeting, modifications to the NIM proceedings will be brought to you, and that's -- changing this facilitator language is part of that package.

But what else we do at the meeting is we serve as the recorder to make sure any developer commitments that are made at the meeting, the staff is there to know that -- and from a procedural standpoint, where is the next step, what's the code say. We'll provide clarification if we need to if, you know, there was a misstatement or there's a question as to, all right, what's the next step in the process if the applicant, you know, doesn't provide for it. We let them know. And we really provide just, like, general information related to the process and moving forward.

COMMISSIONER KLUCIK: But it's not your job to catch a misrepresentation of the applicant. You might catch it, but it's not -- it's not your duty --

MR. BOSI: We don't stand up and -- we don't stand up and say we question that individual statement. Now, if it was -- if he said the code in the C-2 zoning district provides for a height of 115 feet, and we know that's not correct, we would say that's not a correct statement, and we would cite the code and what it read.

CHAIRMAN FRYER: Exactly. Thank you.

And I think -- oh, then another substantive issue that we're going to want to talk about is appeals from official interpretations of the meeting of the Land Development Code. And the way this is set up is Mike Bosi occupies the office that the Board of County Commissioners has designated to be the official interpreter of the meaning of language of the LDC. Now, that can -- that interpretation is the official county interpretation, but it can be challenged and appealed.

And so the question is -- and we're not dealing with this today, but when we come to the substantive issues, the question is, is should appeals of official of interpretations be allowed to bypass the Planning Commission? In other words, the HEX hears them, then they go right to the Board of County Commissioners, or somehow should we be able to weigh in and be heard on challenges to official interpretations of the LDC?

So, again, just planting the seed for you to be thinking about.

And then the final one I have here has to do with comparable-use determinations. And as you know, frequently, the -- well, the HEX is frequently called upon to make a comparable-use determination as is the BZA. And "comparable" is a word that is defined in the dictionary in such a way as to really offer very little guidance as to what things really are comparable. And point of fact, everything in the universe is comparable to everything else in the universe. It might be totally dissimilar, but it can be compared one to the other.

So we've been looking for language that tightens up and get more what I think is the

intention. And so what I have been speaking with staff about, and staff is weighing this and has not come to its conclusion yet, but my recommendation -- I'm just, again, planting a seed for you to think about -- to meet the definition of a comparable-use determination ought to touch on three prongs: Consistency, compatibility, and in-scale.

So be thinking about those things, and we're going to all be coming back to you on all of that. And that's really all I have. And does anyone else wish to be heard on any of this? Because we do have the insubstantial changes in front of us for action today.

(No response.)

CHAIRMAN FRYER: No one is signaling.

Mr. Henderlong, do you want to wrap it up?

MR. HENDERLONG: Yes. With that said, I just want to let you know that in your packet 802 and in the back there, you're going to see a list of discussion items for the LDC. In preparation and anticipation for it, also in your packet, we gave you a chart. It's hard to read at an 8-and-a-half-by-11 reduction that shows where some of the conflicts are between the different codes. So we'll bring all of that back with the PDIs in our next go-round.

CHAIRMAN FRYER: And that will be very helpful, because there are conflicts in the existing language, and the burden is on us to make recommendations for those conflicts to be resolved.

MR. HENDERLONG: Yes.

COMMISSIONER SCHMITT: Mr. Chairman.

CHAIRMAN FRYER: Go ahead, Vice Chair.

COMMISSIONER SCHMITT: Just to make a comment. I want to personally thank you, and I'm sure my colleagues do as well, for you taking the time to go through this in the excruciating detail that you did. You certainly took a burden off of us, and I thank you for going through this and working with the staff. It's just a great job. Thank you.

CHAIRMAN FRYER: Thank you, sir, very much. I appreciate those words.

Mr. Bosi?

MR. BOSI: Before we close the item, I would like to have a little discussion in terms of one of the things that we recognize that these substantial changes are going to need are possible modifications to the Land Development Code as well. And if we would bring those modifications to the Land Development Code as well to the Planning Commission, that's going to demand a much longer time frame before it would get to you, because we'd have to identify what the resolution of these issues would be, what -- the modifications to the Land Development Code and/or the Administrative Code, and then we'd have to bring at least the Land Development Code back to the -- back to the DSAC -- or the subcommittee; DSAC, which is the Developer Services Advisory Committee. It's the step LDC amendments go before they hit the Planning Commission, and then bring them to the Planning Commission.

Just to give you a time frame so it may not -- it won't be within the next month or so that you're going to see these substantive issues come back.

But the other aspect, as you did before, would the Planning Commission feel that it's appropriate to give the Chair, Mr. Fryer, the discretion to have some meetings with the County Attorney and staff and potentially the Hearing Examiner as we talked about to try to find the right path forward on some of these issues? And I --

COMMISSIONER SCHMITT: I make a motion to so -- I make a motion, as Mike Bosi stated, to give the Chairman the authority to do that on behalf of the Planning Commission with the provision, of course, that it comes back with us so we can all be clear as to what changes are being recommended, because we eventually will vote on it in the end. Thank you.

CHAIRMAN FRYER: Thank you, Vice Chair. Is there a second to that?

COMMISSIONER KLUCIK: Mr. Chairman?

CHAIRMAN FRYER: Mr. Klucik.

COMMISSIONER KLUCIK: And this is as to -- this is not a -- this is a temporary thing

for this situation. It's not the Chairman always has that. It's -- we're giving the Chairman for this round to do that?

CHAIRMAN FRYER: That's certainly my understanding.

COMMISSIONER KLUCIK: Because we won't always have this chairman as our chairman because, Joe, when you're the Chairman, I don't know if I'd trust you with that authority.

COMMISSIONER SCHMITT: Well, that's a good thing. That's a -- that's a good point. I strike from the record.

But, no, it's for the review of the Administrative Code, Robb. And it's -- it's an important piece. The Administrative Code provides the path and the planning process for the applicant. It's a detailed document, and I think given what our chairman has gone through, I think it's very appropriate for him to continue on the same path and to review these other documents before they come back to us.

COMMISSIONER KLUCIK: No. And I would just second that I'm very grateful that our chairman is, obviously, very committed to making sure that we run a very professional ship, and this is part of that. And I can't imagine, you know, trying to go forward with this process without, you know -- and I appreciate the staff kind of suggesting, you know, this -- what we're -- you know, what's been moved, so I definitely will second it.

CHAIRMAN FRYER: Thank you. And great work to staff; great work to the Planning Commission.

Any further discussion on the motion that's now been seconded?

(No response.)

CHAIRMAN FRYER: If not, let's see -- well, we've got actually two motions. Have we had a motion to substantively approve, or is this just on my authority to meet on a one-off basis?

MR. BOSI: The motion that was on the floor was simply the allowance for the Chair to work on the substantive issues.

CHAIRMAN FRYER: Okay. Let's have a vote on that, then.

Any further discussion?

COMMISSIONER SPARRAZZA: Mr. Chairman?

CHAIRMAN FRYER: Yes, Commissioner.

COMMISSIONER SPARRAZZA: I just want to make sure that we haven't told you or asked you to do something without you accepting it. Do we need to make that kind of legal --

CHAIRMAN FRYER: Thank you. I accept, with pleasure. Thank you.

Any further discussion?

(No response.)

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

COMMISSIONER SCHUMACHER: 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.

COMMISSIONER KLUCIK: I don't know if I regret that, because if that give you pleasure, then I'm kind of wondering.

CHAIRMAN FRYER: It gives you some insight into my -- I'm wired pretty weirdly, that's all I'll say.

COMMISSIONER SCHMITT: I make a motion that we approve the sections that have come before us today and recommend they move forward and recommend approval as written and

as discussed.

CHAIRMAN FRYER: Thank you. Is there a second?

COMMISSIONER SHEA: Second.

CHAIRMAN FRYER: It's been moved and seconded that we approve the insubstantial changes that staff has presented to us with, I guess, the -- with the changes, Mr. Henderlong, that you --

MR. HENDERLONG: Yes.

CHAIRMAN FRYER: -- that you had, 1 through 7 and a couple of minor changes to those changes.

MR. HENDERLONG: Yes, we'll put that in the final document --

COMMISSIONER SCHMITT: Yeah. With those changes.

MR. HENDERLONG: -- to go to the Board.

CHAIRMAN FRYER: All right.

COMMISSIONER SCHMITT: I amend my motion with the changes that -- as noted.

Thank you.

CHAIRMAN FRYER: Thank you. And the seconder amends the second?

COMMISSIONER SHEA: Yes.

CHAIRMAN FRYER: All right. It's moved and seconded. Further discussion on this? (No response.)

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

COMMISSIONER SCHUMACHER: Aye.

COMMISSIONER SHEA: Aye.

CHAIRMAN FRYER: Aye.

COMMISSIONER SCHMITT: Aye.

COMMISSIONER KLUCIK: Aye.

COMMISSIONER SPARRAZZA: Aye.

CHAIRMAN FRYER: Opposed?

(No response.)

CHAIRMAN FRYER: Thank you, all. It passes unanimously.

And we've reached a rather awkward point in our day, because it's 20 minutes after 2:00, and we now have some downtime till five minutes after 5:00. And if we were going to continue much longer, we'd want to have a court reporter break anyway.

But before we recess, is there anything that anyone wants to talk about for the next 10 minutes or so that -- I mean, this would be an opportunity. Anything you've got on your mind.

COMMISSIONER KLUCIK: Are you sure you want to give me that opportunity?

CHAIRMAN FRYER: Limited to 10 minutes, I am.

(No response.)

CHAIRMAN FRYER: If not, we will see you back here.

Mr. Bosi, did you want to say something?

MR. BOSI: I just wanted to apologize to the Planning Commission. We were trying to make a determination of how much time was going to be needed, and there was, for whatever reason, maybe call it cynicism, but I was unsure of the Forest Glen item, if we were going to have some additional discussion from individual members of Forest Glen who maybe weren't in agreement with the homeowners association and maybe had taken exception to some of those industrial uses that were being proposed. So out of that caution, or cynicism, I had thought that maybe it was going to be a longer discussion. So I apologize for having now put two-and-a-half hours of downtime between us and the 5:05 meeting.

CHAIRMAN FRYER: Thank you. No apologies are necessary, because this is better than if we were here till 9:30 or 10:00 at night.

So, Commissioner Klucik.

COMMISSIONER KLUCIK: Yeah. I just want to say I will not be attending the

afternoon.

CHAIRMAN FRYER: The evening.

COMMISSIONER KLUCIK: The evening.

CHAIRMAN FRYER: Okay. Well, thank you for your participation this afternoon.

Anything further? If not --

COMMISSIONER SHEA: We need to vote, right?

CHAIRMAN FRYER: Didn't we vote already?

COMMISSIONER SHEA: No, no, no. He's not coming. I just want to make sure we have a quorum.

CHAIRMAN FRYER: Okay, good point. Anybody else unable to participate this evening? And that question also to be asked of the Vice Chair.

COMMISSIONER SCHMITT: Mr. Chairman, I am doubtful whether I'll be able to attend that meeting. I'll try. I'll call in at that time.

CHAIRMAN FRYER: Okay.

COMMISSIONER SCHMITT: I will not be on Zoom.

CHAIRMAN FRYER: Okay. I don't think that that's going to create a problem, because we're going to have at least four. So thank you. Thank you for bringing that up about the quorum, but it looks like we're going to be solid.

Anything further before we go into recess?

(No response.)

CHAIRMAN LoCASTRO: If not, we're in recess until our second session, which will commence at or about five minutes after 5:00.

There being no further business for the good of the County, the meeting was adjourned by order of the Chair at 2:22 p.m.

COLLIER COUNTY PLANNING COMMISSION

EDWIN FRYER, CHAIRMAN

These minutes approved by the Board on 4/6/23, 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.