

TRANSCRIPT OF THE MEETING OF THE
COLLIER COUNTY PLANNING COMMISSION
Naples, Florida
May 4, 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
Paul Shea
Randy Sparrazza
Chuck Schumacher
Amy Lockhart, Collier County School Board Representative

ABSENT:

Joe Schmitt, Vice Chair
Robert L. Klucik, Jr.
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. BELLOWS: Chair, you have a live mic.

CHAIRMAN FRYER: Thank you, Mr. Bosi.

Good morning, ladies and gentlemen. Welcome to the May 4, 2023, meeting of the Planning Commission.

Everyone, please rise for the Pledge of Allegiance.

(The Pledge of Allegiance was recited in unison.)

CHAIRMAN FRYER: Mr. Secretary, please call the roll, sir.

COMMISSIONER SHEA: Mrs. Lockhart?

MS. LOCKHART: Here.

COMMISSIONER SHEA: Mr. Schumer [sic]?

COMMISSIONER SCHUMACHER: Here.

COMMISSIONER SHEA: Mr. Sparrazza?

COMMISSIONER SPARRAZZA: Here.

COMMISSIONER SHEA: Mr. Klucik is not here. Mr. Vernon is not here. Mr. Schmitt is not here. Commissioner Shea is here.

Commissioner Fryer?

CHAIRMAN FRYER: Here.

COMMISSIONER SHEA: We have a quorum, sir.

CHAIRMAN FRYER: Quorum of four. Thank you very much.

With respect to excused absences, all three absences have been fully justified and are, of course, excused.

Addenda to the agenda; Mr. Bellows?

MR. BELLOWS: Good morning. We have no changes.

CHAIRMAN FRYER: Thank you.

Planning Commission absences; our next meeting will be on May 18, 2023. Does anyone know if he or she will not be able to attend that meeting?

COMMISSIONER SPARRAZZA: I should be good.

COMMISSIONER SCHUMACHER: I don't have any conflicts.

CHAIRMAN FRYER: All right. It all sounds good. Thank you. So we hope we will have a quorum.

Then the meeting after that is June 1, 2023. Same question: Anyone know if he or she will not be able to attend that meeting?

(No response.)

CHAIRMAN FRYER: Okay. Thank you very much.

Approval of minutes; we have one set before us, those are of our April 6th, 2023, meeting. Any corrections, changes, or edition to those minutes?

(No response.)

CHAIRMAN FRYER: If not, I'd entertain a motion to approve.

COMMISSIONER SCHUMACHER: I'll motion.

CHAIRMAN FRYER: Is there a second?

COMMISSIONER SPARRAZZA: Second.

CHAIRMAN FRYER: Further discussion?

(No response.)

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

COMMISSIONER SHEA: Aye.

CHAIRMAN FRYER: Aye.

COMMISSIONER SPARRAZZA: Aye.

COMMISSIONER SCHUMACHER: Aye.

CHAIRMAN FRYER: Opposed?

(No response.)

CHAIRMAN FRYER: It passes unanimously.

Thank you very much.

BC [sic] report/recaps, Mr. Bellows.

MR. BELLOWS: Yes. On April 25th, the Board of County Commissioners approved the rezone for Justin's Village. That was a rezone to RMF-12. The vote was 5-0 subject to CCPC recommendations.

On the summary agenda, they approved an LDC amendment for the CBIIZO, and then the Growth Management Plan amendment to add the U.S. 41 East Overlay was approved by the Board 5-0.

CHAIRMAN FRYER: Thank you, sir.

Chairman's report; none today.

Consent agenda; again, none.

***Public hearings, advertised; the first out of the box today we will hear two companions.

They are PL20220003426, the Immokalee Road Estates Commercial Subdistrict Small-Scale Growth Management Plan amendment and its companion, PL20210003428, the BCHD1 Commercial PUDA.

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

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?

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

CHAIRMAN FRYER: Thank you.

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

MS. LOCKHART: Staff materials only.

COMMISSIONER SHEA: Staff materials only.

CHAIRMAN FRYER: In my case, public record, meeting with staff, communications with applicant's agents.

COMMISSIONER SPARRAZZA: Staff materials only.

COMMISSIONER SCHUMACHER: Meeting with staff and staff materials.

CHAIRMAN FRYER: Thank you very much.

With that, the Chair recognizes Mr. Davies.

MR. DAVIES: Thank you, Mr. Chairman.

Good morning, Commissioners. Noel Davies with the law firm of Davies Duke on behalf of the applicant, BCHD1 Partners, LLC.

I have the full project team with me here today. Eric Mallory is our client representative. You'll hear from Chris Scott shortly, our land-use planner with Peninsula Engineering. Dan Waters, the project engineer, is also here from Peninsula Engineering, as well as Bruce Layman, our environmental expert.

This project was already approved unanimously in 2021, and all we're here for today is a slight amendment to reconfigure the project boundaries a bit and shift around some of the developable area at the north end of the site only.

In order to do that, we were required to go back through the public-hearing process, so this is our amendment to the existing PUD and corresponding GMPA.

I think almost all of you were on the Planning Commission when this was previously approved. This is Barron Collier's project. It's located on the west side of Immokalee Road where it turns north at Randall. We're just north of the so-called Randall Curve mixed-use project. Our property is located at the existing traffic signal at Orangetree Boulevard and Immokalee Road.

Here's what was previously approved in '21. All commercial up to C-3 uses, 200,000 square feet on just over 19 acres.

Since that approval, my client has received some community feedback for more neighborhood-type uses. For example, an Ace Hardware-type user within a small commercial plaza. We do want to try to honor that request. But in order to do so, we would need to tweak the

site layout a bit.

Today, this portion of the PUD would only be suitable for, say, a bank or fast-food operator, two traditional outparcels, not a small hardware-store-anchored plaza.

Chris Scott is going to walk you through the rest of the specifics, but the short of it is that we're seeking to add today just over two-and-a-half more acres at the very north end of the property, specifically 2.69 acres. That would allow us to reconfigure the location of some of the water management and preserve areas so that we get a bit more developable area to the northern end of the site. No vertical structures would be constructed on the two-and-a-half acres we're seeking to add.

We are not adding any new uses to the permitted-use list, we are not changing any of our development standards, and we are not increasing any net trips from a traffic perspective.

We are requesting that the 200,000 square feet of commercial be exchanged for 100,000 square feet of commercial and 130,000 square feet of self-storage, all of which would be indoors. But because self-storage use has less trips than traditional C-3 commercial uses, there's no net trip increase. And we are actually increasing the amount of preserve, landscape buffers, and open space. Again, Chris will share those specific numbers and those specific increases.

So even though there's no material increase in intensity, we're required to go back through the public-hearing process, and that's why we're here.

The location of the area we're seeking to reconfigure is only the northern portion of the site. If you look at the side-by-side here of the existing Master Concept Plan approved in '21 on the left versus the proposed Master Concept Plan, you'll see that we're shifting preserve to the new acreage. Then that gives us a bit more developable area in this northern C Tract. This section of the PUD is the only section we're seeking to reconfigure. Everything else stays the same. No changes to the southern portion of the site.

And because of that, there is a condition from staff that staff is proposing. Staff has reviewed the applications and is recommending approval with this one condition that we do object to, respectfully. The thinking behind that is that the portion of the PUD, as I mentioned, this northern portion that we're seeking to change, is nowhere near the subject area where staff wants an enhanced buffer, which is over here.

The staff condition purports to require a 6-foot-high wall and additional clusters of palm trees, three palms every 16 to 24 feet, none of which was required by the original approval. The original approval included, in this area of the site, a standard 15-foot Type B landscape buffer.

Staff recommended approval of that. This Planning Commission unanimously recommended approval, and the Board of County Commissioners approved it unanimously.

The subject area, again, here, where staff is seeking this extra buffer, it's already heavily vegetated in this area. The Type B buffer should be more than sufficient to provide the needed buffering.

My client actually already obtained an SDP for a portion of this area where the enhanced buffering is now being requested by Comp Planning staff. And the county's SDP staff did not require that enhanced buffer. So we've got a serious inconsistency here amongst staff. It doesn't make sense, and it's a significant and unnecessary additional cost to my client.

We've tried to work through this with staff in good faith. Unfortunately, we're at an agree-to-disagree posture. We are already providing a 5-foot-tall hedge and shade trees every 25 feet. The immediately abutting property owners in here (indicating) are not requesting this, especially given the dense existing vegetation from Fourth Street Northeast and the project boundary.

And so the bottom line is that this was not required before. We're not touching this portion of the PUD and subdistrict, and we shouldn't all of a sudden be required to enhance the previously approved buffer. So we are respectfully asking that you dispense of that staff condition.

And with that, I will turn it over to Mr. Scott to walk you through the rest of our

PowerPoint.

Thank you, Mr. Chairman and Commissioners.

COMMISSIONER SHEA: I've got a question.

CHAIRMAN FRYER: You're not lit up, but go ahead, Commissioner Shea.

COMMISSIONER SHEA: It's lit.

CHAIRMAN FRYER: Not over here, it's not.

COMMISSIONER SHEA: What's the cost of what the staff is looking for?

MR. DAVIES: I don't believe we've done a calculation of that. It's the difference between -- well, it's -- in addition to the 5-foot hedge, it's an additional 6-foot-high wall over this portion of the property right in here (indicating), through the linear footage of that, plus three additional shade trees every 16 to 24 feet.

CHAIRMAN FRYER: Someone from the control room, please come in. My deliberator is not working. It's not reflecting the names of the people who are signaling to be heard.

Anyone else wish to be heard at this time?

COMMISSIONER SPARRAZZA: No, not yet.

CHAIRMAN FRYER: Okay. Thank you.

MR. SCOTT: For the record, Chris Scott, planning manager with Peninsula Engineering. I'll be relatively brief since Noel gave such a good overview of the project.

Again, this is the location. As Noel had mentioned, this PUD was initially approved along with the GMP subdistrict in 2021.

Since the approval, the westernmost 361 feet that is not colored in, it's 1.49 acres there along Fourth Street, has been sold and conveyed to the adjacent property owner on the north side of that. That was a developer commitment that was included in the initial PUD.

Subdivision plans were approved last September. As part of that subdivision plan approval, the landscape plans consistent with the PUD approval were approved.

The site has been cleared. We have had a number of projects that have been approved already on the southern four commercial tracts. Tract D, there's a McDonald's that already has received SDP approval. Tract B, which is the southwestern commercial tract, has been approved for a self-storage facility.

And then we've had two -- well, we've had one existing pre-application meeting for a proposed NCH medical office on Tract A, which is located here (indicating). And then there is a -- it has not been scheduled yet, but there is a pre-application meeting in the process of being scheduled for another neighborhood health clinic on the southeast commercial tract.

As Noel stated, this amendment is solely dealing with the addition of property on the north side of Orangetree in order to reconfigure the preserve shown in the darker green, and the commercial Tracts E and F as shown on the north side of Orangetree Road -- or Boulevard.

As Noel mentioned, there is a slight change to the approved intensity. This actually results in less intense commercial intensity that was originally approved. The commercial intensity will go from 200,000 to 100,000 square feet, and we're breaking out that self-storage use that was previously approved and capping that at 130,000 square feet.

Again, it doesn't change the permitted uses, the development standards; there's no increase in trips that were approved, and that doesn't affect the four southern commercial lots that have already been subdivided, and some of them have already received site plan approval.

Again, these are the existing and proposed Master Concept Plans. This table kind of shows the changes in areas that were shown on the Master Concept Plans that were originally approved and the proposed master plan.

The PUD rezone also does include one deviation related to the property. That would be to the north of -- on the northern side. That deviation is related to parking requirements. The architectural standards require that you limit the amount of parking between the front facade of a building and the adjacent roadways.

We have a commitment in our PUD that we are maintaining to provide internal access to

the northern and southern parts of the site. With that, and the desire to keep parking away from the residential uses, we're asking to be allowed to provide 100 percent of the parking between the building and Immokalee Road. Staff has stated they are in support of this deviation.

The other clarifications that were made, we were asked to add the word "indoor" prior to air-conditioned mini-storage. We updated the legal description to reflect the additional acreage. The preserve requirement is updated. And then we've updated some of the development commitments that pertain to what could happen to that western 361 feet to acknowledge that that land has already been conveyed to the adjacent Estates property owner.

Again, staff has recommended approval with the condition for an enhanced buffer along this southwest portion of the site. As Noel, I think, explained, we respectfully object to that condition. Again, the amendment is related to the northern portion of the site, and there are no material changes that warrant an enhanced buffer at this time at that location.

I do have some slides that would show from Fourth Street over to our project site if you'd like to see it to visualize how the existing landscaping there shows -- I'll go ahead and show it. But it shows that the existing landscaping along Fourth Street shields our development from that side.

So these kind of -- starting from the northern portion of Fourth Street, you can see it's a lot of existing pine and native vegetation, and then as you move further south, this is looking directly east towards Immokalee Road.

And unless you have other questions, I'm happy to answer those or...

CHAIRMAN FRYER: Thank you.

The deliberator is not working, so if anyone has a question, we'll have to do it the old-fashioned way.

Commissioner Sparrazza.

COMMISSIONER SPARRAZZA: Good morning, and thank you for your presentation.

If we could bounce back to maybe four, five slides before the question area. In your description, I believe you had Tract B at one point being self-storage, correct?

MR. SCOTT: Correct.

COMMISSIONER SPARRAZZA: Is that now being all added together to the upper area, which is now self-storage? So you're not going to have two self-storage units?

MR. SCOTT: No. The only self-storage has already been approved in SDP, and it's located on Tract B, which is the southwest commercial lot right here (indicating).

COMMISSIONER SPARRAZZA: Okay. Then what is the large building that's going up in the most northern section of it? I apologize, I thought that was -- you were shifting the self-storage to the northern area, but that's incorrect?

MR. SCOTT: That is incorrect.

COMMISSIONER SPARRAZZA: All right. So what is that large building with all the parking to the east of that tentatively looking to house?

MR. SCOTT: Yeah. That would be a neighborhood shopping center, and the intention would be to --

COMMISSIONER SPARRAZZA: Yeah, up -- there you go.

MR. SCOTT: A neighborhood shopping center, and we were working to hopefully have it anchored --

COMMISSIONER SPARRAZZA: Anchor store.

MR. SCOTT: -- with a small hardware store.

COMMISSIONER SPARRAZZA: Okay. Self-storage has not increased?

MR. SCOTT: Correct.

COMMISSIONER SPARRAZZA: You have reduced the overall commercial by about 70- or 100,000 square?

MR. SCOTT: Total square footage went from 200,000 to 230,000 square feet, the overall square footage --

COMMISSIONER SPARRAZZA: Okay.

MR. SCOTT: -- but we have broken it up to 130,000 of self-storage and --

COMMISSIONER SPARRAZZA: A hundred of general --

MR. SCOTT: -- other commercial, which would be 100,000.

COMMISSIONER SPARRAZZA: -- commercial.

Okay. And the buffer to the most east side of where all the parking is, I recognize you have an access road that might exit to the north, but the buffering, we'll call it, on the east side of that road to block visual of the cars is what?

MR. SCOTT: The 20-foot Type D buffer.

COMMISSIONER SPARRAZZA: Okay. Okay. Very good. Thank you for your answers. I appreciate them.

MR. SCOTT: Thank you.

CHAIRMAN FRYER: Thank you. Any other planning commissioners have questions or comments?

(No response.)

CHAIRMAN FRYER: I have a few.

And in full recognition of the talents and capabilities of Mr. Davies, who's done a good job in presentation and advocacy, nonetheless, I think it would behoove us to step back a little bit and look at a couple of things.

First of all, when we approve a PUD or a GMP, it involves a rather delicate balance of burdens and benefits that are in front of us at the particular time. And when an amendment comes back and a different set of burdens or benefits is asked for, in my view -- and it's always been my view, and I think it's staff's view, that it really puts everything on the table. So it's not unfair or inappropriate for staff to take another look at, for instance, in this case, the condition from the standpoint of what, in its judgment, would be in the best interest of Collier County. So I just think that needed to be said.

And the other thing that I wanted to point out was the trip -- the trip cap will go -- the needed trips will go down from your current 681, because we all know that storage -- storage is a very low-impact use, and you're going to have considerably fewer trips on the road if the majority of your square feet is going to be storage.

So it seems to me that since p.m. peak-hour trips are the coin of the realm in the county, and everyone wants them, and we want to be sure that we don't leave, unnecessarily, too many trip caps -- or trips in the hands of a developer who doesn't need them, it seems to me we need to give serious consideration to reducing those trip caps.

And, finally, the -- and, again, no fault at all to Mr. Davies the way he characterized it, but, basically, what we're talking about is increasing commercial from 200- to 230,000. I don't have a problem with that, but I just want to be sure that it's been stated in that fashion.

Having said that, anybody else want to be heard?

(No response.)

CHAIRMAN FRYER: Before we go to staff, anything else from the applicant?

MR. DAVIES: No, Mr. Chairman. I would like to respond to your comments, but after staff.

CHAIRMAN FRYER: You're welcome to.

MR. DAVIES: After staff.

CHAIRMAN FRYER: Oh, okay. That's fine.

Then we'll hear from staff at this time.

MS. HANSEN: Good morning. Rachael Hansen with Comprehensive Planning.

Nancy and I have a brief presentation to contextualize the condition that we are requesting.

That one's -- there is, again -- sorry about that.

Okay. So the applicant has already given you an overview of the application for the two companion petitions and, like I said, we just wanted to provide some context for the conditions that

we are imposing -- or, rather, the single condition that we're imposing for the Growth Management Plan amendment as well as the PUD rezone.

So for site-specific Growth Management Plan amendments within the Golden Gate Area Master Plan, we typically impose the neighborhood center subdistrict language for a 75-foot buffer. When this was adopted in 2021, that buffer -- and to clarify, that buffer is used when Estates residential directly abuts commercial zoning.

So, again, when this was adopted in 2021, that buffer was not used. And so upon this rereview, staff is recommending an enhancement to the Type B buffer that was approved to mitigate for those existing conditions along just the southern portion of that western boundary that the applicant did point out.

And so for the Growth Management Plan amendment, the subdistrict text refers directly to the provisions in the PUD language. And so I will let Nancy go ahead and discuss the specifics of that PUD language.

CHAIRMAN FRYER: Thank you.

Ms. Gundlach.

MS. GUNDLACH: Good morning, Commissioners. For the record, I'm Nancy Gundlach, principal planner with the Zoning division. And I just wanted to mention, the previous speaker was Rachael Hansen, and she's also a principal planner, but she's with Comprehensive Planning. And also, Commissioners, just for the record, I'm also a licensed landscape architect, so I'm speaking about the buffer today.

Okay. This is -- this is the view of a typical -- and this is at infancy -- 75-foot-wide preserve separation in the Rural Estates adjacent to commercial. And we have that on part of the BCHD on the northern portion, okay, and -- however, on the southern portion, where you see that yellow highlighted line, we just have a minimum Type B buffer.

And we took some photographs while we were out doing a site visit. And this shows the BCHD next to and adjacent to a residential property, and you can see the residence there. And here's a view where the proposed NCH offices are going to be installed, and you can see that there's not much obstruction there, and certainly not a 75-foot-wide buffer.

I took a picture, so you can see what a Type B buffer looks like. It's a hedge with trees 25 feet on center, and that happens to be next to a storage facility, which we have proposed here as well.

And that is what was presented at the pre-application meeting for the NCH offices, and you'll see the other concern we have as staff is we have parking similar to what we have in the photograph there that will be right next to a Rural Estates residence. So that is the reason we're requesting an enhanced B buffer.

You know, keeping in mind normally we have 75-foot requirement there. We're not asking for 75 feet. This is -- this is our compromise. Just supplement the 15 feet that are already there with a 6-foot-high wall and trios of palms at staggered heights just so that initially we can get a little bit better buffer going between commercial and Rural Estates residences.

And with that, I'm happy to answer any questions you might have.

CHAIRMAN FRYER: Thank you.

Commissioner Shea.

COMMISSIONER SHEA: Could you explain again -- I didn't fully grasp what you said about what was in effect at the time that the original PUD was approved without the wall and why it wasn't in effect at that time.

MS. GUNDLACH: Do you want to respond?

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

I'm not sure in terms of effect at the time. The PUD was approved with a Type B buffer along the western edge of the PUD. Staff's recognition that traditionally, within the Rural Golden Gate Estates, when you have commercial that abuts Estates lots, we have a 75-foot buffer. Now I wasn't -- I wasn't involved with the original rezone, and so I'm not sure what the discussion was,

but we felt that that was inadequate. That's a 15-foot-wide landscape buffer that was approved when -- the GMP, the Growth Management Plan, states that when you have commercial next to residential for Estates lots, it's a 75-foot buffer to protect those residency [sic]. We felt that asking for the addition of a wall within that B [sic] with some enhancements was an adequate compromise to protect those existing residents.

One of the uniqueness -- and Mr. Noels -- or Mr. Davies expressed that there was disagreement among staff because the SDP staff didn't require -- didn't require a wall. Well, what's approved in the PUD is a 15-foot Type B buffer, so a wall wouldn't be required. So there's not disagreement. The SDP staff was only -- was enforcing what the regulations were.

A sidenote, within our land development when you have commercial next to residential, a wall is required. It's required when -- anytime that you've got a commercial property that's being developed next to a residential property. But because this is in an Estates zoning district, it's a subdivision of the agricultural zoning district. It's not zoned residential; therefore, a wall is not required by our LDC. It's somewhat of a loophole.

So every condition within your urbanized area -- every condition within your urbanized area, a wall is required next to residential when you have commercial.

The Golden Gate Estates has a provision that says, we are rural. We want to maintain ourselves rural. So when you have commercial next to Estates lots, we want a 75-foot buffer to really kind of buffer our residences from those commercial properties.

This was approved with a 15-foot buffer with no wall requirement. Staff, we reserve the right to get smarter. And when you open up a PUD -- and I understand they're not affecting the southwest properties, that it's more towards the northern area that they're adding properties in the arrangements going forward, but we felt it was appropriate at least to raise the question that we feel that there's better protection that would be provided by the addition of the wall and that we feel -- the question was, what's the justification? Well, I rely upon the Growth Management Plan to say that's the -- those are your goals, objectives, your policies. Those are -- your highest regulatory document that's supposed to guide development. That requires a 75-foot buffer when you have commercial next to Estates lots.

So we feel asking for a wall to be added to the Type B buffer with some enhancements is appropriate and is supported by the Growth Management Plan, by the Golden Gate Area Master Plan.

COMMISSIONER SHEA: So would you accept the 75-foot buffer?

MR. BOSI: I wouldn't -- would I accept -- if we were at the beginning, we would -- that's where I think our starting discussion point would be.

COMMISSIONER SHEA: Okay.

MR. BOSI: But we recognize that that horse is kind of out of the barn. But we do think adding a wall to -- not even increasing the size of the buffer. We're not asking for additional buffer. We're not asking for additional size within the buffer. We're still comfortable with that 15-foot, we think that that wall would at least block the headlights for -- if you saw the site plan for NCH, the parking spots were -- if you're going in forward, you're going -- you're looking right at -- and you saw the photos of the cleared lots. Those properties will have light intrusion upon them at least until that Type B buffer is five -- is adequate to provide a little bit more opacity.

So for all those reasons, that's why staff is suggesting it. We're not requiring it; we're not imposing. We're suggesting that this would be an enhancement that could protect residential Estates-zoned properties as promoted and as stated within the Golden Gate Area Master Plan.

CHAIRMAN FRYER: Commissioner Schumacher.

COMMISSIONER SCHUMACHER: So the current buffer is 5 feet, correct, 5 feet in --

MR. BOSI: Fifteen.

COMMISSIONER SCHUMACHER: Fifteen feet in height. And does that go in at 15 feet, or is that just a proposed growth height that will eventually get to?

MS. GUNDLACH: It's 15-foot-wide buffer.

COMMISSIONER SCHUMACHER: But the height of the plantings going in is --

MS. GUNDLACH: The height of the trees going in are 10 to 12 feet tall.

COMMISSIONER SCHUMACHER: Scrubs going in are --

MS. GUNDLACH: Shrubs can be planted between 4 and 6 feet tall.

MR. BOSI: And on your screen you're going to -- what you're seeing, that is --

COMMISSIONER SCHUMACHER: I see that. Those aren't close to 4 to 6 feet. That's like an infancy there.

But the question comes back to, I don't understand -- and maybe Mr. Davies can kind of chime in here -- is it a cost issue, or is it just an argument of we just -- we were approved for this, and we don't want to go back? I'm trying to -- and I understand where the staff's coming from because, quite frankly, if I lived on that property and had headlights coming in, I'd be your biggest nightmare. So I'm trying to figure out what is the conflict here in between this request.

MR. DAVIES: Sure. Thank you, Commissioner.

So I've got a number of points to rebut, and I'm happy to answer your question and also tie that into the rebuttal.

I'm trying to think about headlights for medical office uses that aren't going to be open at night, so that doesn't make sense to me. But I think this is a bigger issue of precedent when you open back up a PUD, okay.

The code says what it says. The Growth Management Plan says what it says. There's no -- I think everyone -- everyone understands and wants to try to apply the regulations, you know, in place at the time, but I want to unpack that a bit further as well.

So I think from a precedent perspective it's important to think about any time -- so if you support staff's -- oh, and this is not mine, but that's fine.

If you support staff's position here, I think you want to be careful in thinking about the precedent of opening every single PUD up or Growth Management Plan subdistrict in that even if you're doing what we're doing, which is just tweaking the northern portion of the site, every single thing is potentially up for grabs for new requirements.

The neighborhood center concept that Mr. Bosi talked about -- and, again, all due respect to Mr. Bosi, Ms. Gundlach, Ms. Hansen. I think it's important that we walk through the actual legal language that's being cited to in the Growth Management Plan. So I'm going to try to put this on the visualizer.

CHAIRMAN FRYER: Well, before you do that, are you now at rebuttal, or are you going to want to speak again after we hear from the public?

MR. DAVIES: I would like to reserve the right to speak after the public.

CHAIRMAN FRYER: All right. So are you in the process, then, of answering the commissioner's question still, or are you going beyond that?

MR. DAVIES: I'm just trying --

COMMISSIONER SCHUMACHER: I understand it's going to come in rebuttal, and if I have more, I'll ask him at that point in time. So if we -- we can --

MR. DAVIES: I'm happy to reserve until after the public, and if there's more questions --

CHAIRMAN FRYER: Yeah, I'd rather do it that way --

MR. DAVIES: Sure.

CHAIRMAN FRYER: -- because I've got some questions for staff as well, and just not to break it up --

MR. DAVIES: Sure.

CHAIRMAN FRYER: -- if you don't mind. Thank you.

Ms. Gundlach, did you want to be heard?

MS. GUNDLACH: Yes. Commissioners, I just wanted to bring to your attention Comprehensive Planning has a slight tweak to the subdistrict language that we'd like to share with you at this moment. Would that be okay?

CHAIRMAN FRYER: Of course.

MS. HANSEN: Rachael Hansen, again, for the record.

So the final item in the subdistrict language that lists the Type B landscape buffer, we've changed that to read, "The Type B landscape buffer along a portion of the western property line shown on the PUD master plan shall be enhanced in accordance with the CPUD provisions." So the only change there is just adding that language that says "a portion of the western boundary." We didn't want to imply that it was the entire western boundary within the subdistrict text.

CHAIRMAN FRYER: Thank you.

MS. HANSEN: That's the only change.

CHAIRMAN FRYER: Thank you. Thank you.

No one else is signaling at this point. So I'm going to ask if Mr. Sawyer could come forward, please, if he's here. Oh, there he is.

COMMISSIONER SHEA: He's here.

CHAIRMAN FRYER: Mr. Sawyer, I want to talk, of course, about traffic.

And we've been schooled at your hand for a number of years with respect to the considerably lower impact that self-storage units have in relation to other commercial uses. And I think your points have always been well taken, and I think it aligns with common sense that fewer people are going to come visit their stored merchandise, their stored property, than are going to come to, you know, a retail outlet, for instance.

And so right now the entitlement for the PUD as it was previously constructed was, I think, for 681 peak p.m. trips, and that was for 200,000 square feet of commercial uses. Now we're going to 230,000, but fully 130,000 of those are going to be uses dedicated to self-storage.

So my question for you, sir, first of all, generally, do you anticipate a reduction in the needed peak p.m. trips given this proposed change? And my second question is, if so, could we quantify that?

MR. SAWYER: Certainly. For the record, Mike Sawyer, Transportation Planning.

There would be a significant difference between what is currently in the PUD itself from a trip standpoint and what is now being proposed. What the agent did submitting this time was just simply showing that there would -- the combination of the uses that they're doing is actually going to wind up being less than the current PUD itself. We don't -- they didn't provide that differential number between what they've got now. What we simply have is a reflection of what was originally permitted.

CHAIRMAN FRYER: Well, I'm asking for your best judgment in being conservative in your estimates in favor of the applicant, but what number could we assign that would be more reasonably related to the new uses proposed?

MR. SAWYER: Quite honestly, I'd want to go back and actually take and actually do a calculation on that number. We want to make sure that we had that correct for 130 square feet [sic] of self-storage and the 100,000 of commercial.

CHAIRMAN FRYER: All right. Thank you.

Then I have a question for Mr. Davies, please. We had a conversation about this when we spoke yesterday, and I wasn't able to read you altogether perfectly as to whether you would be willing to reduce that number and, if so, by how much; would you comment on that?

MR. DAVIES: Yes, sir. I needed to talk to my client, and I have done that this morning.

I think in concept it's fine. We don't object to the concept of reducing the trip -- the max trips, right, the max p.m. peak-hour trips, which there's a cap on the prior approval. As has been shared today, what we're proposing has less trips than that, and I think your request, Mr. Chairman, is that the applicant would agree to a reduction in the trip cap that corresponds with the reduction in intensity that's contemplated by the proposal.

CHAIRMAN FRYER: Exactly.

MR. DAVIES: The short answer is, yes, we were able to agree to that. The tricky part is how, right, and what that calculation is. We've got some time between -- I think our BCC hearing's June --

CHAIRMAN FRYER: Well, I'm going to stop you right there.

MR. DAVIES: -- 13th.

CHAIRMAN FRYER: My proposal is going to be that if we can't -- if we can't come to an agreement today, my proposal would be that we continue it so that you can determine what you think you could reduce it to and so staff can also come to a number. I don't want to just send it off incomplete like that, so...

MR. DAVIES: Can I offer a suggestion to that, Mr. Chairman?

CHAIRMAN FRYER: Sure.

MR. DAVIES: Rather than continuing today, I think -- I'm sure that the -- you know, the client team -- and we don't have a transportation expert here because one was not required because of the reduction. But I think that a condition could be imposed that the Planning Commission's recommendation would be that this corresponding trip reduction be reflected in the trip cap number, and we just need to figure out what that number is. So that's, as Mr. Sawyer pointed out, a calculation that can be done by county staff, a calculation that can be done by a transportation engineer. My client is willing to hire a transportation engineer to do that calculation --

CHAIRMAN FRYER: All right.

MR. DAVIES: -- and then we reach an agreement on what that actual number is since we can't do that.

CHAIRMAN FRYER: Okay. But we all agree, do we not, that a reduction is in order in order to truly reflect the number of trips? It's just a question of how much; isn't that correct?

MR. DAVIES: That's correct. There's no objection to that concept, sir.

CHAIRMAN FRYER: All right. Okay. Well, then, I think maybe we could work with that. I just -- I don't want to send it off without any understanding with respect to a reduction going to the Board of County Commissioners because, frankly, they expect us to do that level of detailed work, but if we impose some parameters on it -- and I think the words you've used are good ones -- that we might be able to get beyond that. So thank you for that.

MR. DAVIES: Thank you.

CHAIRMAN FRYER: All right. Anything further from staff at this point?

MR. BOSI: Nothing from staff.

CHAIRMAN FRYER: Okay. Ms. Pedron, do we have any members of the public who've registered to speak?

MS. PEDRON: Good morning, Mr. Chairman. Our first speaker is John Pelletier.

CHAIRMAN FRYER: That -- is that a person in person?

MS. PEDRON: Yes.

CHAIRMAN FRYER: All right.

MR. PELLETIER: I came in person.

CHAIRMAN FRYER: Please approach the podium, sir. You've been sworn in, I take it?

MR. PELLETIER: Yes, I was sworn in.

CHAIRMAN FRYER: Okay. Thank you.

MR. PELLETIER: I'll put some documents on there to show that.

Good morning. Good morning. John Pelletier. I live on this street right next to the development here, and buffering is all we have on this street, you know. I know we're not talking about the 47 acres next to it with the four-story apartments -- and there's also another storage unit on that one, too. I felt like I needed to mention that.

So four years ago or, well, maybe three years ago, we were promised -- that was approved right there (indicating). So I went with pink on the preserve here, and then I went with yellow on the Estate properties. And I'm glad that I did get to see that there is a stipulation about buffering here, because this preserve was really thick, if you look at it -- and I'm going to show what they're going to propose. In my guess, 300 feet maybe. That's a guess. I don't know if anybody wants to say otherwise, but -- and then down there the lower is that three-story storage unit.

So a lot of Estate property back here. I've talked to the owners to the left of the water

management, and he's somewhat distraught, and he's not coming to talk about this, so that's why I'm here.

So this is what's being proposed. Look how thin it is. It got a lot thinner, and that C is much bigger. That's all this is.

So I'd ask for a little leeway here and approve, no matter what -- either nix the whole idea -- because the preserve was there. We were promised that during the neighborhood informational meeting, and now it's being changed, and I don't like that.

So if this does go through, please consider what staff is recommending with the wall, but also I'd like to enhance that. And this idea was mentioned at the current neighborhood informational meeting.

Yeah, so there's the yellow that they're proposing. Now, the pictures that were shown, Mrs. Nancy there, that is a tepid water management pond. It's really ugly right now.

So this is what I'm proposing, and if you please maybe go with me on this. That area I just drew, extend the whole thing, a wall, trees every 25 feet, a four-foot hedge, and three sabal palms within the 25-foot buffer or the trees.

You don't come across very often, that I know of, that you have a four-story -- or a three-story storage unit right next to Rural Estates. So I can see why the yellow is definitely needed. But you can actually see -- sorry, I'm a little nervous. But you can actually see from the street -- the street's right here. You can see straight through there, right over that pond, right into that. So that's all I'm asking.

CHAIRMAN FRYER: Okay. Thank you, sir.

Next speaker, please, Ms. Pedron.

MS. PEDRON: Mr. Chairman, we do not have additional speakers.

CHAIRMAN FRYER: I think there may be a problem with your mic.

MS. PEDRON: Mr. Chairman, we do not have additional speakers for this item.

CHAIRMAN FRYER: All right. Okay.

Any questions or comments from the Planning Commission before we --

MR. YOUNGBLOOD: Mr. Chairman.

CHAIRMAN FRYER: Yes.

MR. YOUNGBLOOD: We have one online speaker that just changed his mind.

CHAIRMAN FRYER: All right. Okay. We'll hear from that person, please.

MR. YOUNGBLOOD: Ty Vigil is our next speaker. Mr. Vigil, can you hear us?

MR. VIGIL: I can hear you fine. Can you hear me?

CHAIRMAN FRYER: Yes, we can, sir. Please proceed.

MR. VIGIL: Awesome. I'll be quick; I won't take five minutes.

I'm concerned about the commercial creep. Our area has made substantial concessions with Randall Curve, and then there's a shopping center on the east side -- or the east side of Palmetto Ridge High School with another 450 apartments. Randall Curve is going to be 450 apartments, some outparcels.

That property was originally zoned ag. It went a large jump from ag to mixed-use commercial, which is a big jump from the transitional-use standards as applied by the Collier County Commissioners.

So to continue this commercial creep north -- I'm not opposed to some kind of development, but not necessarily a hard warehouse, commercial, industrial project. If the applicant would like to purchase additional land as a buffer, please do so, but keep it agricultural use. You don't have to change the zoning to keep -- landscape isn't a zoned proposal.

So, I mean, that's just really the standpoint -- I'm sorry I can't be there, as a lot of us can't be, can't take time off of work and go across town to sit at a meeting. But I think I can speak for most of our neighbors in the community that we're very much opposed to a commercial creep, a hard commercial, but would be receptive to something of more of a soft commercial play such as a church or an assisted living facility or something as we go further north to the Oil Well Road

corridor there, that intersection there.

So that's my only comment; very much opposed to commercial creep.

CHAIRMAN FRYER: All right, sir. Thank you very much.

Anybody who has not registered to speak, nonetheless, would like to be heard on this matter, please raise your hand.

(No response.)

CHAIRMAN FRYER: Seeing no raised hands, we will close the public comment segment of this hearing and call upon Mr. Davies for rebuttal.

MR. DAVIES: Thank you, Mr. Chairman.

So a number of comments in response that I previewed a bit earlier. The mention of other projects; I've got to say that your decision-making today is based on the petitions before you, not other projects.

I do want to walk through, as I mentioned, the Growth Management Plan language that I think staff is saying applies to this property. So I'm going to try to do that on the visualizer.

Okay. Okay. This is the Rural Golden Gate Estates Sub-element, right? So this is the portion of the Future Land Use Element of the Growth Management Plan that could potentially apply to the subject property.

Remember that we're in an already approved subdistrict. It's a subdistrict that's site specific that was previously approved in 2021.

This is the section for Estates. You can see Estates designation here. Then you walk to Estates mixed-use district, residential Estates subdistrict. It starts to go through the mixed-use subdistricts, okay. This is the neighborhood center subdistrict. There are a number of provisions that apply to the neighborhood center subdistrict. Two, three pages.

I'm now on Page 12 of this document which cites -- I've got an arrow here that -- I think staff's referencing for the 75-foot separation. That is a provision that applies to the neighborhood center subdistrict. We are not in the neighborhood center subdistrict. We're in our own subdistrict. Yes, we are seeking to amend that subdistrict pursuant to this process. We're not governed by other provisions within other subdistricts.

I'd also like to put on the visualizer the map. This is the county's future -- excuse me -- Rural Golden Gate Estates Future Land Use Map. Sorry, I've got to turn this the right way. There we go. Where are we going here? Okay. Here is Immokalee Road. This is Immokalee Road going east/west, okay, traversing east -- I'm sorry. Up here.

MR. SCOTT: I'll point at it while you're --

MR. DAVIES: Yeah, that would be good, Chris. Going this way, okay.

Okay. So here's Immokalee Road, and then it turns -- we're right here, yeah.

Right here is our subdistrict, is the point I'm trying to make, okay. That's color coded on your map. That's based on the approval in 2021. These red outlines are neighborhood center subdistricts. The provision that staff's citing to applies to the neighborhood center subdistricts outlined in red. There's the legend. It doesn't apply to our subdistrict, so I don't think it's appropriate to borrow provisions from one subdistrict and force them upon another subdistrict.

MS. ASHTON-CICKO: This project received a commercial designation in an area where it was previously not allowed. I think staff is telling you that they would have required that, or they would right now be requiring that, but they don't think they can. I think for compatibility you can require whatever you think is necessary for this project and make that recommendation to the Board.

CHAIRMAN FRYER: Thank you.

MS. ASHTON-CICKO: And, actually, I think that the provision that he's showing actually supports the argument, you know, but that's going to be for you to determine, and you've heard staff's input today.

CHAIRMAN FRYER: Thank you.

MS. ASHTON-CICKO: But I don't want you to think that you can't require it, because I

think that's what you're being told.

CHAIRMAN FRYER: I appreciate that. Thank you.

Mr. Davies.

MR. DAVIES: My point is that you -- I think it's important that you understand the origin of the provision that staff's citing to. It's not this subdistrict. You certainly have discretion, but there has to be a legitimate basis for requiring additional buffering, especially when you're dealing with a previously approved project. This was not required when this came through in 2021, and now that we're opening up a small portion of it, it's being required or recommended by staff.

MS. ASHTON-CICKO: And you have the ability to require that if you want for compatibility, and I think you heard testimony from staff that they would be requiring it but they don't feel like they can, and I think they can.

CHAIRMAN FRYER: I agree with the County Attorney. And, furthermore, I -- Mr. Davies, you and I do not agree, apparently. In my view, this is not the same PUD. This is a different PUD, whether you like it or not. And when you come forward wanting a change, I believe it puts everything in play. And I think that everyone who then must pass judgment on it, staff, this commission, and the Board of County Commissioners, need to review from the standpoint of what we believe is in the best interest of Collier County.

And so that's exactly what I think we're about here.

MR. DAVIES: Understood, Mr. Chairman.

CHAIRMAN FRYER: Okay. Commissioner Sparrazza.

COMMISSIONER SPARRAZZA: I may be a little ahead of the game, but if we want to break this down to, I believe, a simple fact, currently you have been granted a 15-foot Type B buffer, correct --

MR. DAVIES: Correct.

COMMISSIONER SPARRAZZA: -- with 6-foot trees and 4-foot hedges, whatever, and the county is suggesting, to be neighborly to your friends to the west, that you still maintain that 15-foot-wide buffer, include those trees, but add a 6-foot wall at least for the southern portion, as it wasn't suggested or required for the rest, but we did have that gentleman just make a request for that.

If we were to keep it to the southern portion only, we're talking about whatever that linear footage is, to be neighborly, to work hand in hand with the county and your neighbors to add the 6-foot wall. Is that what it boils down to?

MR. DAVIES: Yeah, that's the staff condition, sir; that's the recommended condition.

COMMISSIONER SPARRAZZA: Okay. So that's something that this board, the county, you, and your client need to discuss and come to an agreement to, really, on the basis of doing the right thing.

What you've been promised before may or may not play into it because this is being reviewed and revised as a project, whole or partial; doesn't matter at this point. But it comes down to probably the cost of that 6-foot wall for however many hundreds of feet that is to, quote, do the right thing, correct?

MR. DAVIES: No, I don't agree with it as being "do the right thing." I think these proceedings are governed by regulations of the county. I think that you need to consider the precedent argument that I made. We're only dealing with the very northern portion of the site. And, in fact, we're doing that to try to accommodate some of the feedback we got from the community to try to create more neighborhood-style uses, rather than the outparcels, which is what I explained in my presentation.

COMMISSIONER SPARRAZZA: Right.

MR. DAVIES: So I don't think that it's, respectfully, Commissioner, appropriate to position this as no wall is not doing the right thing and adding a wall is doing the right thing. There has to be -- there has to be proper legal basis, and there has to be appropriate thought behind these requirements.

COMMISSIONER SPARRAZZA: Okay.

MR. DAVIES: The property owner has property rights. Those rights are not simply subject to provisions in other subdistricts.

COMMISSIONER SPARRAZZA: Right. The original proposal in '21 had a 100,000-square-foot mini self-storage unit, correct?

MR. DAVIES: So the original approval, it had 200,000 square feet of commercial uses. It was very generalized. So there was 200,000 square feet of commercial, and then you got a list of permitted uses, which is C-1 through C-3 uses. And --

COMMISSIONER SPARRAZZA: C-1 through C-3.

MR. DAVIES: -- self-storage was included within that, correct. There wasn't a specific allocation to it.

COMMISSIONER SPARRAZZA: There was not, all right. My mistake.

But you have now gone to the point of 130,000 square on the self-storage and roughly 100- on the general commercial --

MR. DAVIES: That's right.

COMMISSIONER SPARRAZZA: -- 100,000 square [sic] up on the northern area?

MR. DAVIES: Correct.

COMMISSIONER SPARRAZZA: Okay. I'd like to reserve, possibly, other questions later on.

CHAIRMAN FRYER: Thank you.

One other point where we may not agree on, Mr. Davies, is having to do with precedent. And it's a learning process being on this county Planning Commission; I've been up here since 2017. One thing I've learned from repeated admonitions from our County Attorney, Mr. Klatzkow, is that there is no such thing as precedent for us; that each of these deals is specific and unique and stands on its own 2 feet. And so I think I've learned that lesson to the point that I'm not really willing to entertain statements that we're setting a precedent. I just don't think we do.

Anything else, sir?

MS. ASHTON-CICKO: And the self-storage use, they're here because it doesn't fall under the C-1 or C-3 uses, so it's a higher intensity.

CHAIRMAN FRYER: Right. Mr. Davies?

MR. DAVIES: It's not a higher intensity with respect to the trips generated.

CHAIRMAN FRYER: It's higher intensity, lower impact.

MR. DAVIES: Correct.

CHAIRMAN FRYER: Yeah, I agree with you.

MS. ASHTON-CICKO: C-4 -- C-4, C-5.

CHAIRMAN FRYER: Yeah.

COMMISSIONER SPARRAZZA: Self-storage.

MR. DAVIES: And was previously included in the permitted-use list.

CHAIRMAN FRYER: Yeah. It is considered -- it's considered higher intensity, but I think it stands -- the way I understand self-storage -- I don't -- I mean, it's intense in that there's bricks and mortar, so in that sense it is, but when I think of self-storage, particularly nowadays, and the reason I'm more favorably inclined to approve self-storage the way that Collier County developers are doing it is because, first of all, it ends up looking like office space, which I think is a visually appealing and, second, it's very low impact from a traffic standpoint.

So, you know, if I were voting on whether to go -- you know, go back and grant you the C-4 or C-5 use, whatever self-storage is, I would have -- I would have voted to approve that. I probably did.

MR. DAVIES: You did.

CHAIRMAN FRYER: Yeah, okay.

So anything further, sir?

MR. DAVIES: Nothing from me.

CHAIRMAN FRYER: Okay. Anything further from staff?

MR. BOSI: Staff will --

MR. DAVIES: Mr. Chairman, I think Mr. Scott has more comments.

CHAIRMAN FRYER: All right. Mr. Scott, you have the floor.

MR. SCOTT: Thank you. Again, Chris Scott, for the record.

I just wanted to point out -- you had mentioned unique circumstances, and I want to put on the record that BCHD has worked extensively with the abutting property owners throughout this process. We have a very good working relationship with those Estates residents who are directly adjacent to the property.

And to the point we've constructed fences for them, they are not here objecting. And I just wanted to point that out.

But the uses that are going in on the southern commercial where staff is recommending the enhanced buffer and walls, one, it's a self-storage, which is somewhat of a benign use as far as trips. And the medical office, which would be opened up during the daytime, it's not going to be a nighttime use to where you're going to have headlights as some of the higher commercial uses that would be allowed within the development, which would not justify the wall requirement. So I just wanted to --

CHAIRMAN FRYER: Thank you. And I -- and that certainly is noted for the record.

I don't have extensive experience with you, sir, but I'm sure you're of the same frame of mind as Mr. Davies, with whom I do have experience, and I know that he's -- he endeavors to be flexible and rational and working with all parties to see if he can't work something out. So I'm confident that's the case.

Commissioner Schumacher.

COMMISSIONER SCHUMACHER: Mr. Scott, did you say that you constructed fences? Because when the staff showed some pictures there, I didn't see any fencing in that abutting property that was there.

MR. SCOTT: Yeah. I'm not sure where they were taking those pictures from. There was a portion of a fence that was on an adjacent property that had to be replaced that we took over. I don't know -- it was a portion of the -- if I can --

COMMISSIONER SCHUMACHER: But you're not saying you didn't construct a fence along the site to those adjacent properties to those properties -- to those owners?

MR. SCOTT: It was in this area.

COMMISSIONER SCHUMACHER: Okay. On that site.

MR. SCOTT: But, again, we've had a very good working relationship with the Thamel, who reside here, and they are the property owner who acquired this piece; the Hardies, who own this property; and the property owner to the south. They live in Colombia. But we have been working with them throughout the original PUD application and -- since then, as construction's been going on, and have an excellent working relationship with them.

COMMISSIONER SCHUMACHER: Okay. Thank you.

CHAIRMAN FRYER: Thank you very much.

Anything further on rebuttal, Mr. Davies?

MR. DAVIES: Nothing further. Thank you, Mr. Chairman.

CHAIRMAN FRYER: Thank you, sir.

At this point it behooves us to -- oh, I'm sorry. Mr. Bosi.

MR. BOSI: Yeah. You had asked if staff had some additional. I think Mr. Sawyer had something to add, and I just wanted to add --

CHAIRMAN FRYER: Thank you.

MR. BOSI: After Mr. Sawyer, I just wanted to add a little bit as well.

CHAIRMAN FRYER: Thank you. Mr. Sawyer.

MR. SAWYER: Yeah. Again, Mike Sawyer, Transportation Planning.

We do have an estimate, and this is just an estimate, on what the potential trip cap could be, at least as a starting point.

Additionally, we want to mention that there have already been SDPs that have been approved for the project for the overall PUD. So that would also need to be at least considered in what a new trip cap would be.

But just going off of the standard ITE numbers, including pass-by, the number would be approximately plus or minus 410 p.m. peak trips.

CHAIRMAN FRYER: All right. So we're at 681 now, I believe.

MR. SAWYER: Correct, yes.

CHAIRMAN FRYER: Plus or minus what, again?

MR. SAWYER: Plus or minus 410.

CHAIRMAN FRYER: Okay.

MR. SAWYER: And, again, that's just an estimate. That would be a starting point.

CHAIRMAN FRYER: Okay. I understand.

Mr. Davies, did you want to comment on that? And then Mr. Bosi.

MR. DAVIES: So, I mean, I can't agree -- have my client agree on the fly to that back-of-the-napkin calculation. Again, the concept is not objectionable. We will have our transportation engineer look at Mr. Sawyer's calculation and work with Mr. Sawyer like he does on a number of different projects. And, again, I think, for purposes of the record, Mr. Chairman and Commissioners, we are agreeable to a commitment to work with staff to reduce the trip cap in accordance with the corresponding reduction in intensity that this proposal includes.

CHAIRMAN FRYER: All right, sir. Thank you.

Mr. Bosi.

MR. BOSI: And I just wanted to clarify, staff recognizes that they have their own individual subdistrict, and their individual subdistrict has the specifics related to the requirement or non-requirement for their buffers.

I do want to point out within the Rural Golden Gate Estates, the commercial -- the conditional-use subdistrict also requires a 75-foot buffer when you have a nonresidential use against Estates lots, as well as the Randall Boulevard commercial subdistrict requires a 75-foot buffer when you have commercial uses against an Estates-zoned lot.

So what we were saying, the Golden Gate Area Master Plan, the rural sub-element in three instances of subdistricts where you have nonresidential uses next to Estates lots requires the 75-foot. We are asking for a wall because we think that enhances the buffering, and that's just -- I just wanted to clarify that position.

CHAIRMAN FRYER: Thank you very much.

Anything further from the Planning Commission?

(No response.)

CHAIRMAN FRYER: If not, then we will take the case for deliberation and decision. If I may begin a summary, perhaps, to point the discussion.

I think both parties have agreed that a reduction in peak p.m. trips is necessary. Staff and the applicant have agreed to endeavor to come to an agreement on the amount of that reduction, and if they can, that agreement would be presented to the Board of County Commissioners, and if they can't, then each of staff and the applicant would offer their recommended number -- reduction number for the Board of County Commissioners to decide.

So I think, without objection, is there anyone on the Planning Commission who disagrees with my summary of where I think we are on that point?

(No response.)

CHAIRMAN FRYER: Okay. So then the second point, which I think maybe is open and in need of some discussion, has to do with the condition about the 6-foot wall on the southern portion. And staff has proposed that it be on the southern portion only. We've heard from a member of the community wanting it to go all the way up north as well.

And I would like to know what the Planning Commission feels about that, and first recognizing Commissioner Sparrazza.

COMMISSIONER SPARRAZZA: Quick to the button.

This is a difficult situation. Obviously, it's been in discussion for two, if not three years, probably longer in the entire planning. But I would personally like to see some type of a collaboration between what the county wants, what possibly the neighbors want, although they are not here, I recognize it, other than this one gentleman that stated, and maybe there's something even easier for both parties or all parties to agree upon. For example -- and I'm not an expert -- if the wall on the southern portion is financially a burden to the developer, is there something we can do as far as slightly taller vegetation and maybe slightly closer together but do it for the entire western perimeter that maybe comes into the price point of the wall for just the south, but now you've enhanced your property by your property not seeing into neighbors' yards and, of course, the other way around, where the neighbors don't see into your property, with a more visual pleasing higher-density vegetation along, we'll call it, almost a sideways T on all of the western area.

Just a point to possibly discuss amongst us and the petitioner to see what we can do to make both parties happy without an exorbitant amount of money placed as a burden to the developer. Just as a discussion point.

CHAIRMAN FRYER: Thank you.
Commissioner Shea.

COMMISSIONER SHEA: Yeah. I feel like Commissioner Sparrazza, but I don't think we're going to get there. I happen to support staff's position. As far as the wall up north, you have a lot more protection with the water management and the preservation which is -- area, which is going to grow in. And I'm not worried about a precedent either. I take Jeff's comments very seriously when I first joined that every case is going to be heard on its own merit and doesn't establish a precedent for the future.

So where I'm heading is I support the staff's recommendation with your caveat on the trip cap.

MS. ASHTON-CICKO: So that's just on the southern part?

COMMISSIONER SHEA: Yes --

CHAIRMAN FRYER: That's the staff --

COMMISSIONER SHEA: -- the staff's recommendation.

CHAIRMAN FRYER: Thank you.

Commissioner Schumacher.

COMMISSIONER SCHUMACHER: So going back to the wall thing, which is -- I can understand Mr. Davies and his client saying this is what was approved, this is what was needed. That's what they're falling with. I understand staff, where they're coming from, and I do believe there has to be some type of compromise there.

If the height is on 6 feet, perhaps the client and the county could agree on, perhaps, maybe a berm, so you're still using your same plantings, but maybe you're building a berm to get to that 6-foot height instead of putting a 6-foot wall up. I can understand, from a maintenance aspect, that would be difficult, because you've got a 6-foot wall. You've got to paint on both sides and also maintain. Perhaps if the height is the stickler here, is there a way to work that out? Because, I mean, Mr. Scott you're the project manager. You're moving dirt right now, correct?

MR. SCOTT: Chris Scott, for the record.

Yes, the site is currently under construction.

(Simultaneous crosstalk.)

COMMISSIONER SCHUMACHER: I mean, does that seem like it could be something you guys could come together on? I mean, I'm just -- I understand what you're saying with the buffer and the height that was required. I understand what staff -- I'm just trying to get this a little bit closer together.

MR. SCOTT: Yeah. In terms of the berming, I don't think there's enough room in there

to meet our required -- I'm not the project engineer, so bear with me.

COMMISSIONER SCHUMACHER: Gotcha.

MR. SCOTT: I will note that the buffer that does go along that entire perimeter where you were highlighting -- so it does go around the entire perimeter of both -- along the northern side of the preserve, the western side of the preserve, the western side of the stormwater, all the way around the other stormwater and down to the southern boundary. That is all a Type B buffer.

And staff previously had put up some pictures of a buffer where you saw really minuscule scrubs. Those -- that may have been a Type B buffer, but that may have been at time of planting. The Type B buffer is required to have 80 percent opacity up to -- be fully opaque, basically, up to 5 feet, which is almost equivalent and can be maintained higher, a minimum of 5 feet. So it could be maintained at a higher level to be fully opaque up to 6 feet, your scrubs, and then you also have the trees, which are the large shade trees, planted every 25 feet, and those large shade trees have a 25-foot spread. So that is what's in there. It's not going to be a sporadic opening.

But in terms of berming, there's not enough space within that location to provide additional berming.

COMMISSIONER SCHUMACHER: Got it. Thank you.

CHAIRMAN FRYER: Thank you. Let me say a few things here. First of all, we're barely at quorum here with four voting members, and so in order to send a recommendation to the Board of County Commissioners, we're going to have to be unanimous, and I loathe the idea of not being able to send a recommendation -- what?

COMMISSIONER SPARRAZZA: Do we only need three?

CHAIRMAN FRYER: Doesn't it take -- doesn't it take more than three to send something, or is it a majority of the quorum?

MS. ASHTON-CICKO: I think it's --

MR. BOSI: Majority of the quorum.

CHAIRMAN FRYER: Three? Okay. All right. Well, I stand corrected. Thank you very much. All right.

All right. So we're going to need -- we're going to need three out of the four in order to send something on. And my apologies for misstating that, but thank you for correcting me.

And I don't -- I don't want to see us splitting 2/2, because then that is no recommendation.

So to summarize where I think we are, both -- we've got two points. Both parties have agreed that a reduction is appropriate. They haven't yet come to terms with the amount of that reduction. It sounds like it's going to be significant. The applicant is going to go back to its experts, and the county will go back to its experts, and then they will collaborate and try to come up with a number. But we know that there's going to be a reduction; that part has been agreed to.

So by sending that to the Board of County Commissioners without an exact trip count doesn't offend my sensibilities because there's been a significant concession by all sides that there's going to be a reduction. So I'm okay with that.

COMMISSIONER SHEA: Can we put the caveat that that has to be agreed upon before the commissioners' meeting?

CHAIRMAN FRYER: We could. But let's -- you know -- well, let's hold that open for a moment.

Now, on the second thing, the wall, if we don't -- if we don't take a stand of some kind -- and, personally, I am not espousing the need for a northern -- a wall extending north on the west side. I'm not going that far. That's a wall too far for me. But I do accept and agree with the county's recommendation about a 6-foot wall on the southern portion.

Now, if we were to have a recommendation that says 6-foot wall on the southern portion, that doesn't preclude further conversations, including conversations that there be no wall at, all between now and the Board of County Commissioners. It's just that we've gone on record supporting the staff -- staff's recommendation.

So it is my hope that we can have a motion along those lines, number one, about the

reduction, as I expressed it and, number two, that we approve and concur with staff's recommendation for a 6-foot wall on the southern portion recognizing that that doesn't foreclose further discussions between the applicant and the county between now and the Board of County Commissioners.

So having said that, are there any --

COMMISSIONER SHEA: So moved.

CHAIRMAN FRYER: Thank you.

Is there a second?

COMMISSIONER SCHUMACHER: Second.

CHAIRMAN FRYER: All right. And before we take a vote I just -- I don't want us to go into 2-2. So I'd appreciate if someone's going to vote against that, please let us know, and we can re-craft a -- all right. It doesn't sound --

COMMISSIONER SPARRAZZA: We're good.

CHAIRMAN FRYER: Okay. It sounds like we're good. So that -- does anybody need further clarification of the resolution that we would be voting on?

(No response.)

CHAIRMAN FRYER: It seems like -- oh, here comes Ms. Gundlach.

MS. GUNDLACH: Commissioner, are you supporting just the wall or the supplemental palm plantings as well?

CHAIRMAN FRYER: I am wanting the full staff recommendation, so the palm plants as well as the wall. I misspoke. Thank you for --

MS. GUNDLACH: Thank you.

CHAIRMAN FRYER: I'd ask the mover and the seconder if that's part of their --

COMMISSIONER SHEA: Yes.

COMMISSIONER SCHUMACHER: Yes.

CHAIRMAN FRYER: Okay, it is. All right.

Okay. Good. Any further discussion?

(No response.)

CHAIRMAN FRYER: If not, all those in favor of approving the application both -- and this is a joint vote -- both on the GMPA and the amendment to the PUD -- no EAC vote is required -- with those two conditions, as I've expressed, please say aye.

COMMISSIONER SHEA: Aye.

CHAIRMAN FRYER: Aye.

COMMISSIONER SPARRAZZA: Aye.

COMMISSIONER SCHUMACHER: Aye.

CHAIRMAN FRYER: Opposed?

(No response.)

CHAIRMAN FRYER: It passes unanimously.

Thank you. Thank you, applicant, staff, members of the public.

MR. DAVIES: Thank you, Mr. Chairman and Commissioners. Thank you.

CHAIRMAN FRYER: Thank you.

All right. It's 10:22. Let's take a break right now, and we'll return at 10:35.

(A brief recess was had from 10:22 a.m. to 10:34 a.m.)

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

CHAIRMAN FRYER: Thank you, Mr. Bosi.

***Ladies and gentlemen, next to come before us is PL20190001540, which is the Brookside Marina rezone.

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

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?

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

CHAIRMAN FRYER: Thank you.

Ex parte disclosures beginning with Mr. Lockhart, please.

MS. LOCKHART: Staff materials only.

COMMISSIONER SHEA: Staff materials only.

CHAIRMAN FRYER: All right. Public record, meeting with staff, and communications with applicant's agents, and site visit.

COMMISSIONER SPARRAZZA: Staff materials only.

COMMISSIONER SCHUMACHER: Staff materials and a meeting with staff.

CHAIRMAN FRYER: Thank you very much.

Mr. Brooker, you have the floor, sir.

MR. BROOKER: Thank you, Mr. Chairman. My name is Clay Brooker. I'm with the law firm of Cheffy Passidomo here in downtown Naples on Fifth Avenue South.

I represent Naples Marina Holdings, LLC, which owns the lands known for decades as the Brookside Marina. The matter before you today is a request to rezone the submerged lands or waters generally associated with the marina.

With me today is John Giglio. He is the owner of the property, the sole member of the LLC which owns the property; Hans Wilson, professional engineer and principal of Hans Wilson & Associates, a marine engineering and environmental consulting firm; and Stephanie Caldwell, professional engineer and principal of Greensite Engineering.

On the screen is an overall aerial. The applicant of the property. The applicant, my client, Naples Marina Holdings, owns this property, approximately 7.6 acres. It's located -- let's see. Here's Davis Boulevard. Here's the East Trail. Brookside Drive, to orient yourself. So it's just east of Tamiami Trail East on Davis Boulevard.

This property, the 7.6 acres, as you can see here, contains both uplands, here (indicating), and privately owned submerged lands.

CHAIRMAN FRYER: With apologies, Mr. Brooker, I'm going to have to interrupt you because I've gotten another technological problem. I need to call for someone from the control room. The very same thing has happened again. I've lost my availability to see people signaling on the deliberator.

Sorry to interrupt, sir.

MR. BROOKER: No worries. Usually technical difficulties happen with me, so I'm perfectly happen that it happened to you.

The next slide is an aerial of the actual subject property that's at issue here today. The subject application involves only this parcel comprised primarily of the submerged lands.

Here is the zoning map -- the county's zoning map for the area. You'll see that the subject submerged lands are currently zoned RSF-4, or Residential Single-Family 4. The associated uplands that my client owns here are zoned C-4 commercial.

Before I address this slide, there are three fundamental premises of this application. First, we are seeking permission to reinstall wet slips in the submerged lands that have existed for decades, albeit with a temporary pause over the last few years, which I'll explain in a minute; number two, the subject property submerged marina use and wet slips are the only logical, reasonable use that can be put to this property; and then, third, the submerged lands are owned privately by Mr. Giglio. They are manmade. They are not waters owned by the state.

While subject to regulation by the DEP and the Army Corps of Engineers because they are navigable waters, they are not subject to a sovereign submerged land lease.

Now, I'd like to take a couple minutes to show you that what we're proposing is no different than what has existed at this site for decades.

CHAIRMAN FRYER: Mr. Brooker, pardon me again. Just to correct -- or to be sure I understand the current status of the basin, there is sort of a dividing structure in this picture. Is that -- is there a dividing structure right now?

MR. BROOKER: A dividing structure? Can you --

CHAIRMAN FRYER: Yeah. When you look at the vertical piece, the basin, there's something going on in the middle of it.

MR. BROOKER: Here?

CHAIRMAN FRYER: Okay. But the picture that you have on there has a divider in it, but the divider is gone right now, correct?

MR. BROOKER: Correct. And I'm going to show you much more legible aerial photos once we get to that point.

CHAIRMAN FRYER: Sorry to interrupt.

MR. BROOKER: So what we're proposing here today is no different than what has existed at the site for decades. In fact, what we're proposing is less intense, a fewer number of wet slips that were there previously.

On the screen is an aerial from 1979. Here is Rock Creek coming in from Naples Bay, essentially, or Gordon River. This is -- this is natural. All of this here is created by man in the 1960s. It was dredged. That means these are submerged lands that are privately owned. My client owns these waters here, and the Brookside neighbors that own these lands right -- this property here, they all, for the most part, own the submerged lands that abut their properties, with the exception of a couple swaths of land that as owned by the Brookside HOA. So all of this land is privately owned. "Land" meaning submerged land.

So this aerial shows that from no later than 1979, some 42 years ago, the western basin, which I'll call right here (indicating), held numerous covered wet slips, and then on the uplands you can see the marina building which still exists today.

Fast-forward about three decades to 2012, first and foremost, you'll see that the covered boat slips in the western basin continue to exist at this time.

And, Mr. Chairman, hopefully this gives you a little bit more clarity. These three fingers, if you will, are all covered wet slips. That's what has been in existence or was in existence since at least 1979.

A few years prior to this aerial photograph, in 2002 or 2003, the DEP, the Army Corps, and the county approved additional slips, the slips you see here along the southern shoreline.

For installation of those slips, these submerged lands were dredged to remove any contaminated sediment, and the additional slips were then installed. These additional slips here continue to exist today. I just wanted to show you that in 2003 the county did approve, through a Site Development Plan amendment, the addition of the 39 slips here.

I just give this aerial to give a different perspective of what it looked like for the first decade or so of the 2000s. Here are the submerged lands at issue, and here you see the three fingers of covered wet slips; however, in 2014 -- well, this is a 2014 aerial. What this shows is sometime between 2012 and 2014 -- I believe it was 2013 -- a predecessor owner removed those covered wet slips from the western basin due to their dilapidated state.

Prior to that removal, these waters held a total -- or what was approved for the site was a total of 234 slips, 137 in the water and 97 on the uplands. So that was what was approved in the first -- in the first decade of the 2000s.

After these covered wet slips in the western basin were removed, the submerged lands were dredged a second time to remove any contaminated sediment. Then in 2018, Naples Marina Holdings, my client, Mr. Giglio, purchased the property. Mr. Giglio entered into a lease with Freedom Boat Club to use these boat slips that still are there today. There is no formal relationship between Mr. Giglio and Freedom Boat Club other than as landlord and tenant. Freedom Boat Club is a tenant on the property.

As previously stated, Mr. Giglio's goal is to reinstall the wet slip in the basin, albeit at a lower number than had existed for decades. This slide shows the conceptual layout of the proposed reinstallation, it shows 73 slips in the western basin, for a grand total of 112 wet slips in the submerged -- in the subject submerged lands.

If you recall, a total of 137 wet slips previously existed in the submerged lands for decades.

This layout proposes 25 fewer than what previously existed.

The first step in achieving this goal was to secure permits from the DEP and the Army Corps, and that has been done. Here is the DEP permit that was obtained in 2018 by Naples Marina Holdings. This permit approves the conceptual site plan that you just saw.

Our focus then turned to the county, hoping it would approve the 73 wet slips through the Site Development Plan process, just like the county did back in 2003; however, we were advised that a rezone is required, and so we are here.

The rezone request before you today seeks a rezone to a limited restricted C-4 which basically allows marina uses. The rezone, if approved, would be restricted as shown here. At the top, these are the permitted uses, essentially, a marina, and whatever's associated with a marina: Piers, walkways, boatlifts, and so forth.

Number two is water transportation to passengers. This is akin to a water shuttle or a water taxi. A water taxi could moor at the marina and take customers to Tin City, for example.

Water transportation services; that allows for commercial boat rentals, like a fishing guide.

And then, finally, number four, amusement and recreation services. That is the zoning lingo for recreational boat rentals.

Prohibited uses would be liveboards and personal watercraft such as Sea-Doos, jet skis, WaveRunners, those sorts of things.

County staff is recommending approval of this application, having found it consistent with the county's Growth Management Plan and its Land Development Code.

In fact, the county's land-use regulations prioritize and prefer this site for marina operations. Here is Policy 10.1.1 of the Conservation and Coastal Management Element of the Growth Management Plan. You'll note here the priorities for water-dependent and water-related uses, which is what we're talking about here.

The first priority is recreational facilities. This site doesn't lend itself to recreational facilities. The second priority is public boat ramps. While a ramp has existed for decades on the uplands, it's private. The site would be overwhelmed if open to the public. And I also imagine that the Brookside neighbors to the north would not want to open this site to unlimited public use.

And the next priority use in the Growth Management Plan is marinas. So the county's Growth Management Plan prioritized this site for marina use. The application before you implements this prioritization.

You also note, in Objective 10.1, above the reference to the Manatee Protection Plan. Here is a summary of the Manatee Protection Plan codified at Land Development Code Section 5.05.02. The Manatee Protection Plan is the county's only land-use regulation that specifically addresses how many slips are authorized at any given marina site, and it does so in this way. It takes a look at three criteria: Water depth, native marine habitat, and manatee abundance. I'll spend a few seconds on each.

Water depth; they're just making sure there's at least four feet mean low water. Native marina habitat; they're looking for existing seagrasses, salt marshes, manatees, things that manatees like. Manatee abundance; the way they apply that criteria is they look at watercraft-caused manatee deaths within a five-mile sphere, a circumference around the site.

When you apply all those three criteria, three ratings can be assigned: Preferred, moderate, or protected. And based upon those ratings, boat slip densities are imposed. If you are preferred, you get 18 boat slips for every 100 feet of shoreline; moderate is 10; protected is 1. The county has confirmed that this subject site ranks as a preferred site. It checks all the criteria I just described.

And with the amount of shoreline we have here, that Manatee Protection Plan authorizes up to 311 boat slips on this site. So while the Manatee Protection Plan authorized a total of 311, the proposal before you today seeks permission for 112. That's just 36 percent of what the Manatee Protection Plan authorized for this site.

The county encourages outreach to surrounding neighbors for land-use applications like

this one, and the rezone process requires one neighborhood information meeting.

As you can see by this slide, we have gone beyond what the code requires in this regard. We have had two neighborhood information meetings and several other meetings and phone calls. In my opinion, the communications have been amicable and informative. I happen to have personal friends who live in the Brookside neighborhood. We've learned of the neighborhood's concerns and taken efforts to address them.

Perhaps the most repeated and discussed concern was excessive speed of vessels traveling in Rock Creek to and from the marina. So Mr. Giglio asked me to investigate. I learned that since 1979 the county has designated all of Rock Creek as ISNW, idle speed, no wake; however, Fish and Wildlife -- Florida Fish and Wildlife Conservation Commission, which has preempted regulation in navigable waters in state law, designates Rock Creek as SSMW, slow speed, minimum wake, which is slightly faster than ISNW, idle speed, no wake.

Regardless of the speed designation, I toured Rock Creek on my own boat and noticed that there are no official vessel speed zone signs anywhere within or at the entrance to Rock Creek.

So we contacted Fish and Wildlife back in early 2022 to ask them about the speed designation and lack of signs. We spoke to Captain Yanez and Lieutenant Lynn. They responded that on March 2022 they took a vessel, unmarked, through Rock Creek and witnessed no problems. No excessive speeds. Moreover, they emphasized that there were no watercraft-caused manatee deaths in Rock Creek, no boating accidents in Rock Creek, and no complaints to Fish and Wildlife about vessel speed in Rock Creek; therefore, Fish and Wildlife told us that they are disinclined on their own to change the speed zone or post additional signage.

Not to be discouraged. I then researched state law to try to find out any other ways we could try to get Rock Creek designated ISNW, idle speed, no wake. I discovered one statutory section that recognizes a possibility of ISNW designations 300 feet on each side of blind turns in narrow creeks.

In my opinion, we have two blind turns in Rock Creek as you travel to and from the marina. So I drafted this letter and sent it to the county in May of 2022. Essentially, it asks the county to propose to Fish and Wildlife -- which again has exclusive control over speeds in navigable -- ISNW zones around the blind turns. The law does not allow private property owners like Mr. Giglio to make such proposals, but it does permit local governments to do so.

So as we sit here today, Mr. Giglio's done everything he can as a private property owner on this issue. We fully support any efforts by the county to continue to push for ISNW zones, and my client has offered to bear all the cost of installing and maintaining any approved speed zone signs.

It is my understanding that the county staff has made efforts in this regard. They have engaged with Fish and Wildlife, but I hear that they have received the same chilly reaction that I did.

Moreover, back in July of 2022, the County Commission did authorize staff to engage a consulting firm to study Rock Creek in this regard. Several months ago, a firm did submit a proposal to gather data on boat speeds in Rock Creek, and the cost of that Rock Creek boat speed survey is \$24,000. I'm not aware of whether staff has accepted that proposal, but I can say that, based on my experience with Fish and Wildlife on this issue, I'm not sure the survey will actually persuade Fish and Wildlife to do anything other than leave Rock Creek as a slow speed, minimum wake speed zone.

At the second neighborhood information meeting in July 2022, we made several other offers to the Brookside neighbors after hearing their concerns conditioned, of course, on the rezone being approved, and here they are. I'll run through them quickly. First, we agree that the existing boat slips -- the existing docks on that southern shoreline would not be extended any further north into the basin to ensure that there would be clean and easy access to the Brookside neighbors' docks and homes that live on Harbor Lane right at that location.

Second, we would install two cameras within the marina basin. We are still working on that today. Technologically, it might be a little difficult due to distance of WiFi, but we're

working on that.

Fish -- Freedom Boat Club would explore cooperating with Mr. Harms, who owns a property right there at the entrance of Rock Creek, to install a third camera at the entrance. Freedom Boat Club is to send a manned vessel to the entrance of Rock Creek to have a person monitor the activity at anticipated high-use times.

Naples Marina Holdings would offer 10 additional cameras to property owners along the waterfront or Harbor Lane and Rock Creek, first come, first serve, so they can monitor themselves. What we're hearing -- and for -- by way of explanation, the cameras, what we've heard is a boat goes by, it might be going too quickly. It can't capture it quickly enough to report it to Freedom Boat Club. So these cameras would record and would be able to send video snippets to Fish and Wildlife and to Freedom Boat Club and take action against the offending vessel captain.

Naples Marina Holdings would offer one wet slip to a marine law enforcement vessel. The idea there is that would theoretically increase patrols up and down Rock Creek and just serve as a deterrent by being there.

And then, finally, you see the liveboards and personal watercraft prohibitions.

MS. ASHTON-CICKO: Clay, some of those commitments are from Freedom Boat Club. Does your client control that company?

MR. BROOKER: We do not, but the condition could be made clear that we would -- the client, the property owner, would take full responsibility.

MS. ASHTON-CICKO: Okay. Thank you.

CHAIRMAN FRYER: And in our conversation yesterday, Mr. Brooker, you indicated that your client would agree to include these points in the conditions of approval.

MR. BROOKER: That is correct.

CHAIRMAN FRYER: Okay. Thank you.

MR. BROOKER: Since the second neighborhood information meeting back in July, we haven't heard much from the neighbors; however, we have since learned that they have been busy. Over the past -- over the last few months, two or three neighbors have lodged many complaints with various agencies: Collier County Code Enforcement, fire marshal, DEP, Collier County sheriffs. And that's fine. We expect nothing less than to be held responsible for compliance with all applicable codes, regulations, and permits.

Some of the complaints were just fishing expeditions for violations. No pun intended. And the responses from the agencies were that no violations exist; however, other complaints resulted in the finding of noncompliance issues. And in every such case, once we were alerted, we resolved the issues. As I stand here today, I am not aware of any outstanding noncompliance issues with the site.

I'd like to now take a couple of minutes to address some of the issues the neighbors have raised and explain what was done to resolve them. Around the time Mr. Giglio purchased the property, a temporary-use permit was obtained from the county for the placement of a temporary trailer on the uplands to serve a dual purpose, a construction management office for repairs to the existing on-site buildings damaged by Hurricane Irma which had hit in 2017, and the second purpose for the trailer, an office from which Freedom Boat Club could temporarily administer its operations.

Repair and construction work began in 2019; completed in 2022. Thereafter, Freedom Boat Club moved into a permit building on site, which is where they are today, and for the last few months of 2022, the temporary trailer sat vacant. It was removed from the site with the help of a crane in January this year.

During the construction period, the temporary-use permit expired. By code, such permits have a two-year lifespan. No one realized it, not even the county, that is until one of the neighbors lodged a complaint with Code Enforcement. Code Enforcement contacted us and, ultimately, the trailer was removed before any Code Enforcement hearing.

Gazebo. Freedom Boat Club installed a wooden deck on the uplands with a roof,

described as a gazebo, to give its customers some shade from the sun while their boats were being readied. One of the neighbors lodged a complaint with Code Enforcement which resulted in a violation because no permit had been pulled. The gazebo and its shade was gone within a month.

In-water hull cleaning. About eight months ago we were informed by the Brookside neighbors that Freedom Boat Club was cleaning the hulls of their boats while sitting in the marina in the water. That is not permitted by our permit. So we immediately directed Freedom Boat Club to cease those activities. They did so, and no in-water hull cleaning has occurred for many months now.

Fueling. For years Freedom Boat Club was using two larger sized portable fuel tanks situated on the uplands to fuel their boats. Fueling from the uplands is permitted by the DEP and the county. During those years, the fuel tanks and the fueling operations were inspected and approved by fire officials on an annual basis, that is, until August 20, 2022, when, in response to a complaint from a neighbor, a new fire official disagreed with her predecessors from years past and red-flagged the fuel tanks.

We could have challenged the alleged violation based on the previous years of approved inspections and the fact that the same type of fuel tanks and operations currently exist in other marinas around the state; however, we elected not to fight it, and the tanks were removed. Fuel is now brought to the site on an as-needed basis, and we are told we are in full compliance with applicable fire code regulations.

Fish cleaning table. In response to a recent complaint from one neighbor, the DEP conducted a general inspection of the entire marina one week ago, coincidentally. In a letter we received two days ago, the DEP reported just two minor violations. A fish cleaning table was installed on the docks, and no fuel spill containment equipment was observed. As I stand here this morning -- we received it two days ago -- the fish cleaning table's gone, and a fuel spill containment kit is now on site. There was one on site at the time during a DEP inspection, but Freedom Boat Club didn't know where it was. So we are now in full compliance with the DEP letter that we received a day and a half ago.

Mr. Chairman, that concludes my initial presentation. I do request the opportunity of rebuttal after public comments, and I'm happy to answer any questions you have at this time.

CHAIRMAN FRYER: Thank you, Mr. Brooker. Anyone from the Planning Commission have questions for the applicant?

(No response.)

CHAIRMAN FRYER: If not, we'll turn it over to staff for staff's report.

MR. BOSI: And just -- Mike Bosi, Planning and Zoning director.

Staff is recommending approval as contained within the staff report as well as the additional commitments that Mr. Brooker highlighted. We agree that we will incorporate those within Exhibit B of the ordinance to be additional conditions of approval, because they were obviously offered at the -- at the neighborhood information meeting; therefore, we want them -- to make sure that they're enshrined within the ordinance as well.

But with that, staff would ask -- or be happy to entertain any questions that the Planning Commission may have.

CHAIRMAN FRYER: Commission, any questions? If not, thank you, staff.

Ms. Pedron, do we have registered speakers?

MS. PEDRON: Mr. Chairman, our next speaker is Dom Cotugno. His time is exceeded [sic] by the following people -- so if you could all please just wave your hand once I call your name.

Rick Groveman?

MR. GROVEMAN: Yes.

MS. PEDRON: Stacey Cotugno?

(Raises hand.)

MS. PEDRON: Alison Gleason?

(Raises hand.)

MS. PEDRON: And Peter Lang?

(Raises hand.)

CHAIRMAN FRYER: And so that is a total of how many minutes, Ms. Pedron?

MS. PEDRON: Twenty minutes.

CHAIRMAN FRYER: Twenty minutes for the speaker. Thank you.

MS. PEDRON: I'm sorry, 25.

CHAIRMAN FRYER: Twenty-five minutes.

MR. COTUGNO: Mr. Chairman.

CHAIRMAN FRYER: Yes, sir. Approach the mic.

MR. COTUGNO: I'm going to request that Todd Morrison precedes my presentation.

CHAIRMAN FRYER: Identify yourself, sir.

MR. COTUGNO: Dom Cotugno.

CHAIRMAN FRYER: Okay.

MR. COTUGNO: And the second comment I'd like to make is I doubt very much I'm going to need those 20 minutes. I just wanted to make sure we had enough time.

CHAIRMAN FRYER: Understood. Okay. Without objection from the Planning Commission, we'll change the order.

MR. COTUGNO: Thank you.

CHAIRMAN FRYER: Thank you. So who is the speaker now? Please approach, sir. Either podium.

MR. MORRISON: I have a PowerPoint presentation as well.

CHAIRMAN FRYER: All right. And identify yourself, and let's -- I'm going to ask Ms. Pedron how many minutes you have.

MR. MORRISON: I shouldn't be much longer than five to six.

MR. YOUNGBLOOD: Mr. Chairman, Mr. Morrison has been ceded time by Linda Groveman.

(Raises hand.)

CHAIRMAN FRYER: Okay. So up to 10 minutes.

MR. MORRISON: Thank you, sir.

CHAIRMAN FRYER: I didn't catch your name, so when -- before you start.

MR. MORRISON: Yes, sir.

I have a flash drive.

Thank you. Good morning. My name's Todd Morrison. I reside in Brookside neighborhood at 2095 Harbor Lane.

And some of the information I'm going to present has also been discussed by Mr. Brooker today, and I may even mention some additional items to that.

On that slide you'll see two parcels that are part of the marina, which he's also pointed out. These parcels have a designated-use code of 95, rivers and lakes, submerged lands, as recently as two weeks ago. Neighbors who live on the water observed as many as 68 boats docked in the floating dock slips in those two parcels as the additional boats were being rafted up to other boats.

This is 76 percent more than what is permitted. It's also important to note that no taxes are currently being paid for the use of these two parcels. A business should be required to pay taxes on properties they use for commercial purposes, similar to how they are paying for taxes on the yacht basin, which is the other parcel that's underwater. That parcel's 00386200003, and taxes for that particular piece of parcel is \$11,819.

THE COURT REPORTER: Could I ask you to slow down just a little bit?

MR. MORRISON: Sure. I'm just trying to get my five minutes in.

CHAIRMAN FRYER: Well, you've got 10, so don't worry.

MR. MORRISON: The following are some code violations that have occurred on parcels

of Brookside Marina recently related to the lessee, Freedom Boat Club. As mentioned, the temporary trailer was used by Freedom Boat Club as an office. It was granted a temporary permit for 730 days. Despite Freedom Boat Club being notified of the infraction being in violation and noncompliant, which resulted in Freedom Boat Club -- and I'll just refer to them as FBC going forward -- being instructed to not utilize the trailer for any future use, their trailer wasn't removed until 1,012 days beyond the permit. The trailer was on the property in violation longer that it was permitted; 139 percent more. That initial code enforcement complaint was made in August of last year, and the trailer wasn't removed until January of this year.

Also mentioned, the gazebo deck was built next to the trailer on the property without a permit after a complaint was made to Code Enforcement, and, as mentioned, it was removed sometime in November of last year.

On August 19th of last year, Greater Naples Fire Rescue District fire and life safety notified the lessee, FBC, of a stop work order that provided the following comments: The two gasoline storage tanks at your facility do not meet fire prevention code. Your site will need to pull a permit for a permanent installation. I think that's important to note. And no further use of the gasoline tanks may occur. I think that's also important to note. And 10 days have been provided to allow removal of the tanks.

Again, as mentioned, despite these actions being required, they failed to comply.

On August 30th of last year, they were issued a red tag by the fire district and fined \$250, as a result, on August 31st. What was concerning about the fuel was how the hose and pump handle was being stored on the docks and the amount of oil slicks in the water that have been observed by homeowners living on this waterway.

After FBC received their red tag from the fire district, they began to bring fuel to the dock on their own via gas cans, as you can see in the picture on the right. On April 27th, the FDEP, Florida Department of Environmental Protection, visited FBC, and on -- two days ago, on May 2nd, the FDEP noted that a fuel tank was at the location, and they mentioned Permit 01731790-003EI. It clearly states no fuel storage shall be allowed on the docking structures.

During the FDEP inspection, department staff observed, as mentioned, a fishing cleaning table, and it is prohibited for the life of the facility. Department staff also did not observe any fuel spill equipment on site. Department staff spoke with the manager, Mike Gallagher, who stated that the marina has contracted responsibility to fuel spill -- response to a fuel spill contractor. The name and contact information for the fuel spill contractor was not immediately known.

I know Mr. Brooker mentioned that there's actually a fuel spill containment that's actually on the property. For me, I think part of the concern here is the fact that the lessee or the tenant is not aware of, you know, safety measures that are actually on site. He actually thought they had actually contracted it out. So if a fuel spill happens, how is it going to get cleaned up?

Excuse me, sorry. Going off my notes. I should just stay on my notes.

CHAIRMAN FRYER: Slow down a little bit when you're reading your notes, sir.

MR. MORRISON: Based on the information I have provided, it's clear that the operations at this location have a history of dismissing codes and regulation. And although all or most of the violations have occurred as a result of the lessee, Freedom Boat Club, ultimately the owner is accountable for the lessee's actions, at least in my opinion.

Before any rezoning is considered, it's important that the marina understand that one boat slip equals one boat; otherwise, the proposal total of 112 could be as many as 197 additional boats placed at the marina if the current rate of 76 is continued to be used with mooring boats to other boats like it currently is on the floating docks.

I would encourage the Planning Commission, the owner, and the tenants currently, Freedom Boat Club, to look closely at Collier County code requirements, environmental requirements, and fire code requirement to ensure the property remains compliant and to ensure that they have a clear understanding of what those are.

I'd also like to request that the use code for the two parcels mentioned at the beginning of

the presentation be changed to a use code of 20, like the yacht basin currently is, as airports, bus terminals, piers, and marina.

Also, I would like to ask that these parcels be appropriately valued and taxed. Currently they are valued at \$100, and zero dollars are being paid in taxes.

Mr. Brooker also mentioned the ramp on the property. He said that it's only uplands and that it's private. I'm not sure how that can be when the ramp actually goes into the water. I realize that those that live on the water may not want that boat ramp to be utilized due to the increase of the number of boats within there. I particularly do not live on the water, so to be able to have access and use of a boat ramp close by would be nice.

So along those lines, I'd like to also request that if any of this works out as far as whether the boat ramp's deemed as -- and, again, the boat ramp's on the commercial property, so -- and I'm going to go through some of the Florida Administrative Code in regards to ramps in commercial operations.

So whether the -- if the boat ramp stays private, I guess my ask would be -- because in the past there's a lot of long-time residents that live within the neighborhood of Brookside where we actually used to have riparian rights -- that's before my time of living in the neighborhood -- but we had riparian rights to be able to utilize the boat ramp.

So if it's continued to be private, I would like to ask that those riparian rights continue to remain and be offered to the residents within the Brookside. If not, then I would -- you know, then it will be considered, I would have to think, a public boat ramp. Because, again, whether it's on the uplands or in the water, I think it's still considered a commercial operation. You'll see on the next slide what I'm talking about.

So along those lines, I'd like to request that a minimum one slip space be provided to utilize the boat ramp for loading and unloading a boat, kayak, or paddleboard in the water. Specifically, I'd love to see it for the Brookside residents.

According to the Florida Administrative Code 62-330.417, general permits for construction, alteration, operation -- which I think that's the key one -- and maintenance of boat ramp facilities, Letter C, commercial entity, provided such ramp is open to the general public for the life of the ramp or without a fee and without any membership or qualifying requirements. I'd like to ask that Brookside Marina within the time period that -- if and when this is approved, that they fully execute the binding agreement in the official records of Collier County in which the boat ramp is located. If that hasn't already been done, which it doesn't sound like it is because they're claiming it's private, as it is required by the Florida Administrative Code based on the code shown on the screen, commercial entities shall execute and record the agreement to main [sic] public access incorporated herein as Form 62-330.417(1), ensuring the facility will remain open to the general public for the life of the facility.

CHAIRMAN FRYER: You have one minute left, sir.

MR. MORRISON: Okay. And then I believe Dom's going to review some of this. I know that there's been Army Corps of Engineer studies. I do know that there's been DEP studies as well that have been conducted. But one of the things, too, as you look at these maps, the size of the chokepoint within that waterway is not very large at all. And I know Dom will review some of this. But I think it's important -- and I know this is probably out of your purview, but I believe that the county needs to look at traffic studies not only on the roadways, as they've done with this particular project, but also looking at them in the waterway.

Whenever you're putting in a marina or a dock, what's the impact on that traffic within that purview as well on the waterway? And that's something that was actually discussed at some of the neighborhood information meetings as well.

Thank you for the opportunity to present this information for your consideration, and it's greatly appreciated. Have a good day.

CHAIRMAN FRYER: Thank you, Mr. Morrison.

MR. MORRISON: Thank you.

CHAIRMAN FRYER: Next speaker please.

MS. PEDRON: Mr. Chairman, we're going to go back to Dom Cotugno.

CHAIRMAN FRYER: Thank you.

MR. COTUGNO: It's still morning, so I'm going to say "good morning." My name is Dom Cotugno.

CHAIRMAN FRYER: Please spell your last name.

MR. COTUGNO: C-o-t-u-g-n-o.

CHAIRMAN FRYER: Thank you.

MR. COTUGNO: My wife, Stacey, and I have lived in Naples, Florida, since 2003 and reside at 2072 Harbor Lane, Naples, Florida, in Brookside community.

On behalf of the Brookside community board, HOA, and numerous community residents that sit here today, we thank you all for this opportunity.

Our objective, since speaking on behalf of the entire community, or most part of it, is to share the experiences, the issues, and requests relative to the Brookside Marina that is located in our residential waterway community, specifically the multitude of issues we have experienced with the existing members based on commercial marina operations, which is Freedom Boat Club, and also our committee's concern is -- with the adding of 73 additional vessels to the basin, the concern is that this will only compound these ongoing issues and make matters worse than they are today if changes are not made.

Before addressing the commercial marina issues in detail, we believe it's appropriate to express our community's concerns with the Collier County Planning Commission staff study and that -- and their approval granted to move forward with expanding operations. It's unfortunate to us and very concerning that the Planning Commission study paid no attention to our community's various concerns with Freedom Boat Club's ongoing operation which has set the precedent for these issues over the last five-and-a-half years.

No study nor any mention in their report was made regarding the Freedom Boat Club's extraordinary and disruptive vessel traffic, ongoing nonconformance to DEP rules and regulations, numerous violations cited by local code enforcement, and potential negative effects, notwithstanding, very importantly, the water quality of this canal, nor did they study or report the effects of vessels that -- vessel traffic from adding 73-plus vessels in the basin that could cause further consequences to the overall well-being of the waterway, its residents' properties, and the general quality of our living. Instead, they provided a total what we consider to be arbitrary and inaccurate study with no consideration or regard for the real circumstances at hand.

Let me just illustrate to this point. Here are some ways that prove that none of this was done.

CHAIRMAN FRYER: Just for the record, you say "Planning Commission study," this is really the staff's study.

MR. COTUGNO: Yes, sir, sorry. Staff study.

CHAIRMAN FRYER: That's okay.

MR. COTUGNO: Thank you for the clarification.

CHAIRMAN FRYER: Thank you.

Mr. Bosi?

MR. BOSI: Clarification. Staff does not study. Staff provides a staff report based upon the application material that's required by the Land Development Code and what's supplied by the applicant related to the requirements of a rezoning petition. Staff does not commission a study.

CHAIRMAN FRYER: Okay. So this should be called a planning staff report?

MR. BOSI: I think it's criticisms of the staff report, would be it.

CHAIRMAN FRYER: Staff report. Okay. Thank you.

MR. COTUGNO: Thank you.

CHAIRMAN FRYER: Go ahead, sir.

MR. COTUGNO: Thank you for the clarification.

Notwithstanding, if you look at -- some of the things that they cited is whether the proposed changes would adversely influence living conditions in the neighborhood, and what we're saying -- and they said that it will not adversely influence living conditions in the neighborhood. What we're saying is we need an impact study of the vessel traffic and to what extent that number of traffic is going to create some consequences to the water quality.

It also states that -- whether the change suggested is out of scale with the needs of the neighborhood or the county. It's staff's position that the proposed rezoning to C-4 is not out of scale with the needs of the community or the county. What we're saying is, but it's not the perspective of the citizens, and that's why we're here today.

The other thing it says is whether proposed changes will create or excessively increase traffic congestion or create types of traffic deemed -- and you can read. I'm not going to go word by word, but the statement was, as noted, transportation planning staff finds this petition, excuse me, consistent with the GMP. But that study was on vehicles entering their premises. None of it was on the vessel traffic.

Two more -- three more quick points. Whether the proposed changes will be consistent with the goals and objectives and policies of future land use. The petition is consistent. What we're saying is those are land-use goals, not residential waterway goals. It was ignored.

Whether proposed changes will adversely affect property values in the adjacent areas. And what we're saying -- and they said it would not. What we're saying is if you continue to ignore the amount of traffic and further operations' disregard for rules and regulations, local and Florida, DEP, of course it's going to affect the value of our homes and the quality of our living in those homes. No one's going to want to live there. The values of our homes will go down, and it will be very difficult to sell a home when you have 110,000 passages of boats on a very small compatible waterway from a commercial marina.

And I'd like to just parenthetically say, Clay Brooker mentions that this basin used to have a lot of boats and covered slips, but those were on a rental basis. They were -- this is in a commercial marina that has, even at 75 percent of utilization, 110,000 passages by neighbors' homes every day. So if it's 75 percent, 75,000. That seems like an extraordinary amount of vessel passages on a very small waterway.

And then, lastly, it says that -- such other factors, standards, or criteria that the Board of County Commissioners shall deem important to the protection of public health, safety, and welfare. We're asking that the Planning Commission make traffic and sediment study condition -- conditions of approval before it goes to the BCC for a decision.

And having said that, let me take you through two major things that we're asking for. We ask that before any approval is granted, the Collier County Planning Commission and the Board of County Commissioners make the following what we consider to be only fair and logical conditions for any final approval.

The first condition is an impact study be done to evaluate if Rock Creek waterway can safely accommodate the current 75-plus vessels which equates to 55,000 at 100 percent utilization. And they're in business to make money, so even if you go 75 percent, it's still a high number of boat passages on a small residential community.

So we're asking somebody look at the impact of this many trips and also study to what extent, by adding the basin boats, which is going to be 73-plus, which is another 55,000 -- so we're going to have 110,000 passages. That's one out and one back. Let's say it's 75 percent utilization, which I doubt it will be because they want to make sure that these members are using their boats.

So on an annual basis, if you calculate that, it's 110,000 trips up and down this very small waterway.

Especially since there's a very narrow and potentially dangerous area that every one of these vessel passages need to go through, we are fearing that it's an accident waiting to happen, since small vessels used by residents and those rented by patrons of local hotels make passage on this waterway as well, and these being kayaks, standup paddleboard, canoes, Gheenoes, on a

regular basis, particularly since the commercial -- existing commercial marina lessor hasn't effectively provided a permanent solution to prevent their crew and their clients from continuously speeding. I'm going to get to, in a moment, a record of what's going on.

Nor has anyone measured the ill consequences, most importantly, to the water equality and the general hygiene of the environment by having over 100,000 trips per year on this very small waterway which, by the way, we did some research, and this is the only residential community that has commercial marina operations on it in our county. We even extended that research and looked for where else does Freedom Boat Club operate in a residential community along the West Coast of Florida. There are none. They're out in open bodies of water. So that's why this is a major concern.

And we get it, it compatible. They have a business to run. They own the property. But we believe we need to put some governance and more attention, particularly since Freedom Boat Club set a very bad precedent over the last five-and-a-half years.

The final note is, on the extraordinary volume of vessel traffic, both existing and forthcoming, we've asked for an impact study several times in writing to Clay Brooker, who's the attorney, obviously, for NMH Holdings -- withholdings [sic]. Unfortunately, these requests have been ignored.

It's very important to note that these requests were not only ignored but, rather, added to a list of contingency items. We'll give you all of this stuff. We're going to put markers in the water. We're going to put patrol in there. We're going to allow -- we're going to -- we're going to manage this better for you, but at the time, a year ago, Clay came back and say, unless you agree to this right now in writing -- I'm going to send you a letter that everybody needs to sign -- then we're not going to do any of this. He failed to point that -- all that list of things they proposed to do, it was contingent and a condition of if we signed it right there, and we consider that to be a little bit forceful.

CHAIRMAN FRYER: Are you talking about the other offers?

MR. COTUGNO: Yes.

CHAIRMAN FRYER: All right. Well, that's been conceded at this point.

MR. COTUGNO: Right. Thank you.

The second condition is Freedom Boat Club perform a sediment study in order to demonstrate whether or not their operation has contaminated the sediment under their docks and vessels during the last five-and-a-half years. Should contaminants be found with exceedances above allowable levels -- excuse me -- then Freedom Boat Club and the less -- and/or the lessor should be required, as a condition of any of approval, to dredge and restore to safe levels.

Also the lessor or lessee be required to conduct this study each year and required to restore annually to acceptable levels based on outcomes.

And the final note is -- on the sediment study testing is we have and sent written requests to Scott Ward, who's the senior vice president of operations for Freedom Boat Club who reports to Brunswick Corporation. Scott has deferred that to Mr. John Giglio recently.

So let me give you an example of -- and some of this Mr. Brooker and Mr. Morrison discussed already. They have done in-hull scraping of their hulls -- in-water scraping of their hulls, which contain -- and they've scraped anti-fouling paint which, by the way, contains carcinogens, for those who don't know, and proven to cause birth defects in a pregnant woman. It's a very, very bad thing to do, and the DEP is very strict about this.

Next is the use of harsh and environmentally toxic chemicals to clean boat hulls that sit above the waterline. We've witnessed and have pictures of them using rust remover to clean their boats' exteriors.

Another is fuel spillage. We talked about this. We have photos, and the residents are very disturbed about the collection of fuel spills on incoming tide at the non-flush end -- the east end of the canal. There's no way for water to go any further.

It's important to note that these issues were observed and recorded way prior to Hurricane

Ian, nor the result of Hurricane Ian. This has been ongoing way before that. And the fact that the DEP just cited -- we are busy because we're concerned, that -- that Freedom Boat Club does not have any fuel spilling equipment on premises nor do they know who to call when asked if it is, indeed, out-sourced to a third party.

To make matters worse, there is constant daily disruptive movement of 75-plus vessels currently around the marina and waterway causing further distribution of any fuel spills, whatever toxins they've created in the water or on the sediment, especially when crew members -- crew and their clients propel vessels that force their way during extreme low tides. So not only do they exist, but we have videos of them propelling boats, kicking up dirt and sand during extreme low tides, which the concern is, if there are sediments, indeed, they are being spread further.

So here's their in-hull cleaning -- in-hull scrubbing of -- using a diver. We've recorded this. This is a pontoon boat bringing containers of fuel, which, by the way, we understand it's not forbidden to do that, but the concern is spillage is very likely when lifting heavy and awkward containers, and we have proof of that. You see in the bottom picture this is a repeated situation.

We have videos -- I think you might have to help me out here with --

MR. BOSI: Hit "media player," and then hit "okay."

MR. COTUGNO: I got it thank you.

Here is an example of a boat that is propelling through very low tide, and in all due respect to John Giglio and Clay Brooker, I think that's a disconnect between what Freedom Boat Club is telling you and what is actually happening.

(A video was played and narrated.)

MR. COTUGNO: Here is an example of a speeding member, excessive speed, and this was taken on the day that the neighbor right next to this home that has the video recording had three children on standup paddleboards, and that gentleman ran down to the marina and made a formal complaint.

To date, nothing has been done by Freedom Boat Club to incorporate some practices that would make sure that this doesn't happen again. They simply tell you it's under control. We'll deal with it. But there's nothing -- there's no processes. It happens randomly all the time.

MR. BOSI: Hit X up at the top.

MR. COTUGNO: Thank you.

And the last. Here's another member speeding by these homes. And, by the way, this is a video camera that sits on Fred Harm's property that was referenced before, and this is Fred Harm's video camera.

And the last comment I'd like to make here is the concession that Freedom Boat Club or Mr. Giglio will put cameras on our premise. Our contingent is, why are we being held responsible for watching all of this disruptive behavior? It should be their cameras on their premises or their people preventing this from happening.

Here's the chokepoint we constantly refer to. The upper line is 49 feet across, according to Google. Low tide, probably 35. You're going to have 100,000-plus vessel trips go by that point each and every year. We just think it's an extraordinary number. The one below it is 39 feet across, probably 24, 25 feet at extreme low tides. We just think this is an accident waiting to happen.

And I'm going to flip now to my last page. We, being our community's recent study to determine to what extent, if any, there may be contaminated sediment in waterway, earlier this year our community contracted with Turrell Hall & Associates, a reputable marine consulting firm here in Naples, to study and analyze to what extent, if any, the residents' submerged land may be contaminated, recognizing that would be unlawful for us to go into the submerged lands owned by John Giglio.

So in doing so, testing our own submerged land, seven different metals were tested. Results were compared to the sediment collected that Clay referred to before, studied in '06 and '16, and copper and zinc were noted to have exceedances above allowable levels in all three studies, so

it's consistent. Copper and zinc keep on showing up and showed up in our report. Not only ours, but in '16 and '06. Hence, we think it's only fair and reasonable Freedom Boat Club be required by you folks to conduct a study of their premise's sediment to demonstrate if they have or have not caused contamination on the waterway since their inception, which was five-and-a-half years ago.

So two key asks, if there's anything folks can remember is impact study on this extraordinary amount of traffic, not just the addition of 73 more boats that Mr. Giglio is proposing but also the existing 73-plus -- the 80-plus boats that Freedom Boat Club currently has in their 39 slips, and also a sediment study of whether or not Freedom Boat Club has contaminated. And we'd like not only this to be a one-time occurrence but to govern these behaviors going forward, make this a condition of approval that they be done today and they also -- before any approval is granted and they be done on a year-to-year basis so everything's under control and there's checks and balances.

So with that, I thank you very much for all of your time and appreciate you guys looking at these things.

CHAIRMAN FRYER: Thank you, sir. I have a question for you.

MR. COTUGNO: Sure.

CHAIRMAN FRYER: To your knowledge, are there any current uncured violations of law today?

MR. COTUGNO: The only one that comes to mind is -- and John -- we saw a note that is going to tend to -- and, John, we appreciate this -- the DEP's concern that there's no fuel spillage equipment or recognition by the crew there, the manager, of how to address the fuel spills.

CHAIRMAN FRYER: Okay. Thank you very much.

MR. COTUGNO: Thank you.

CHAIRMAN FRYER: Ms. Pedron?

MS. PEDRON: Mr. Chairman, our last speaker is Phid Pollis.

CHAIRMAN FRYER: Thank you.

MS. PEDRON: And then we will proceed with our online speakers.

CHAIRMAN FRYER: All right. And this is -- this is a five-minute --

MS. PEDRON: That is correct.

CHAIRMAN FRYER: -- segment?

Thank you. When you reach the podium, sir, please spell your last name.

MR. POLLIS: Pollis, P-o-l-l-i-s.

CHAIRMAN FRYER: Thank you.

MR. POLLIS: Yeah. I just wanted to make the Planning Commission aware that not everyone in the neighborhood is against the marina being allowed to put their slips back into the basin where they historically have been.

I've been living in that neighborhood since 1977. I've been there for 50 years. There's always been a marina there. There has always been boat slips. There has never been a problem as far -- I don't know where -- those numbers of trips he's come up with, but that's -- that has never been the case. I've lived in that neighborhood for almost 50 years.

It's just -- well, just -- not everybody in the neighborhood is against the marina. It's always been there. It's always been a good neighbor. And it's a boating community. It's -- we would love to have this community have this marina there as an asset to our boating community, and that's about it.

CHAIRMAN FRYER: Thank you very much.

MR. POLLIS: You're welcome.

CHAIRMAN FRYER: Next speaker, please.

MS. PEDRON: Mr. Chairman, we have two new speakers. Peter Lang followed by Frank Perrucci.

CHAIRMAN FRYER: These are people who are present? Is your name Lang, sir?

MR. LANG: Yes.

CHAIRMAN FRYER: Okay. Please approach.

MR. LANG: This is okay?

CHAIRMAN FRYER: It's fine, yeah.

MR. LANG: Hello. I'm Peter Lang. I live at 1884 Harbor Lane. I don't really know an awful lot about where everybody lives, but I live right at the chokepoint of the area that we're talking about. And I will say that since I've been there now, for six-plus years, that the amount of vegetation, the amount of fish, the amount of wildlife that is visible from my dock, my house, has gone from abundant to close to zero.

When we moved in, we were fishing there every day. We had tarpon, snook, redfish, every imaginable thing, and especially an overabundance of bait fish and different items of that nature. It is all gone, and it is all gone since Freedom Boat Club.

Unlike most people, I rented a slip in 1992 on that location, and to consider that, what that was, anything other than the complete opposite of what they're asking us to do or give into is ridiculous. Comparing Naples, Florida, 1979 to 2023 is unfathomable, if you ask me.

The last thing I'd like to talk about is the lack of aerial footage of what that basin looks like as it's being used today. I notice that they have all kinds of aerial footage of 1979, what it looks like after they put in the amended docks along the main canal. But what I would wonder is why hasn't anybody showed what it looks like at 5:00 Monday through Sunday or Sunday through Saturday every single day? There are a hundred boats lined up in an area that is not wide enough for 10 boats.

The abusive behavior by the people at Freedom Boat Club has warn me thin. I don't go outside my home at 8:00 in the morning, noon, or 4:00 p.m. anymore because I cannot look at the abusive behavior of their members. They have done nothing in regards to tampering that, absolutely nothing.

I am not in any way, shape, or form a member of CAVE, the citizens against virtually everything. I'm a construction owner -- I own a construction company -- and I make my living on the very good decisions that the planning committee makes. And all that our neighborhood is probably asking from you is to treat us the same way you're treating the people out on Immokalee Road, you know, not to look back at all of the legal mumbo-jumbo that Mr. Brooker brings up as to why he can do this, but look at the common sense as to what is going on in the neighborhood. It is a residential neighborhood. It is not able to handle the amount of boat traffic that is there.

And I believe that the evidence of no changing of the behavior of those Freedom Boat Club people is [sic] going to make it any different.

Thank you for your time.

CHAIRMAN FRYER: Thank you, sir.

Next speaker.

MR. PERRUCCI: I was waiting for my name, I guess.

CHAIRMAN FRYER: Well, who is the next speaker, Ms. Pedron?

MS. PEDRON: Mr. Chairman, our next speaker is Frank Perrucci.

CHAIRMAN FRYER: Is that you, sir?

MR. PERRUCCI: That's me.

CHAIRMAN FRYER: You're on the air.

MR. PERRUCCI: Good morning.

CHAIRMAN FRYER: And spell it, please.

MR. PERRUCCI: P-e-r-r-u-c-c-i.

CHAIRMAN FRYER: Thank you.

MR. PERRUCCI: I am also a resident on the waterway of the Brookside community. I just want to follow up very quickly. Very important fact that came out -- and I'm respectfully requesting you and Clay and John to follow up on this. That speed zone area is declared as a slow speed, minimum wake. That's really not a defined action. What really is defined is idle speed, no wake. And let me correct. I think -- I think I said "no wake." It's slow speed, minimum wake.

Idle speed, no wake, really defines what a boat is supposed to do. I've -- as past president of the Marine Industries, I deal with this every day with managing two marinas on Naples Bay.

You need to chat with the county. The county has the ability to be able to change that. Fish and Wildlife, I know their criteria as to why they don't want to move on that, but they also will say that you -- you, the county, can change that.

It needs to be idle speed. It will correct a lot of the issues that are happening. One issue that is really happening, and it does happen. And I know they've had their boats out there to say, oh, we were out there; not too much happening. Live on the water, and you'll see what's happening.

And all due respect to the marina, I'm all for boater access. It absolutely is a great thing for the community, and everyone should live the dream as a boater. It's the best thing ever.

The traffic study, as president of the Marine Industries for 11 years, past president now, we did a traffic study when we were involved back in 1997 with speed zone issues on Naples Bay. And we came to a conclusion, and it worked for a long time. But we did do a study as far as traffic count itself. Boat traffic count can be done.

Thank you.

CHAIRMAN FRYER: Thank you very much.

Next speaker, please.

Oh, Mr. Bosi.

MR. BOSI: Chair, I was just was IM'ing with Mr. Youngblood. I guess we had a hiccup within our network connectivity. He needs to reset the Zoom meeting so we can have the rest of the public speakers. I'm not sure if you want to take a break for lunch now or whatever your discretion. But we need to at least have a short break.

CHAIRMAN FRYER: Yeah, okay. So let's take that as a point of deciding what we're going to do for the rest of the afternoon.

Typically it's my sense of what the Planning Commission frequently likes to do is to have a later lunch and try to continue rather than stop for lunch and come back.

COMMISSIONER SPARRAZZA: Yeah.

CHAIRMAN FRYER: Which I think is potentially doable here. I see heads nodding yes.

So let's do this. We'll take a 10-minute break -- nine-minute break to 12, noon, right now, and then we'll return and continue. We're in recess.

(A brief recess was had from 11:50 a.m. to 12:00 p.m.)

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

CHAIRMAN FRYER: Thank you, ladies and gentlemen. We're back in session.

Mr. Pedron.

MS. PEDRON: Mr. Chairman, we have two additional speakers. Patricia McNamara followed by Brooke Sykes.

CHAIRMAN FRYER: Thank you.

Ms. McNamara.

MS. McNAMARA: Yes, hi.

CHAIRMAN FRYER: Before you start, you hadn't ceded your, had you, or did you?

MS. McNAMARA: No.

CHAIRMAN FRYER: Okay. I'm sorry. I thought you did. Go ahead.

MS. McNAMARA: No, I didn't. I just -- I just wanted to let you know -- reiterate what's already been said.

THE COURT REPORTER: Can you speak into the microphone.

CHAIRMAN FRYER: Yeah, and say your name, too.

MS. McNAMARA: Pat McNamara, and I'm at 2096 Harbor Lane.

And I want to just, like, emphasize it's not even just like the further growth for the boat club. It's the damage that they have already done. Like the gentleman said, the wildlife there,

there are no fish there. You can't go fishing on the dock. You can't -- you know, we used to have the dolphins, we used to have the manatees. The quality of life since they've been there...

And also it's like -- you know, they say it's like they have -- they haven't had any complaints. That's just an outright lie, because I've complained, and I know a lot of people have always complained. But we've been trying to be good neighbors and complain to Freedom Boat Club. And, apparently, that's where it ended.

You know, my dock has been damaged by their members hitting my dock. And I had -- you know, they would just tell me -- it's like, well, docks are made to be hit, you know, and that was the end of that.

And then, plus, like, you know, that -- and the wakes that they cause -- because they also -- not just the speeding, but they'll turn around right in front of my dock, and it causes the wake. So the whole pilings are deteriorating. I'm sorry. I'm short of breath.

CHAIRMAN FRYER: That's all right.

MS. McNAMARA: But -- yeah, that and the wildlife, and the expansion of the boat dock -- it's not just the marina. It used to have those docks there, but those docks weren't used for commercial, you know. So it's -- it's not the amount of the slips. It's the usage of those slips that's really concerning.

So that's all I wanted to add to it. Thank you.

CHAIRMAN FRYER: Thank you very much.

Next speaker, please. Ms. Pedron, will you say the name again.

MS. PEDRON: Mr. Chairman, our next speaker is Brooke Sykes.

MS. SYKES: Hi.

CHAIRMAN FRYER: Your last name is Sites?

MS. SYKES: Sykes.

CHAIRMAN FRYER: Spell.

MS. SYKES: S-y-k-e-s.

CHAIRMAN FRYER: Thank you very much. Go ahead.

MS. SYKES: Thank you. Hi. My name is Brooke Sykes, and I live at 1800 Holiday Lane. We live on the water also in Brookside.

That was the one thing I was -- I wanted everyone to know, too, that there were boat slips before, but they were residential, and I think that's important. To change all of them to commercial, that makes a really big difference for us.

And I'll speak for me as a mother and having kids, and we're out in kayaks and paddleboards, and we have a boat as well, and we're out there, and that really makes a big dif -- I mean, we're on Rock Creek. I mean, it's labeled a creek that -- we have, you know, all traffic funnels out and then it goes out, you know, into the river -- but to just really, take to heart for all of us that live there and are there day in and day out and want to enjoy this as well -- I don't think any of us are opposed to putting the slips back, but it's -- changing it all to commercial will really, I think, make a big difference for us that live there.

Thank you.

CHAIRMAN FRYER: Thank you very much.

Ms. Pedron?

MS. PEDRON: Okay. Mr. Chairman, our final in-person speaker is Nicholas Thomas.

CHAIRMAN FRYER: Go ahead, Mr. Thomas.

MR. THOMAS: Thank you. I just wanted to talk about a few things. We -- I represent Freedom Boat Club, and we do have 63 vessels there today in the water. Some of the fueling concerns that we had was we did have a delay in removing the fuel tanks from the land because we had our employees and their families impacted by Hurricane Ian, so there was a delay. It's not like we were just disregarding the notion that we had -- we weren't going to move it. We certainly had every intention to.

We do not store portable fuel tanks on the docking structures per code. We store them in

OSHA-approved containers, and when we do fuel, we use pumps associated with those, so our employees aren't picking up fueling containers and making it harder on them and potentially on the environment as well.

We do have training and education to our staff when it comes to fueling.

CHAIRMAN FRYER: Slow down a little bit, sir, for the court reporter.

MR. THOMAS: Can do.

We do have training and education to our staff when it comes to fueling. We have standard operating procedures. We operate out of 108 locations internationally, and to date we haven't had any major fuel issues, and we believe that is a direct reflection of our SOPs. Granted, we did cease our continuing education program of some programs post-Ian because of the local resources, but we are going to reinstall them, and that way every employee knows what to do in the event that something, unfortunately, happens.

We do have on site a fuel spill recovery kit. It is now, as of yesterday, on the docks, bolted to the docks, so it can't go anywhere and it can't float away or go anywhere else. And we do use a boom for refueling procedures. In the unlikely event that something is spilled, we deploy a boom to keep the contaminants all in one area.

And then I would also like to address the third party. In the event there is a major fill -- a major fuel spill, which we hope never happens, we do have a third-party company that we outsource to, just like the City of Naples does. It's the same vendor that they use in the event that there's a major fuel spill at the city dock.

For trips to adjust for utilization, is what we would call it, up and down Rock Creek, in one of our peak weeks, we do about 320 trips, or 300 trips in that week, which is about 1,300 per month, which would be roughly 16,500 trips per year, to put it in perspective, not hundreds of tens of thousands of trips.

FBC model is a subscription-based model. So it's like Disney Plus or your cell phone. Our members pay us, and it's up to them to use the club. Now, we want to get them out on the water in a good, safe manner as much as possible, but it's not every boat's going out every single day like a rental business all of the time. That's not our goal. We just want to make sure our members can use the water when they want to use the water.

And we do operate in several marinas from Bonita -- from here through Bonita, the Fort Myers area, Englewood, Venice, and up to Anna Maria. All of those marinas butt up against residences. So I don't know where other people may have done their research, but we do operate in marinas next to residential neighborhoods or within residential neighborhoods.

We also use antifouling paint as nonabrasive. It's called abrasive [sic] antifouling paint, which doesn't have the traditional coppers and heavy metals that are found in most of them. And since we learned that you can't clean vessels there, we have not cleaned any vessels there on-site.

And then we do definitely use green marina chemicals because some of the marinas that we operate in are part of green marinas in the State of Florida. So all of our chemicals are approved for green marina use. And the Starbrite chemicals that we use have non-heavy metals in them, and they're sourced at the local West Marine and local marina stores.

We do take every compliment or complaint seriously, and we've had three major complaints brought to us, one of them being a member had struck a dock and done damage. One of our directors went out on site, reviewed the potential damage with the owner of the property, and no -- no major and significant damage could be determined or deciphered that wasn't unilateral to the entire dock. But we do take every complaint that's raised to us very seriously.

We agree that when our members drive too fast, we don't want that. We are 100 percent in alignment of wanting to make that an idle speed zone and not just a slow speed zone. When it is brought to our attention that a member does drive too fast or is going too fast, on the two or three that have been brought to our attention, we have taken corrective action with our members, and that's typically done for a 30-, 60-, or 90-day suspension of boat-use privileges, and if they continue to show those repeated actions, we typically terminate them from the club, because we don't want

those type of people representing our club or doing that to the waterways.

With slow speed, minimum wake, the Florida State statutes do define that as a means that a vessel must fully be off plane and completely settled in the water, and that is what slow speed means, and that's -- like I said, we do encourage you, along with the neighbors, to have the county continue to pursue with the state to change that to an idle speed, slow speed zone.

I would also like to remind the Commission that post Hurricane Ian for -- as part of our community investment team, we had several employees reach out to the neighborhood to find out what we can do and what they want us to do, and that was cleaning up the waterways, removing port-o-potties that had blown in there and had clogged the waterways post Hurricane Ian, and we have done that, and that's something that now we are continuing to do on a regular and scheduled basis because, obviously, sustainability of the waterways is very important to us.

CHAIRMAN FRYER: You're at your time limit now, sir.

MR. THOMAS: Thank you very much.

CHAIRMAN FRYER: Thank you very much. And I think you gave us a little preview of rebuttal. If there's anything further that you want said at rebuttal, just let the lawyer know, and we'll hear it then.

Next speaker, please.

MS. PEDRON: Mr. Chairman, our first online speaker is Mr. Joan Gross.

CHAIRMAN FRYER: Gross is the last name; Gross?

MS. GROSS: That is correct.

CHAIRMAN FRYER: Thank you. Ms. Gross? Mr. Gross?

MR. GROSS: Hi. This Dean Gross. Joni couldn't wait for meeting.

And only thing I would mention is that this is, again, people who used to be in the neighborhood; a lot of them have moved away, that -- just to make the point that Brookside owned all of those marinas when the development was built, and all the ones that are along -- maybe not the cutout where the covered was [sic], but all the way along there. And what happened, they let everybody use it. The people in the neighborhood could use it, all of Brookside, and they let other people across on the other side use their marina.

And the crafty guy that took this and abused it, he put all his boats in there, and it went on for three or five or whatever years. And then -- this is part of history, I guess, that wasn't covered. And then what happened is he had boats that he was using there, and he said, well, that's adverse possession. And legally what adverse possession is, if you use that area without written permission, after three or five years or seven, whatever it is, you can take the land, and that's exactly what happened to the owners in Brookside is we lost all those slots for the people that didn't live on the canal, across the canal, to be able to pull -- park their boats there.

So this has been kind of an abuse that's been going on. And I wouldn't want to keep seeing the regulations derode to the problems and future degradation of the owners for the Brookside.

So that's about it. Joan would probably have more comments, but I just wanted to make that point.

CHAIRMAN FRYER: Thank you, Mr. Gross.

MR. GROSS: Thank you very much.

CHAIRMAN FRYER: Thank you, sir.

Next speaker, please.

MS. PEDRON: Our next speaker is Amy Eckenrode.

Amy, can you hear us?

MS. ECKENRODE: Yes. Hi.

CHAIRMAN FRYER: Spell your last name for us, and then you have the floor.

MS. ECKENRODE: Okay. It's E-c-k-e-n-r-o-d-e.

CHAIRMAN FRYER: Thank you.

MS. ECKENRODE: You're welcome.

I'm just going to make statements and kind of just rounding up what everyone has already said today.

They will not disclose the use of the old building on the property zoned C-4. I don't want a party in my backyard daily, nightly.

Tiki boats create this disturbance. We can hear the hotel pool parties. Commercial zoning creates more traffic.

Oak [sic] Farm is expanding as well. The triangle is going to create more traffic.

Constant wakes. Frequent use of the rental program. Twice-a-day rental creates an impact on the ecosystem.

Back when the slips were in use, they were for private use. Private use is usually twice a month. There's no patrols. I played Karen so many times; it's exhausting.

He would have put up the signs already if he really cared about our ecosystem. The fact of the matter is, he doesn't care about our ecosystem. He is a capitalist. And I understand it, but there has to be a balance. There has to be a balance for our ecosystem back here.

And I called the boat club, and they just give verbal slaps to the clients. In the end, again, it's about our ecosystem and quiet enjoyment, which we are lacking.

Thank you.

CHAIRMAN FRYER: Thank you very much.

Next speaker, please.

MS. PEDRON: Our next speaker is Fred Harms.

Fred, you may unmute your microphone. Can you hear us?

MR. HARMS: Yes, I can.

CHAIRMAN FRYER: All right, sir, please proceed.

MR. HARMS: Okay. First of all, I'll give you a little bit of my background. I'm a retired businessman, operated my business on fairness, and I was never all about the money. So that's a bit of my background there.

This is one of my properties that I reside in. I choose to select properties that are peaceful and natural, and this is why I selected this property here to live in the winter.

Anyway, it's very -- full of mangroves. My view is mangroves. You've seen my cameras. You can see what my view is, and I'd like to keep it that way.

Also, we have been impacted by Hurricane Ian, and our residents and neighbors have spent thousands of dollars repairing their homes in the hopes that it would still be a nice place to live.

I was also impressed by the Chairman stating -- and correct me if I'm wrong -- that the goal of the Board is to protect the citizens of Collier County and not out-of-county corporate entities like we're dealing with here from Venice, Florida. Did I hear that correctly, or is that --

CHAIRMAN FRYER: You added to do it, but the record will stand.

MR. HARMS: Okay. So, therefore, we have a subdivision. And I'm just wowed at what I just heard about the way it used to be there, that all of that property was sort of like deeded to the community and it was taken away illegally, or whatever, from us and, wow, I didn't even know that. That was very interesting.

So I think the solution here is -- I'll just get to the quick solution. Either tear out all the mangroves and open up this whole area for a thousand boats or turn things back the way it used to be where you would have resident -- people in the area, like your neighbors, going by your home and saying "Have a nice day," or "How are you today?" rather than these inexperienced boaters who couldn't care less about our properties. And they're always in a hurry to get back or to get out, which makes sense. I mean, I would be no different.

I've been threatened by people. And I don't know if any of you people have ever been threatened by somebody, but generally it's to your face and you know who they are and you can respond to it. When you call the Freedom Boat Club, who is also not the owner of the property, they said, we'll talk to them.

I said, well, do I not have a right to know who this person is? Because they know who I

am, because I used to post my family name (unintelligible).

So I also fear for my life with some of these people. I wish I could slow them down, but maybe I will. I'll slow (unintelligible), and we'll go over these things a little bit more.

I don't even go out in my backyard either, because I can't -- I can't stand it. And when I ask people to slow down, they either laugh at you, give you the finger, or just -- when I say "slow down," you know, just give the -- my hands down, they pretend they're (unintelligible) to me or something. It's just ridiculous.

This is a residential neighborhood. It was always a peaceful, tranquil neighbor -- tranquil neighborhood where your neighbors would come by occasionally, and you would say, "Hi, how are you?"

I am going to invite each and every one of you Board members to my property for a coffee as well as the media and to see what I'm up against and what my neighbors and their families are all up against.

So I've got more things to add, but I think we've pretty much done it all. Other Freedom Boat Clubs, apparently, have 10 to 14 boats in there operation. These people want to have, I don't know, is it 150? It's ridiculous as it stands right now, and they want to add more? It's just terrible.

Somebody's going to get hurt. Something's going to happen. And I can't even put my boat out on my dock because when these yahoos come flying by, they smash my boat into my dock and destroy it. Who's going to pay for my repairs? You know, I don't know. There's -- the other side of this is, sure, you can have a business, but, come on, man, be fair, and don't do it -- you know, think about the impact you're having on families in a residential neighborhood.

It's also on a cul-de-sac which is generally more private. People seek out these locations.

CHAIRMAN FRYER: One minute to go, Mr. Harms. One more minute, sir.

MR. HARMS: One more minute?

I told you they're inexperienced boaters. Also, the owner has no control over who these people are in these boats. The owner apparently used to own the Freedom Boat Club. I don't know if you people are aware of that, whether it's true or not. I mean, he said to me that he used to. So, I mean, it seems like it's (unintelligible).

So there are other (unintelligible) that a fellow who brings down from Rhode Island -- I believe he brings two or three down. He carts them down from Rhode Island in the winter, and they can't navigate those waters safely either with these kind of (Unintelligible).

In the mornings is like one constant (unintelligible). They come within 10 feet of these docks. Also there was mention of these underwater submerged lands. I own that land as well underneath -- right to the other side of the mangroves. Can I put in -- I have 110 feet of waterfront. Can I put in 20 more docks?

CHAIRMAN FRYER: Sir, you're at six minutes, so I want to thank you very much for your comments and indicate for the record that -- no one's fault but technology, that I'm sure the court reporter had some difficulty hearing all the words you were saying. I know I did. But I know she'll do the best she could.

All right. Who's next, please?

MS. PEDRON: And our final online speaker is Jason Botta.

Jason, you may unmute your microphone. Can you hear us?

MR. BOTTA: Yes, I can hear you.

CHAIRMAN FRYER: And spell your last name, and then you have the floor, sir.

MR. BOTTA: Last name is Botta, B-o-t-t-a.

Just a couple comments. I just wanted to take exception to Mr. Brooker's statement about speeding being the main concern. Although it is a major concern of the residents, I think from my perspective of many of the residents it's the total traffic at the use case [sic] of the Freedom Boat Club as tenant that our issue is.

I've been at the property as -- you know, visiting the property, living at the property for

over 30 years, so we were present when the docks in the basin that they're proposing were in existence.

And the condition of the water and the use of the waterways is significantly different since the Freedom Boat Club became present in 2017.

As most of the residents can attest to, that the waterway's condition has severely deteriorated, and the wildlife is almost nonexistent. That's -- yeah, I think the case -- or the statement that manatee deaths are primarily the assessment of wildlife impact is unfair and not appropriate in this case because, in the current condition of water, we don't see any wildlife present at all, so of course there will be no manatee deaths.

The presence of the Freedom Boat Club here as the tenant, I think, is extremely unprecedented for this type of waterway. As Mr. Harm stated, this is a cul-de-sac and, really, the end arm of the Rock Creek waterway. So all the residents along this waterway are impacted by the presence of the Freedom Boat Club.

We have investigated several of their other properties via satellite images, and there was -- we couldn't find of any other case where the Freedom Boat Club operates at the tail end of a residential waterway like this which impacts absolutely everyone and especially the residents that are directly here at Brookside community.

So, you know, our -- at least my concern, and I think the main ask, is that the traffic and the environmental impact be assessed because of -- at least our observations from the Freedom Boat Club's presence since 2017 has been extremely significant. You know, as I said, that the boat slips that did exist in the aerial photos in the '70s, there were boats present. As was stated, these were usually just private boats that made very limited routes through the waterway; whereas, the Freedom Boat Club operates very much like a rental car agency where these are going out multiple trips every day. So the total traffic change from 1979 when that image was taken to today is extremely different. It's not -- also, though it's less boat slips, it's multitudes larger total traffic. So we think that that comparison is totally unfair.

So we wish that the traffic assessment is at least reevaluated as was stated that there's no impact. We think that's completely untrue, and the environmental impact is significant just from the total amount of traffic being present. And that's all I have to say about that.

CHAIRMAN FRYER: Thank you, sir.

Ms. Pedron, any further speakers?

MS. PEDRON: At this time, we do not have any additional online speakers.

CHAIRMAN FRYER: Anyone in the room who has not registered but, nonetheless -- has not ceded their time, nonetheless, wishes to be heard, please raise your hand.

Seeing none, at this time we'll close --

COMMISSIONER SHEA: We've got one. He's got a hand.

CHAIRMAN FRYER: Oh, please approach. And I take it you have not been sworn in, sir?

MR. WALSH: I was.

CHAIRMAN FRYER: Have you already spoken?

MR. WALSH: No.

CHAIRMAN FRYER: Okay. Then please identify yourself, and then you have the floor.

MR. WALSH: My name is Kevin Walsh. I'm a resident of Collier County. I am a member of Freedom Boat Club and have been for a long time and, in full disclosure, I also work there. But I'm speaking as a member and not as a Freedom Boat Club employee today.

I wanted to just speak on behalf of the Freedom Boat Club members that I know and live near who -- for whom access to the water in Collier County wouldn't otherwise be possible if it wasn't for Freedom Boat Club. We have a number of -- hundreds of members here in Naples and down in Marco and up in Bonita who, but for Freedom Boat Club and their expansion over the last 10 years, wouldn't have access to the water.

And I'm not talking access through a boat ramp or whatever. But we don't own boats.

We don't choose to rent boats because they're too expensive and in not such good shape, so we choose Freedom Boat Club as members to get out on the water in a way that's less disruptive to the waterways of Florida and Naples than if we all each had our own boat.

So we're a boat-sharing community. Not a timeshare, if you will, but, you know, a dozen or so people that effectively share a boat. And do we get more use out of a boat than somebody that might have been at Brookside Marina 20 years ago? Certainly we do, but it's because 10 families or so are sharing a boat and access to the water.

So what I would like to respectfully request is that in addition to listening to the Brookside neighbors who are immediately impacted because the boat goes back and forth in front of house once or twice a day, please listen to the people that are up and down Davis Boulevard or as far out as Collier Boulevard who otherwise would have no access to the water in Naples and are looking to Freedom Boat Club to be able to provide more slips so that we can have access to boats in the busy season when right now it's hard to do.

So that's all I'd like to say. Thank you.

CHAIRMAN FRYER: Thank you, Mr. Walsh.

Anybody else who's not -- yes, ma'am. Please approach, state your name, and then you'll have the floor. Have you been sworn in?

MS. GALVIN: Yes.

CHAIRMAN FRYER: Okay.

MS. GALVIN: Hi. Thank you for hearing me today. My name's Robin Galvin, G-a-l-v-i-n. We've owned a home here in Naples from 1987, and we live within walking distance of Brookside Marina.

I'm speaking in behalf of Freedom Boat Club right now. I understand that the neighborhood of Brookside has had a lot of boats passing by, and it has increased since we've had the boat club there.

We used to rent at Brookside Marina. We rented a slip many years ago. That marina was not well taken care of. It was not well maintained. It was a commercial area where that basin was, the covered slips. It was so poorly maintained that it fell into the water. The cover fell in, part of the pavement fell in, the seawall caved in.

Since John Giglio has owned the property, he's made improvements in the property. He's complied with a lot of the issues that the neighborhood has had. Speeding is one of them. It is a designated slow wake area, not idle speed. I know I was reprimanded as a Freedom Boat member coming in at slow speed. I docked the boat, and I was lambasted for coming in at slow speed and not idle speed, and I was told that further action would be made against me if I did not comply.

So that is reiterated all the time in the monthly statements. We have monthly email newsletters from the boat club about the speeding. All the time on the dock, it's -- we're reminded of this. It's got a placard up there to tell us that it's idle speed only, even though it's slow speed, in recognition of the concerns of the neighborhood.

The prior property owners there, they had all kinds of establishments where there was drinking and no restrictions on the property. The slips that were rented out there had no oversight. People could go there all hours of the day. Freedom Boat is dawn to dusk operations only. I know that they have used -- they have allowed the usage of their boat ramp for neighbors to have to remove their boats out of the area. They've allowed that. They have.

CHAIRMAN FRYER: Ladies and gentlemen, if you don't have the floor, please do not speak.

MS. GALVIN: Yes, they have. I was there when that occurred.

So I just want to say that the Freedom Boat Club allows a lot of people access to the water. We used to have a boat, and then the slips became unaffordable, so we joined the boat club probably more than 10 years ago. We try and be very respectful of the neighbors. We wave. We say hello. There was one day somebody was not watching their fishing pole, and a snook was jumping out of the water, and I yelled to the people to come get their snook, you know. So we try

and be good neighbors. We've been in that marina off and on for years and years now.

The Freedom Boat Club also affords people who could not get on the water, handicapped people, veterans, disadvantaged youth -- they couple with Freedom Waters and do a service for the community, the community at large. They bring people who could not access the water out to the water for the day, and the members volunteer their time to drive these people around.

There are other things that the boat club does that is not -- is not well thought of in the community, but they do provide quite a bit of community support.

So I want to say thank you for allowing me to speak on behalf of Freeman Boat. Thank you very much.

CHAIRMAN FRYER: Thank you, Ms. Galvin.

Anybody else in the room who's not registered but wishes to be heard?

(No response.)

CHAIRMAN FRYER: I don't see any hands up and so, therefore, we will close the public comment portion of this hearing.

And we will now turn to rebuttal. Mr. Brooker.

MR. BROOKER: Thank you, Mr. Chairman. I'm going to try to be selective on my rebuttal. Some of the points have already -- that I was planning to make were already made by some of the speakers.

Mr. Morrison's request that we record a fully executed binding agreement to maintain public access -- there was a citation to a Florida Administrative Code provision. That code provision applies to public ramps. The ramp here, which is, by the way, not on the land subject to this rezone, is not public. It's private. So the requirement doesn't apply here.

Also, given some of the comments we've heard from the neighbors, I'd be very surprised if the neighborhood would want this ramp opened up to unlimited use by the public.

Mr. Morrison mentioned the issue of the taxation of the eastern two parcels. Taxation is surely an irrelevant issue for this zoning proceeding. The Board of County Commissioners and the Property Appraiser are distinct authorities. The BCC has no power to dictate how the Property Appraiser does his or her job; however, assuming there is some relevance to this proceeding, which there is not, no taxes are being paid because no taxes are owed.

Mr. Giglio has not done anything with the way the parcels are coded by the Property Appraiser. That code has remained the same for many, many years, long before Mr. Giglio purchased the parcels.

If Mr. Morrison's comments or requests result in the parcels being taxed, please understand that some of the neighbors who you've heard from today have docks or portions of their docks that are, in fact, located on Mr. Giglio's property without his consent. He has not pursued this issue, doesn't want to, because he'd prefer to be a friendly neighbor; however, if taxes are imposed, he must respectfully reserve his rights, which would include removal of the docks from the property or the payment by those property owners of a pro rata portion of the taxes for their use of his property.

Mr. Morrison's comments about the "one boat, one slip." We are aware of no documents or restriction that limit each numbered slip, even if a slip is more than 60 feet in length and there are some slips on the property right now that are more than 60 feet in length, to just one vessel.

In fact, this one boat, one slip was the subject of one of Mr. Morrison's complaints to county Code Enforcement. The county found no violation.

The DEP's permit allows 112 slips in these waters, and the county's Manatee Protection Plan authorizes up to 311 slips in the marina. So we respectfully disagree that there is any violation with respect to the number of boats at the marina presently. Having said that, one boat, one slip is our goal. That's why we're here trying to get additional slips added to the western basin where they were for decades.

Finally, the sediment and impact studies mentioned by Mr. Cotugno. He asked the county to delay my client's application and condition any rezone approval until these studies are completed

and somehow applied. Doing so would amount to an egregious violation of my client's due process rights.

The studies Mr. Cotugno requests are not codified anywhere in the county's land-use regulations, yet he asked you to create them from scratch and apply them somehow to this application. What exactly would be studied? What criteria would be applied to the results? Creating such uncoded, standardless studies and criteria on the fly would violate my client's due process and private property rights.

Having said that, with specific regard to the so-called impact study, as I stated earlier, we encourage the county to continue to pursue efforts with the Fish and Wildlife Commission to impose an idle speed, no wake speed zone in Rock Creek. But as I explained to you, Florida law does not permit my client, a private property owner, to do anything more than what we have already done. But we do encourage county staff to continue haunting Fish and Wildlife. We are in full support of ISNW.

With regard to the sediment study and dredging requirement, the county has no such authority. To my knowledge, the only agencies that can order the dredging of lands under navigable waters are the DEP and the Army Corps of Engineers.

In his recent complaint to the DEP, Mr. Cotugno asked the DEP to support his request to force my client to study and, if contaminated, dredge the submerged lands. The DEP refused, likely due to the fact that my client's submerged lands have been dredged twice in the last 20 years.

Moreover, the sediment study referenced by Mr. Cotugno analyzed samples from their own submerged lands, lands that, to my knowledge, have never been dredged since they were created in the 1960s. That study confirms only one thing; that the copper and zinc levels in their submerged lands -- lands that they own, not lands that we own -- are allegedly elevated.

If the county were to even consider imposing a possible study and dredge requirement, a requirement that it cannot legally impose and one which would violate my client's rights, that requirement should be applied equally to the neighbors' submerged lands that they own. They have admitted that copper and zinc is elevated in their lands.

So if the county's going to treat my client equally, it should immediately require the neighbors to dredge their submerged lands. And, again, a lot of this is hyperbole because the county does not have the legal authority to dictate that.

In conclusion, the county staff recommends approval because it has determined that the application before you today is consistent with and satisfies all -- I'll use the words of the neighbor -- legal mumbo-jumbo, otherwise known as codified county regulations.

In fact, the county's Growth Management Plan and Land Development Code prioritize and prefer this site for marina operations. If this zoning application is denied, the county would deprive my client of the only reasonable use of his privately owned submerged western basin.

For all of these reasons, we respectfully thank you for your time and request that you recommend approval. Thank you.

CHAIRMAN FRYER: Thank you. Mr. Brooker, I have a question, and others who will signal and are signaling will also have questions.

In my judgment, at least, I think you've gone a significant way toward answering the questions and issues and concerns that I had.

The "one slip, one boat" question.

(Cell phone ringing.)

MS. LOCKHART: I'm so sorry.

CHAIRMAN FRYER: The "one slip, one boat" question, you said that's your goal. Would your client be in a position to put a ceiling on the number of boats per slip so that we have a clearer idea of what the magnitude and the overall intensity might be of that area?

MR. BROOKER: So we are asking for the 73 to be reinstalled in the western basin and the 39 that exist today. We would agree today that would be a stipulated cap. No more than 112 vessels moored at those slips.

CHAIRMAN FRYER: Okay. So it is one boat, one slip at 112?

MR. BROOKER: That's what we would agree to, although there's no document.

CHAIRMAN FRYER: I understand. Okay. Well, that fully answers my question and my concern.

Commissioner Sparrazza.

COMMISSIONER SPARRAZZA: Thank you, Chairman.

And thank you very much for your detailed explanation, especially as you introduced this complicated program to us and the community.

I apologize for, I'm sure, repeating a few things, but I just want to confirm, all of these slips are dedicated/leased to Freedom Boat Club, correct?

MR. BROOKER: The existing slips in the marina today are leased to Freedom Boat Club.

COMMISSIONER SPARRAZZA: Great. Thank you. All of the new slips, so the 112 total, are leased totally to Freedom Boat Club?

MR. BROOKER: No. That does not -- that is not a true statement.

COMMISSIONER SPARRAZZA: Oh, great. Thank you.

Can you explain how many are to Freedom and if Freedom will agree to the one boat, one slip, and how many to -- please explain, is it private residents that can come up and rent a slip and come to it dusk to dawn?

MR. BROOKER: So I'll try to explain. It's a -- it's not exactly a concrete number as I stand here today. A lot depends on what happens to the uplands. There is interest, especially at the mini-triangle going across the street, of what can be done with the uplands. For example, if there were a mixed-use project developed in the uplands that has condominiums incorporated in the upper floors, I'm not aware of any developer that would come along and say, we're going to build without any rights to any of those slips.

Mr. Giglio is keenly aware of that market tie between what happens on his uplands and the ultimate use of the slips in the water. So there is going to be some sharing of what happens on the uplands with the wet slips in the water.

Right now Freedom Boat Club has the right to use those slips that are there. If these slips are approved -- they have been by the DEP. But if the county approves the wet slips and they are installed, I imagine Mr. Giglio and Freedom Boat Club are going to have a talk. How many do you want? What are you going to pay for them? How are we going to work this out?

So that's -- that's literally where we stand today --

COMMISSIONER SPARRAZZA: Okay.

MR. BROOKER: -- is Freedom Boat Club wants more slips, no doubt. Is Mr. Giglio willing to give them to him? Don't know --

COMMISSIONER SPARRAZZA: That's a financial decision.

MR. BROOKER: -- because the market will drive that one.

COMMISSIONER SPARRAZZA: Very good. Thank you.

In conclusion, the number of slips for Freedom and possible private ownership may change, may alter throughout the course. But are you stating, as the Chairman stated just a moment ago, there will never be more than 112 vessels in that entire marina?

MR. BROOKER: Yes. In the water, yes.

COMMISSIONER SPARRAZZA: In the water, okay.

MR. BROOKER: Moored -- moored there. You know, people come up, transients. I can't control boats.

COMMISSIONER SPARRAZZA: Very good.

And as we have seen -- and I've seen it myself. I've been at Freedom Boat Club on a few. You do see multiple boats tied together, and that's something you are trying to eliminate.

MR. BROOKER: (Nods head.)

COMMISSIONER SPARRAZZA: And we appreciate that.

A couple other just common questions. Will -- the landlord and the lessee, Freedom Boat

Club, are they able to be held either, together, responsible for any and all codes that the county, the local fire, whatever, imposes and holds them to it. Not only Freedom Boat Club, but the landlord, I believe, is always responsible for their tenant. So if the tenant is violating something, it can actually go to the landlord.

Is that a conversation -- or something in writing that can be presented as you move forward with this should it pass?

MR. BROOKER: Well, what I can tell you, the lease between owner of the land and the tenant, Freedom Boat Club, expressly requires the tenant, Freedom Boat Club, to comply with all applicable codes, regulations, and permanent conditions.

Over the last few months, you've heard of complaints and issues that have risen. You can rest assured that there have been conversations between Mr. Giglio about that and Freedom Boat Club.

Breach of a lease? But am I permitted to present as a public record that lease? No.

COMMISSIONER SPARRAZZA: That's fine. And I apologize if that's --

MR. BROOKER: Okay.

COMMISSIONER SPARRAZZA: -- how it was interpreted.

MR. BROOKER: But I can tell you you are correct, the buck stops with the property owner. We are --

COMMISSIONER SPARRAZZA: Correct.

MR. BROOKER: -- ultimately responsible, but we will be talking to our tenant when issues arise.

COMMISSIONER SPARRAZZA: Wonderful. Thank you.

All right. One last comment. I don't know how it is, because I've heard various uses of it articulated today, but is there some type of an agreement for the neighbors who legally own on Harbor Drive, maybe the other one, Holiday Drive, whatever is access to the waterway? Would the owner be open to allowing -- I'm sorry -- the owner of the marina be open to allowing those owners access for emergency repairs or repairs getting their vessel in and out if they can't do it on their own property to be able to come in and use the dock that is currently there?

MR. BROOKER: So that request came from the neighbors at the very beginning of our communications with them --

COMMISSIONER SPARRAZZA: Right.

MR. BROOKER: -- and we have also said yes.

COMMISSIONER SPARRAZZA: Okay. I apologize. I must not have --

MR. BROOKER: No. We're willing to accommodate. I know it's expanded a little bit further. Now they want one slip dedicated for their use. I don't know if we can do that, but we are accommodating and -- but with one condition: That's along Mr. Giglio owns the property. He's owner right now; fine. While he can encourage a successor owner to continue cooperating with the neighborhood in this regard, we can't -- we can't dictate anything in that way.

COMMISSIONER SPARRAZZA: Wonderful. Thank you very much for your answers. Appreciate that.

CHAIRMAN FRYER: Commissioner Shea.

COMMISSIONER SHEA: Just a follow-up to Commissioner Sparrazza's. I'm assuming that you've protected yourself by flowing down all the major responsibilities you have on a contract because, if you don't flow them down, then any kind of repair or anything that needs to be done gets tied up in court between the two of you. So I would assume you would have flown down those clauses.

That's not my primary question, though. I want to ask Mike a question. I've never sat here and looked at a petition involving submerged land. So it was filled, and it was -- it's zoned RS-4 [sic]. So can they fill that back in and build houses there? Or what happens over a period of time -- now it's officially a waterway and now they call it submerged lands, and if that's the case, what -- what is our obligation as a Planning Commission? We've never dealt with this.

MR. BOSI: The -- I'm not sure -- Mike Bosi, Planning and Zoning director.

In response towards can they fill that land back in, I would have to probably lean upon our environmental staff as to what the process is, but I imagine there would be a process that we would have to follow and satisfy that eventually they couldn't fill that land back in and develop residential. That's what RSF-4 would allow for.

COMMISSIONER SHEA: Well, right now they have a piece of property that can't be developed as zoned. So we've kind of done something with somebody's rights on that land and limited it, right?

MR. BOSI: What I can tell you is at the time that this marina was developed, the zoning that is currently on it was not what it currently zoned. The zoning has changed. The zoning has changed over time, and during the zoning reevaluation, an RSF-4 designation was applied to this property. I'm not sure what the criteria was when this -- when that happened back in the early '90s when that program went on. But that's what the zoning is now. It's been utilized as a marina for over 50 years. They are here to seek to try to provide for consistency with what the underlying zoning is with the actual use of that property.

COMMISSIONER SHEA: I can tell you, I am somewhat sympathetic. I rent a lot of boats, and the best place for a place like Freedom is not at the end of a river, small stream like that, because of the 8:00 to 9:00, the 12:00 to 1:00, and the 4:00 to 5:00 rushes when -- the four hours and the eight-hour or whatever time they have out, it's pretty -- it's pretty overpowering when you're -- especially when you're going through such a narrow passage.

But -- so from our standpoint, what -- what ability do we really have as a commission on a submerged land?

MR. BOSI: Whether it's a submerged land or not, I think the rezoning criteria is applied the same. The rezone criteria that are contained within your staff report, which you're making an evaluation upon, that doesn't change regardless of whether it's upland or submerged land.

What I would say is, I think what staff has looked at as the most pressing is the historic use of this property. It's always been a marina for the last 50 years. They're aligning the zoning with the use of the property. I think that is the appropriate action that -- and they have satisfied the zoning requirements.

COMMISSIONER SHEA: So should we think about it as a piece of land and think about it as commercial versus residential, which means not having -- having private residences using the docking facilities versus a commercial?

We look at land as residential or commercial. I look at the submerged land as a commercial rental or just an individual dock rental. Should we look at it like that? Because they're two completely different uses, and they have to go through that small waterway.

MR. BOSI: I will fall back on the historical use of --

COMMISSIONER SHEA: I told you it wouldn't be an easy day today, Mike.

MR. BOSI: The historical use of this property has been a marina. The underlying zoning --

COMMISSIONER SHEA: Commercial -- I'm separating a commercial marina, because that's what this is with Freedom versus a group of individual people that might go out once in a while.

MR. BOSI: No. It has always been a privately owned commercial marina. Now, whether they have a lease with Freedom Boat Club or not, it doesn't change the underlying nature of this marina. It's been a commercial marina. It's not a residential. It is a marina that has offered their slips for an individual throughout the world to be able to rent and moor their boats there for commercial -- for commercial property.

MS. ASHTON-CICKO: So if it stayed RSF-4, then the use that they have it for now in the waterway is nonconforming. So they want to rebuild, so they can't rebuild. And if it stays RSF-4, it needs to have an upland residential, correct? You know, the -- because you have to have a home or some kind of residential principal use, right? So they wouldn't be -- am I -- I'm trying

to answer his question.

MR. BOSI: Yeah. I don't think that the underlying zoning of this reverts back to changing the nature of the existing marina.

MS. ASHTON-CICKO: No. I'm just saying that if it stays RSF-4 in just the waterway, there's no upland use, like you require a residential principal use in order to have the docking facility. It wouldn't be a marina -- I wouldn't be able to operate as a marina, or there would be no docks allowed which, you know, we have some -- we'd have some exposure, you know, if we get sued over that.

MR. BOSI: Currently it is a nonconforming -- it's a nonconforming use. If the request is to deny, it's still a nonconforming use. It doesn't change the status. It's not going to -- it's not going to change the status. They won't be able to add additional -- additional facilities. And then we're going to probably -- and then, in that regard they wouldn't be able to expand the marina, but it still -- it's not going to make the marina go away. It's not going to change the commercial nature of it. It simply would be that they would be restricted from adding additional slips because of the inconsistency with the underlying zoning.

CHAIRMAN FRYER: Thank you.

Commissioner Schumacher.

COMMISSIONER SCHUMACHER: Okay. A couple things. So going back to the zoning. I wanted to talk to you about that, because I believe when this code was written, I don't think anybody anticipated the popularity that you would find with a boat club. I mean, typical marinas might have two, three, four, five boats for rent. Here we've got 63 tied up on 39 slips. I mean, I don't think anybody kind of thought that was a possibility when that code was written. I think that's something staff needs to take a look at and, if possible, try to figure out a way we can work out some wording in there to say if you're going to be running a boat rental in excess of one boat, one slip, well, that's got to be considered in the congestion that we're seeing from these maps and from what the residents are saying on that small waterway. I mean, I can understand their concern. If you've got 63 boats going past you on a busy week, even on the weekend when it's the busiest time, everybody wants to be on the water, that's a concern. I think that that needs to be looked at.

Mr. Brooker, thank you for your presentation. It was well detailed, and I appreciate it. You just stated that when it goes into permit, it will be one boat, one slip. That would kind of put Freedom Boat Club in a pickle because they've got 63 on 39 slips, so they'd have to drop down to 39 boats as soon as you went in for permit, or is that after you get the CO and complete it? After CO and completion?

MR. BROOKER: Right. Those boats would be moved over to the western basin, so they would be one boat, one slip.

COMMISSIONER SCHUMACHER: Okay. I'll reserve -- I have another question coming up, but I've just got to review it a little bit more, sir. Thank you.

CHAIRMAN FRYER: All right. Well, we're coming close to the end here.

One point that I want to raise, and it had to do with the emergency repairs allowing the neighbors to have reasonable access for that purpose. If that finds its way into the ordinance, it's going to run with the land. It's going to be more than just binding on the current owner. So I want everybody to understand that, you know, if that's what we're going to recommend to the BCC, it's not going to be just for this owner.

COMMISSIONER SPARRAZZA: Okay. Stay with the land; stay with the property?

CHAIRMAN FRYER: It would run with the land if we put it in.

Okay. And I -- and what is your client's position on that, Mr. Brooker?

MR. BROOKER: So, number one, that ramp is not part of the subject lands today, so I don't know how you would impose that requirement on land that's being -- that is the subject of a rezone application to land that's not subject to the rezone application.

We would -- we have also been accommodating -- Mr. Giglio has always -- to my

knowledge, has always been willing -- he has never wavered to be willing to work with the neighborhood.

One issue is there are a lot in the Brookside neighborhood. You know, how often and how is that going to be managed if it becomes a popular thing, you know, it's something we need to work through, but Mr. Giglio is willing to work through it. But we do not want it to be, essentially, an easement being created and imposed upon these lands that would run forever.

CHAIRMAN FRYER: Well, that's the point that I wanted to bring forth so we all understood that.

Okay. Anything further from the Planning Commission?

(No response.)

CHAIRMAN FRYER: Anything further in rebuttal?

MR. BROOKER: No, thank you.

CHAIRMAN FRYER: All right. I think -- let me just double-check here that the concerns I had have been addressed. The -- who was it? It was Mr. Thomas who said that the fuel spill recovery kit is in place. There was testimony from one witness, at least, that the only possible current violation would have been having to do with tanks and spills, and what you're saying is that that is not the case because of this kit; is that correct?

MR. BROOKER: That is correct.

CHAIRMAN FRYER: Okay. All right. That's all I have.

Anything else from the Planning Commission?

COMMISSIONER SPARRAZZA: No.

COMMISSIONER SCHUMACHER: One more question.

CHAIRMAN FRYER: Yes. Go ahead, Commissioner.

COMMISSIONER SCHUMACHER: Waterway traffic study; Mr. Bosi, is there a way that we can facilitate that? Is that possible?

MR. BOSI: From staff's perspective, the application has been submitted. To ask for additional information that's not codified that's outside of the process would be not -- I believe would be highly unusual, and I'm not sure if the County Attorney's Office would even suggest that we could impose that type of --

COMMISSIONER SCHUMACHER: I'm just talking about in general. I don't think we could impose it here.

CHAIRMAN FRYER: Well, not retroactively.

COMMISSIONER SCHUMACHER: Yeah, not retroactively, no. I'm just wondering if that's something that we would look at.

CHAIRMAN FRYER: Prospectively, we can always recommend to the Board of County Commissioners that they have a study. We have that ability. But that wouldn't apply to this --

COMMISSIONER SCHUMACHER: No, I'm not looking -- I was just asking in general if there's -- if we look at -- if the staff looks at the code and says, if somebody's operating or -- leasing to or operating a marina with X amount of boats for a rental business, much like a Freedom Boat Club, can that tie into also having to do a waterway --

MR. BOSI: There's most certainly -- I mean, with any of our land-use petitions that deal with upland -- and we have traffic impact study requirements, we could -- you could make a request to the Board of County Commissioners for staff to explore the development of a boat mobility study for future marinas --

COMMISSIONER SCHUMACHER: Okay, thank you.

MR. BOSI: -- as a possible addition to the code.

COMMISSIONER SCHUMACHER: Thank you.

CHAIRMAN FRYER: Ms. Cook, did you want to be heard?

MS. COOK: Sure. Jaime Cook, director of Development Review.

I'd just like to add that when Commissioner Taylor was still in office, the Board did direct staff to conduct a boat study in the Rock Creek area. The Coastal Zone Management team is

undertaking that study, however they have -- we had a hurricane, and they have been very involved with repairs and restoration efforts. So they haven't had a chance to start it yet, but they are working on that study.

CHAIRMAN FRYER: Good. Thank you for that update.

COMMISSIONER SHEA: Can you stay there, Jaime?

CHAIRMAN FRYER: Commissioner Shea.

COMMISSIONER SHEA: Thank you. I just wanted -- this is more for information. It's not necessarily for this. But what is the county's ability to address issues like sediment? Is that all by other state agencies, you know, water quality by the state? Is -- the sediment and all that, can the county initiate any --

MS. COOK: Collier County does not have any regulations regarding sediment studies. DEP's website, their watershed monitoring program, does contain a subsection on sediment guidelines. The state or the federal government do not have criteria or state standards for sediment quality. That being said, they have guidelines if a project or a landowner wants to take on restoration activities or assist in any kind of restoration or water-quality improvements. But there are no state or federal standards or criteria to do so.

COMMISSIONER SHEA: So if somebody dredges, what do they have to do in terms of monitoring the quality of what they're dredging and where they're putting it?

MS. COOK: If they want to dredge, a sediment quality study may be the basis of why they want to dredge.

COMMISSIONER SHEA: Okay. Okay. Thank you.

CHAIRMAN FRYER: Thank you.

No one else is signaling at this time. We should probably take the matter up for discussion and vote. Anyone want to lead off?

COMMISSIONER SHEA: Do they have the ability to speak some more?

CHAIRMAN FRYER: Well, if you call on them, they do, but we've closed public comment.

COMMISSIONER SHEA: Oh. Can I ask him a --

MR. COTUGNO: I'm simply wanting an opportunity to rebut.

COMMISSIONER SHEA: Can we allow that, or --

CHAIRMAN FRYER: If a commissioner wants you to, you can. I mean, it's -- go ahead. Go ahead. You have five minutes, sir.

MR. COTUGNO: Thank you. Appreciate it.

So we assessed there's going to be 112, right, vessels. It's not the number of vessels. It's the traffic that is the big matter here. So if you got your calculators out folks, it's not 16,000, right, because you're operating upwards of 75 boats right now. It takes 75 vessels making two trips per day. That's 150 trips per day. That's 54,750 trips per year. I don't know why you minimize the impact down to 16,000. How did you get there?

CHAIRMAN FRYER: If you'll address your comments to us, sir.

MR. COTUGNO: Thank you.

Number two, now, that's Freedom Boat Club today. You take 112 set-in-stone vessels two trips a day, that's 224 trips per day, 365 days, that's 82,000 trips per year on this very small creek.

So the request is, as I think we're hearing is, is there an opportunity to look at the traffic, not the number of slips and how many boats you put in there. You can put 150,000 boats in there. If they don't move, then we don't have a problem with that. So point taken aside.

Relative to sediment study, Mr. Brooker claims that I forced the DEP into getting involved with a sediment study. I differ with that. What I did do was I requested to what extent would they get involved in -- as were the questions before, and we just heard -- a sediment study, and they continuously said -- Elizabeth Hatchell -- that they defer to the local government. That's the local government's requirement if they determine need be so.

So if you're a citizen and nobody knows who has the authority to do that, that's very

concerning, right? And that's not against you guys. I'm just saying, it seems like the ball is bouncing around in terms of -- and that's all we're asking.

And my other point is, when the dredging was done -- and, John, you were kind enough to do that before you took occupancy and ownership of the property -- that dredging was, you'll see in the reports, before and after, and that included our properties.

So we don't have, assumably, residual contamination because, allegedly, when you did all of the dredging, it was all cleaned up. And when you look at Terrell's and DEP's report, it shows you two different levels for the whole entire waterway. So that leads us to say allegedly all the contaminants were removed. Freedom Boat Club's area that they occupy, that was allegedly cleaned, and all we're saying is, we notice some contaminants on our properties. Why would you not, as the Freedom Boat Club, claiming to be a very green organization and company, want to prove that you didn't create any further contamination? And if you try to avoid that, then our interpretation is you're hiding something. Why not do it and prove to us -- we're not saying you have to do it. We're saying why don't you do it to demonstrate you did or didn't create further contamination? That's a simple ask.

So that's really where our concern lies. And we want to do this for the existing operation of Freedom Boat Club, because that's the precedent in which we're concerned about, the ill consequences and their lack of disregard, as we all stated.

In going forward, how do we govern to make sure it sticks to 112 boats? It sort of -- it's like a moving target. We couldn't even come up with a number of boats until today. How do we stick to and create some rules to prevent any more arbitrary and capricious behavior by -- not you, John -- by the Freedom Boat Club or any other lessee of John's property? That's the comment. That's all we're asking for.

CHAIRMAN FRYER: Thank you, sir.

Any surrebuttal, Mr. Brooker?

MR. BROOKER: No, sir. The horse is dead.

CHAIRMAN FRYER: Okay. Thank you.

All right. Ladies and gentlemen at the dais, we are -- the matter is now in our hands for deliberation and vote. Anyone want to start off?

COMMISSIONER SHEA: Wow.

COMMISSIONER SCHUMACHER: I don't think -- listening to all the residents' comments -- and I appreciate everybody who took time out of their day to come here. When we look at this code, there's -- you can't do enforcement on somebody's business practices. I think -- I think what the residents have been doing is correct, I think, documenting everything that you're seeing wrong, calling it in to Code Enforcement, creating that paper trail. That, unfortunately, doesn't end with us. That doesn't come here. We're here for the code on this property, which, as the applicant has shown, they could have up to 300-plus slips. They're looking for 112. They've agreed to do one boat, one slip -- I think that is going to be documented in there as well -- so there is some adherence moving forward versus the 63 tied to the 39 slips right now.

I think that we can't -- we can't go at the business practice that's going. But if we look at the code and what they're requesting, it's nonconforming, we're bringing it into conformity, and we're taking it from 300 to the 112. I think that's a good mix. I don't -- I can't -- I can't help resolve the issues between Freedom Boat Club and the neighborhood, but I can at least take staff recommendation, which they're asking for a lesser number.

One question I did have for the county -- for the attorneys are, how would they -- if they built docks on his property X amount of years ago, wouldn't that have been picked up in, like, permitting or something where they'd say, hey, you're building a dock on somebody else's submerged lands, or how does that get resolved? Or is it just something where it's just granted to those owners since there is no removal in X amount of time?

MS. ASHTON-CICKO: I don't know whether they got county permits or if there was a permitting requirement at the time those docks went in. So I would think, unless he -- oh, did you

want to comment?

MR. FRENCH: Yeah. For the record, Jamie French. I'm not sworn in, Terri.

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. FRENCH: I do.

Anything beyond the seawall, you're -- you do not have the authority. They go through the state.

COMMISSIONER SCHUMACHER: They go through the state.

MR. FRENCH: So if the state allowed them to build their docks on somebody else's property, that's the state. That wouldn't have been us.

COMMISSIONER SCHUMACHER: The state.

MR. FRENCH: And the contractor would have had to demonstrate that with a survey where the location of that building would be. We'd go to the seawall. Beyond the seawall -- any even the seawall, by the way, is issued by the State of Florida.

COMMISSIONER SCHUMACHER: Gotcha.

MR. FRENCH: But we would not have any local permitting. Local permitting wouldn't even have been established other than just a marker card back in -- until probably the early '80s.

This marina has existed -- and I grew up here. It's been here probably since the '50s or '60s.

COMMISSIONER SCHUMACHER: Gotcha. All right. Thank you.

CHAIRMAN FRYER: Thank you.

Any other comments?

(No response.)

CHAIRMAN FRYER: I'm going to try to summarize where I think we are. And this is certainly not at all without sympathy for the owners, as we have seen this many, many times, those of us sitting on this side of the dais, where expectations arise as a result of the passage of time and then situations change.

We are a body of very limited jurisdiction. There's only so much we can do, and what we can do is recommendatory at most anyway. So we have to operate within those strictures. And we listen to evidence, we evaluate the evidence, and then we give it our best shot.

From my perspective, coming into this, we, as a Planning Commission, have accomplished nine things, I think, being added into the ordinance if we approve this for recommendation. And the first one -- and I'll just tick them off. They were the other offers that the applicant has agreed to add in.

NMH to ensure that access to and from Brookside residents' docks is not impeded and that existing docks will not be extended any further north into the basin.

Number two, FBC to install two cameras within marina basin.

Number three, FBC to explore cooperating with Mr. Harms to install a third camera at the entrance to Rock Creek.

Four, FBC to send manned vessel to entrance of Rock Creek to monitor activity at anticipated high-use times.

Number five, NMH to offer 10 additional cameras to property owners along Harbor Lane, first come, first served.

Next number, NMH to offer one wet slip to marine law enforcement vessel.

Next, live boards [sic] will be prohibited to moor at wet slips or anchor in the basin.

And, finally, personal watercraft, e.g., jet skis, Sea-Doos, WaveRunners, et cetera, are prohibited to moor at the wet slip.

And, finally, we're going to have one slip equal one boat for the maximum of 112 boats for the applicant.

Now, that may not go, perhaps, anywhere near what the hopes and expectations of the neighbors would have been, but I think it goes a pretty substantive way toward it and, for that reason, I'm going to support a motion to approve subject to those conditions being incorporated

into the conditions for approval.

MS. ASHTON-CICKO: Chairman Fryer?

CHAIRMAN FRYER: Yes.

MS. ASHTON-CICKO: I'd just like to clarify for the record that I will be working with Mr. Brooker to clarify the document to make sure that it's enforceable as we work on those conditions and get it in final form for the Board.

CHAIRMAN FRYER: Thank you very much.

So with that additional condition or understanding, Commissioner Shea.

COMMISSIONER SHEA: I'm probably just going to reiterate what the other commissioners have said. It's very frustrating for us because we have a limited frame of reference that we can operate under. And it sounds like you have some real concerns. And we're not -- we don't have any control over that. We're very limited.

I would have to support it, as much as I sense the frustration and probably would be just -- if I vote against it, it doesn't accomplish anything. And this -- and it probably doesn't really help me comply with what I committed to do when I got on the committee.

CHAIRMAN FRYER: Any other comments or questions?

(No response.)

CHAIRMAN FRYER: If not, I'd entertain a motion.

COMMISSIONER SPARRAZZA: So motioned as depicted by the Chair, including our attorney's additional comment.

CHAIRMAN FRYER: The nine conditions plus the County Attorney's additional comment?

COMMISSIONER SPARRAZZA: Correct.

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: Aye.

CHAIRMAN FRYER: Aye.

COMMISSIONER SPARRAZZA: Aye.

COMMISSIONER SCHUMACHER: Aye.

CHAIRMAN FRYER: Opposed?

(No response.)

CHAIRMAN FRYER: It passes unanimously.

Thank you very much. Thank you, applicant; thank you, members of the public, staff, and Planning Commission.

Now, it's 13 minutes after 1:00. I had a conversation with Mr. Mulhere, who I believe is ready, willing, and able to go forward if we want to. I want to just touch base and see whether we would like to continue and just postpone our own lunch or whether we want to break for lunch.

There's probably no way of estimating, and we can -- I mean, we can always -- we can always break for lunch. I mean, if this goes another two hours, we can decide to break for a meal.

My personal preference would be that we try to plow through, but mostly because that's how I think you-all frequently like to do it.

COMMISSIONER SCHMITT: Yep.

CHAIRMAN FRYER: All right. Okay. Having said that --

COMMISSIONER SCHUMACHER: I'm good. Thank you.

CHAIRMAN FRYER: Then -- all right.

Madam Court Reporter, are you okay without a quick break?

THE COURT REPORTER: (Nods head.)

CHAIRMAN FRYER: ***So then our third and last hearing today will be on

PL20210002658, which is the Stor-All Storage rezone.

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

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?

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

CHAIRMAN FRYER: Thank you.

Ex parte disclosures from the Planning Commission, ma'am, starting with you.

MS. LOCKHART: Staff materials only.

CHAIRMAN FRYER: Thank you.

COMMISSIONER SHEA: Staff materials only.

CHAIRMAN FRYER: Public record matters, as well as meeting with staff, and communication with the applicant's agent.

COMMISSIONER SPARRAZZA: Communications with the applicant's agent and staff materials.

COMMISSIONER SCHUMACHER: Staff materials and meeting with staff.

CHAIRMAN FRYER: Thank you.

With that, Mr. Mulhere, the Chair recognizes you.

MR. MULHERE: Thank you, Mr. Chairman. Bob Mulhere, for the record, with Hole Montes, here on behalf of the applicant. Also with me today is Felix Pardo, who is an architect who I've worked with in the past for the same applicant; and Chris Mitchell, who is the civil engineer who's worked on this project through several site plans and site plan amendments; and Ellen Summers who works with me. I do want to note that, unfortunately for Ellen, while she's here today, it's her birthday.

COMMISSIONER SCHUMACHER: Happy Birthday.

COMMISSIONER SPARRAZZA: Did she get a brownie?

MR. MULHERE: She didn't know that I knew that.

MS. SUMMERS: No, I didn't.

MR. MULHERE: So you know where the subject property is -- it's depicted on that aerial just east of Collier Boulevard and accessed with very limited access from Tamiami Trail. I'll get into the details of that shortly.

And we're requesting a rezone from C-3 to C-5 to permit the full range of C-4 uses and the self-storage facility. That's the only C-5 use. So that's limited to just the self-storage.

This is a picture -- a snippet from the county's Future Land Use Map. It's kind of interesting because that shows you that this is a commercial mixed-use activity center at that intersection, and the county's Future Land Use Map shows the squares, approximately 1,320 feet in every direction, north, south, east, and west, but that is not what that activity center looks like, and we'll get into that in just a minute.

This is the zoning map. You know, we have frontage on a very busy Tamiami Trail that is six-laned that, you know, has turn lanes. It's pretty wide at that location, very close to the intersection.

We have commercial -- three other quadrants to this activity center, and I'll get into the details of that. But, obviously, the northwest quadrant, the southeast quadrant, and the southwest quadrant, those are all within this commercial activity center.

This is a copy of the conceptual site plan. I do want to point out a few things here in particular. That's not on, so I don't get to do my magic. I'll just have to use the mouse.

And you can see that this is an existing preserve, and you can see that this is a stormwater -- significant stormwater area that extends across this way. And north of us is Falling Waters Residential PUD.

And we worked with the residents and homeowners association in Falling Waters both the first time that we came for the existing self-storage and this time.

We do have the HOA president who is going to be leaving to catch a flight at 3:00, but

hopefully he's still going to be available to speak via Zoom long before that. I don't think I'll take that much time; I promise.

I do want to point out this is a very limited access, as I said. There is commercial that runs to the east here, a farm tractor store, some other kind of construction-related developments, and then this is also owned by our client. This is a vacant lot that, if this were to be approved, would allow C-4 uses.

And you see there's an interconnection here, but there is actually no real interconnection, because after spending quite a bit money and a long time of negotiation, we've never been able to come to terms with the CVS. The CVS really controls that, and if they demand something that makes no economic sense in terms of payment for interconnection, then we're not going to interconnect.

And, really, I think that's an issue that the county ultimately needs to consider. They did have a settlement with that property owner when the interconnection in Collier Boulevard was widened, and perhaps that was an opportunity to require that interconnection. But as long as you have people making exorbitant demands, those interconnections are not going to happen.

This is a rendering that Felix, or maybe somebody that works for Felix, did showing the existing self-storage right here, the proposed right here, and, of course, the singular point of access that we have, which is a right-in, right-out from the East Tamiami Trail.

So this property is designated urban, urban commercial. It's within the mixed-use activity center. In fact, on Page 10 of the staff report, Packet Page 539, under the GMP conclusion by staff, the first sentence says, the GMP is the prevailing document to support land-use decisions such as this proposed rezoning. Staff concludes that this petition is consistent with the GMP. I won't read the rest of the sentence, because we'll get to that in a minute.

So you have a frontage road that would extend now further to the west, and maybe some day we'll be able to connect through the CVS and access -- traffic could access, then, Collier Boulevard. It wouldn't change the only access point, which is a right-in, right-out, and there's really -- you know, it's that limited access that really dictates the kind of uses that you're going to see on this property.

This is the site plan prepared by Chris Mitchell and his staff, again, showing you the preserve and this stormwater facility. There's a significant distance between Falling Waters here and both of these facilities and, of course, even whatever happens here in the future on the vacant Lot 3. We spent a lot of time working with Falling Waters. We improved this existing wall that was in a state of disrepair. It was painted and, in some cases, reconstructed. We put in extra landscaping on both sides. And I'll let the HOA president speak for himself, but I think we've had an excellent working relationship with them. As a result, they support what we're asking for.

So it's 180 feet as the closest point on the proposed building, and there is an existing 6-foot wall installed by the developer.

We already talked about the uses, but there are some other conditions on there. Lighting will be Dark Sky compliant. No more than one fast-food drive-through establishment is allowed. We agreed to limit the location of the ordering window if we went with fast food on the vacant Lot 3 to not be within 100 feet of Falling Waters, and that the payment and ordering windows would not be located between the building and U.S. 41. So they'd be on the side, west or east.

Square footage is limited to 105,000 square feet.

Hours of operation are 8:00 a.m. to 9:00 p.m.

There is very limited exterior lighting on the building itself. Only for security purposes. There's no parking on the Falling Waters side of the building.

The self-storage units are accessed from the interior, so we don't have a bunch of doors or sliding garage doors. You come into the facility, and then you access your unit.

We have a maximum size -- we did on the original one. We've retained that -- of 200 square feet. As I said, no parking on the north side. No functional windows. There are faux windows to meet architectural standards, but no functional windows.

And the loading areas and building accesses are prohibited on the rear or north side of the building.

We have very limited height because that was one of the conditions we agreed to with our neighbors. So we have a zoned height of 35 feet, which is the same as for a single-family, generally speaking, and actual of 38 feet.

Very low traffic generator. You see that those numbers probably appear a little high to you, but that's because of the potential on the vacant lot of a fast-food restaurant. The actual numbers for the self-storage facilities are very -- I think they're 16 or 17 p.m. peak-hour trips.

So let's talk about the elephant in the room, the staff recommendation, at least from my perspective. I was really surprised by the staff recommendation. The East Naples Community Development Plan has been accepted by the Board, but it is not a regulatory document. The staff is working through that process with GMP amendments to create the overlay and LDC amendments. We've been in this process since February. We have submitted a Site Development Plan, and that's under review.

There was actual discussion at the Board as to whether or not to implement a moratorium which would have restricted those uses that were deemed less desirable -- they're not prohibited uses even in the recommendations moving forward -- but less desirable uses. That moratorium did not go forward, and I think that's important in your deliberations because, you know, my client has the right to request this. He's in the mixed-use activity center, and these restrictions have at this point no regulatory element associated with them, and there's no guarantee they're even going to get approved as recommended right now, because that public policy discussion hasn't occurred yet in front of either you or the Board of County Commissioners.

However, we understood that we should try to comply, at least to whatever extent it was feasible and appropriate, to what we understand will be the recommendations as they relate to -- let's just limit it to this use. There are undesirable uses; car washes, gas stations, and self-storage -- or less desirable. They're not restricted -- they're not prohibited. They are restricted in terms of certain proposed and, yet, not approved design standards and maybe some locational restrictions as well.

One of the proposed conditions -- and it was raised at our NIM -- was whether or not we would agree to 30 percent of the ground floor of the building being some other use, and we don't agree to that and we can't agree to that. It's not a viable condition. But we do have a vacant lot immediately adjacent to us which will be developed with some C-4 use. What goes there is going to be a direct -- directly resultant from the limited access here.

So a convenience-type use, and, in my opinion, based on my experience, even a fast-food use, is highly unlikely because of that limited access. I think more likely you might get a credit union, a bank, a small office building, something that doesn't need or rely on convenience because it isn't going to be convenient to get in and out of there.

So, you know, you can only get in from traveling east on U.S. 41, making a right. And you can't get through to Collier Boulevard, so now you've got to go back out, go through the intersection, and turn around if you want to go back to where you came from. It's just not convenient.

One of the recommendations was that if you didn't -- and for the proposed overlay is that you don't have to provide this other use within the building. You can provide it outside or elsewhere on the property, but it needs to be in front of the self-storage. Well, I mean, if we go back to the site plan, you know, there really is not the opportunity for us to do that.

This is a frontage road. You come in here, there's a frontage road right here. There's a landscape buffer that runs along U.S. 41 right in here. It would make no sense to jog this building back. We can't. We have the stormwater, permitted, and this preserve. So this -- there's no place to put Lot 3 in front of Lot 2; however, this does provide an opportunity for some other use that, perhaps, under the East Naples Community Plan is more desirable, that maybe employs more people, such as an office or a bank or a credit union.

I just want to make sure I mentioned there was no moratorium. I mentioned that Lot 3 is available for some other use, in some ways consistent with the recommendations of the overlay. We have an existing buffer along U.S. 41. You know, one of the recommendations is to have a 25-foot buffer on all sides of such a use but not on the 41 side, because they want -- they want the buildings to be closer to 41 is my assumption. I don't know why you have to have a 25-foot buffer between an existing commercial use and another commercial use. Again, that hasn't been debated as a public policy issue. I'll be here to talk to you when it's on your agenda.

We don't -- we don't have any metal roll-up doors. The building is accessed internally, which is also part of the proposed conditions.

They have a condition that says no building shall exceed 100 feet. We can't -- we can't really address that. This is longer than 100 feet.

We're not having any outdoor storage associated with this use.

Again, the primary -- there are two primary reasons why this makes sense. Number one, the severe limited access of this site does not lend itself to a whole lot of other uses. To the east of us are -- is a Tractor Supply store. People -- I think they're not going there for convenience. They're going there for a purpose, a couple of construction-related uses.

The CVS, when the county was going to take a significant amount of property from them, argued -- I don't know if they were successful, but argued as part of that taking claims that their access was severely limited by the revisions to this intersection and that there were damages associated with that. So, I mean, it's not like the other quadrants, and I'm going to show you that.

This is the actual map of the activity center. So if the ideas espoused in the East Naples Community Plan have some value, they have value where you have sufficient room to accommodate a mixture of uses and different uses.

Down at the town center and in this activity center, for example, you have this fairly large commercial quadrant right here. You have another one right here. And this is actually fairly large and is developed with a number of -- I don't know if it's a regional shopping center, but Ulta and these kinds of stores.

You can see that this is completely different here. It has no depth sufficient to accommodate a wide variety or mixture of uses.

And I guess the second reason is that the individual -- the community that's most affected is Falling Waters directly to our north, and they're 100 percent behind this proposal. This exhibit shows you the actual dimensions and depths. So, you know, these projects have over 2,000 feet here -- on the northwest and southwest quadrants have over 2,000 feet of frontage. This one is a little odd-shaped triangular, but it's got a lot of depth in the rear, so they designed it such that the buildings are where the parcel is the widest, and parking is up in the front.

This obviously, just looking at it, is nothing like those three configurations. The opportunities simply don't present themselves there.

We had a neighborhood meeting. This is the comment that, you know, that was made by the HOA representative. There was a representative of the East Naples Civic Association who did speak and ask us to commit to a 30 percent commitment of some other use. I would argue -- although we said we couldn't do that, I would argue that we have that immediately adjacent to us in vacant Lot 3, that opportunity.

I did have one minor revision. It turns out we had limited height to 15 feet, but the actual height for the lights adjacent to U.S. 41 do need to be taller. They need to be 20 feet, so I'm proposing that addition. They already are 20 feet on the existing portions.

In deference to your already busy day, that concludes my presentation. I'm happy to answer any questions that you have.

CHAIRMAN FRYER: Planning Commission? Go ahead.

COMMISSIONER SPARRAZZA: A couple simple ones.

Thank you, as always. It was a great presentation. You certainly do your homework.

A couple quick, simple questions. Your client owns all three of those properties, correct?

MR. MULHERE: No. Well -- all three, well, Lots 1, 2, and 3.

COMMISSIONER SPARRAZZA: Correct.

MR. MULHERE: Yes.

COMMISSIONER SPARRAZZA: And Lot 1 is currently --

MR. MULHERE: Self-storage.

COMMISSIONER SPARRAZZA: -- self-storage. This one is called All Store something.

MR. MULHERE: Stor-All.

COMMISSIONER SPARRAZZA: Stor-All.

MR. MULHERE: Stor-All. They were both called Stor-All when we went through. I don't know --

MR. PARDO: Development arm, legal entity.

MR. MULHERE: Okay. So that's a legal entity development.

COMMISSIONER SPARRAZZA: Very good. And as you depicted in your presentation, they're going to look fairly similar on the visuals that drivers on 41 --

MR. MULHERE: Yes.

COMMISSIONER SPARRAZZA: -- will see. No one on 951 really sees it. Roughly the same size, 10,000, 15,000 square difference for --
(Simultaneous crosstalk.)

MR. MULHERE: Ninety-four versus 105,000, so 9,000, yeah.

COMMISSIONER SPARRAZZA: Okay. So 9,000.

Height roughly the same?

MR. MULHERE: Yes.

COMMISSIONER SPARRAZZA: Thirty-five, specked out at 38 actual. I'm just kind of going over the notes, and you covered them very well. Nice job. I'm satisfied.

MR. MULHERE: Thank you.

CHAIRMAN FRYER: Thank you. I don't want all this to go to your head, Mr. Mulhere.

MR. MULHERE: Don't worry. Don't worry. I'll be here next time and be beaten up.

CHAIRMAN FRYER: And that possibly being the case, I would be remiss in not also saying you do run a very good NIM, and thank you for that. This was well done.

MR. MULHERE: Thank you.

CHAIRMAN FRYER: I -- I'm going to need some clarification. Certainly I will want staff to weigh in. I'm probably going to want to hear from the County Attorney.

The moratorium question's an easy one, because there is none right now. There's talk of one, and there's one County Commissioner who has expressed, perhaps, an interest in it. I don't know where the other County Commissioners are, and it wouldn't matter because there's no moratorium yet.

Now, that takes us over to the East Naples Zoning Overlay, and this is where things get a little fuzzy in my mind. This is something where the Board of County Commissioners, albeit, I presume it was a previously constituted Board of County Commissioners, accepted -- accepted this overlay.

Now, I'll start by asking the County Attorney. What legal significance does that have as far as we're concerned and as far as the developer's concerned, the fact that this has been accepted, and what does that mean?

MS. ASHTON-CICKO: So at this stage of the game, there is a pending Growth Management Plan amendment for -- to create an overlay, and you-all saw the transmittal resolution. It doesn't -- the overlay doesn't become effective until you -- the Board adopts the ordinance, which is probably going to be in another five or six months, and Mr. Mulhere's client's application predated all of this.

CHAIRMAN FRYER: Okay.

MS. ASHTON-CICKO: So it's generally not effective.

CHAIRMAN FRYER: All right. So I take it what you're saying is is that the fact that it's been accepted is not legally binding upon us at this point because it's premature?

MS. ASHTON-CICKO: Correct, there are no regulations --

CHAIRMAN FRYER: Right.

MS. ASHTON-CICKO: -- you know.

CHAIRMAN FRYER: Okay. Thank you.

Now, the separation requirement -- I don't know if this is partly what you meant when you were talking about locational. But the two storage facilities are less than a quarter of a mile apart. Is that quarter-of-a-mile separational -- or locational requirement, is that part of this EZO that hasn't been approved yet?

MR. MULHERE: Yes.

CHAIRMAN FRYER: Okay.

MR. MULHERE: It's recommended. No. It's not even part of the overlay. The overlay is a GMP. And I think Mike can speak to these issues. But it's a GMP amendment to establish an overlay.

What you had already accepted is simply a plan and a report. No regulatory authority. GMP gets -- if it gets adopted in four or five months would then result -- and I think they're going to run pretty much simultaneously -- in a land -- set of land-code amendments that would implement that overlay. In that proposed set of land code amendments -- because I've seen them and reviewed them -- there is a recommendation to have a quarter-mile separation.

CHAIRMAN FRYER: Okay. So right now there is no such requirement?

MR. MULHERE: Correct.

CHAIRMAN FRYER: Thank you.

All right. And the comment or the words that are out there, five undesirable uses, that doesn't have the force and effect of law yet, does it?

MR. MULHERE: I'm not a lawyer, but as a planner I would say no.

CHAIRMAN FRYER: All right. So those are my questions and comments. How about from the other Planning Commission members?

COMMISSIONER SCHUMACHER: I'm trying to process this. So the East Naples Overlay, where did that end? Like, what was the -- this seems like this is right on the boundary; way down, right?

MR. BOSI: The proposed East U.S. 41 -- East Naples Zoning Overlay runs all the way to Port of the Islands.

COMMISSIONER SCHUMACHER: That's right. I'm just thinking of this, because when you get on the road, there's nothing there.

So, I mean, I agree with Mr. Mulhere that it's a limited site. There's really not a lot you can do with it, I mean, just because the access to it is tough. The Tractor Supply Store, which is one down, has its own left-hand turn to go into it. You've got a sheriff's substation there and a security company.

MR. MULHERE: Yes.

COMMISSIONER SCHUMACHER: So there's not really a lot you can do with this property, and --

CHAIRMAN FRYER: Anything else from the Planning Commission at this point? Commissioner Shea.

COMMISSIONER SHEA: I'd like to hear from Mike.

CHAIRMAN FRYER: Well, that's next.

COMMISSIONER SHEA: I don't have anything for Bob.

CHAIRMAN FRYER: All right. Anything else, Mr. Mulhere?

MR. MULHERE: No. Thank you.

CHAIRMAN FRYER: Okay. Then we'll hear from staff. Mr. Bosi.

MR. BOSI: Staff -- or Mike Bosi, Planning and Zoning director.

Staff -- for all things being equal, if it wasn't for the East Naples Development Plan and then the overlay that has been transmitted -- and the transmitted overlay basically extended the Traffic Congestion Management Area to extend from Rattle Hammock down to 41 but also allow for additional qualified targeted industries. That's the only thing that it did.

What was going to -- at adoption we were going to bring the East Naples Zoning Overlay, and that zoning overlay, which was based upon the recommendations and the identification of those undesirable uses within the East Naples Development Plan, had specific design treatments for those five undesirable uses and had a specific separation requirement for self-storage facilities.

And why we brought that to your attention, even though it's not a binding -- because it's not adopted; it's not law. But what we -- why we brought it to you, they have C-3 zoning. A storage utility is not allowed in C-3 zoning. They are asking for a rezone. A rezone -- there's a lot of things that are brought into the considerations as to whether the rezone is appropriate or not.

We felt that the direction that the East Naples Development Plan suggested for these undesirable uses, and then working with the community and what they felt was appropriate, meaning having separation between these, was at least a pertinent piece of information the Planning Commission and the Board of County Commissioners should you have while you're thinking about whether you should grant the rezoning as part of the consideration.

But there's further complication. The further complication -- and it became -- staff has become aware of it about two weeks ago, three weeks ago, is Senate Bill 250 -- and excuse me, Bob, I've got to jump in here.

MR. MULHERE: That's okay.

MR. BOSI: And what Senate Bill 250 says -- and this has been approved by both the House as well as the Senate. And it says -- and this is -- this basically talks -- the effective date of this proposed legislation is September 29th of 2022, and why that's a significant date, that's the date of Hurricane Ian.

And it says, it's going to run until October 1st of 2024, and what it says is a county or municipality located entirely or partially within 100 miles of where Hurricane Ian or Hurricane Nicole made landfall. So that's Collier County. We are included in that.

And, one, shall not propose or adopt any moratorium or construction, reconstruction, and redevelopment of property damaged by Hurricane Ian or Hurricane Nicole. That's not the pertinent part. This is the pertinent part. Shall not propose or adopt more restrictive or burdensome amendments to its Comprehensive Plan or land development regulations or propose or adopt more restrictive or burdensome procedures concerning review, approval, or issuance of a site plan, development permit, or a development order to the extent that these terms are defined by 163.3164, Florida Statutes, before October 1st of 2024.

So what that's saying -- and I had a conversation with the County Attorney's Office yesterday. They are further exploring it with commissioner -- or Mr. Klatzkow. Upon -- that effect upon the proposed EZO overlay. That EZO overlay cannot propose anything more restrictive than currently that [sic] we have on our books today.

Therefore, that separation requirement that was being proposed will have to be tabled until after -- if this bill is signed by the Governor -- it's been approved by the House. It's been approved by the Senate. There's only four members of the Florida Legislature that voted against this legislation. If it does get signed on July 1st, we will have to have a conversation with the Board of County Commissioners that says that we cannot adopt any additional regulations. If some of the regulations that are contained in that EZO overlay are more restrictive than we currently have, we can't adopt it. Our hands are tied.

So our recommendation of denial was a little stronger a month ago when our staff report was being generated. We recognize that it's something we want to at least provide -- make the Planning Commission and the Board aware of that it's not -- it's not in alignment with what the community was looking for within the EZO. But based upon Senate Bill 250, what's going to be provided for within the overlay may have to be tabled to a later date.

So staff does recognize that there has been some changing conditions, and it most certainly will have an effect upon what we will take forward or what we can even take forward to the Board of County Commissioners, because it doesn't -- the original bill said a county couldn't adopt. This says they can't even propose it.

So I'm not sure where -- legally where that stands. So we will have to work that out further with the County Attorney's Office, but -- so that's a portion or a twist that we weren't expecting. But, obviously, we wanted to share with you that will have a profound effect upon what we can move forward related to that EZO overlay.

CHAIRMAN FRYER: Thank you.

Commissioner Shea.

COMMISSIONER SHEA: Mike, I guess I'd go down another avenue. This is in an activity center. I haven't been here long, but the idea of an activity center is to promote activity: Jobs, transportation, concentration where we're building our infrastructure to support. To me it seems like a storage facility should be someplace else other than an activity center because it defeats all the intents of an activity center.

And I'm not trying to get hung up on the legal side of it. I'm just trying to understand. It seems it's contradictory to our overall growth management intent, even if it's not a regulation yet.

MR. MULHERE: The other thing I can speak to that is I understand your perspective, and I don't disagree that some more active uses would be something that you would expect within an activity center, but it does allow for the C-1 through C-5 uses, and storage facilities are a permitted use in C-5, a conditional use in C-4.

So it is endorsed -- the C-5 zoning that permits storage facilities is a zoning that is promoted by activity centers. Now, it may not be in alignment with what the average person would want to see within an activity center, but in terms of permitted uses and how activity centers allow the zoning categories within it, it does allow that zoning category that permits self-storage facilities.

COMMISSIONER SHEA: So refresh my memory. Why are we here, then?

MR. BOSI: Because it's currently zoned C-3. A storage facility is a -- is not an allowed use in a C-3 zoning district. It's in an activity center. That sets your future land-use designation. The zoning is C-3. The C-3 zoning district does not allow storage facilities.

A C-4 site would allow storage facilities but as a conditional use. A C-5 site, which is being proposed for the rezoning, it allows a storage facility as a permitted use. It is -- and activity centers allow C-1 through C-5 in a variety of our commercial uses. All of them are allowed within activity centers. So they're consistent with the Future Land Use Element. They're just inconsistent currently with their current zoning.

COMMISSIONER SHEA: So if we just vote to reject this, they can't build a storage facility there?

MR. BOSI: If you would vote to -- if you would make a recommendation of denial, that would be the end result. Of course, you would have to express why -- what are the conditions within the rezoning criteria that you found that it didn't satisfy to justify that determination. But, yes, that would be the end result.

COMMISSIONER SHEA: That's it.

CHAIRMAN FRYER: Commissioner Sparrazza.

COMMISSIONER SPARRAZZA: Real quickly. Lot 1 with the current storage facility is was originally zoned C-3, correct?

MR. MULHERE: (Nods head.) Rezoned to C-5.

COMMISSIONER SPARRAZZA: Rezoned to C-5.

MR. MULHERE: With a limited use. Same condition.

COMMISSIONER SPARRAZZA: We're doing the same thing to the adjacent lot to a building that will look very, very similar --

MR. BOSI: Yes.

COMMISSIONER SPARRAZZA: -- with limited use on that property, correct?

MR. MULHERE: Correct.

COMMISSIONER SPARRAZZA: Thank you.

MR. MULHERE: And if I may --

CHAIRMAN FRYER: Okay.

MR. MULHERE: -- Commissioner Shea, I don't necessarily disagree with what you said. That's part of the reason why the East Naples Community Plan has been adopted, but there are -- I think you have to look at some unique conditions here. The location east of Collier Boulevard, you can see that the geometry of these other quadrants in the activity center are completely different than the geometry of this one. This purple line represents the actual boundaries of that activity center.

If you look at the criteria that Mike talked about, these are the rezone findings. This is the staff responses. Whether the proposed change will be consistent with the goals/objectives of the Future Land Use Map and the elements of the Growth Management Plan.

Response, staff concludes this petition is consistent with the GMP.

Existing land-use pattern. The proposed rezone will not affect the existing land-use pattern.

Possible creation of an isolated district. The zoning will not create an isolated district.

Whether existing district boundaries are illogically drawn in relation to existing conditions. The existing district boundaries coincides with the lot lines. So, again, not illogically drawn.

Whether the changed or changing conditions make the passage of this rezone -- make the passage of this rezoning necessary, and the response is, the proposed rezone from C-3 to C-5 is not specifically necessary; however, the petitioner believes the rezone is necessary to accommodate the use. That's true of any rezone. They're not necessary. They're necessary to get the use you want.

Whether the proposed change will adversely influence living conditions in the neighborhood. Well, the only affected people are strongly in favor of this, so I don't think it's going to adversely affect the living conditions.

Whether the proposed change will create or excessively increase traffic. We know it's far less traffic than almost any other use.

Whether the proposed change will create a drainage problem. We've got an improved stormwater plan. It won't create. It will improve.

Whether the proposed change will seriously reduce light and air. It won't.

Whether the proposed change will adversely affect property values. It won't.

Whether the proposed change will be a deterrent to improvement of development of the adjacent property. Staff does not anticipate the rezoning would be a deterrent to improvement of the adjacent property.

Whether the proposed change will constitute a grant of special privilege. Well, yeah, the rezone will allow us to do a use that we can't do today. I don't think that's a grant of special privilege. There's a process here. Anybody can avail themselves of the same process on their own property.

Whether there are substantial reasons why the property cannot be used in accordance with the existing zoning. To your point, no, there's -- there are uses that are allowed; however, it's in an activity center, which allows C-1 through C-5.

Whether the change is out of scale with the needs of the neighborhood. This is the one that staff says, of all these criteria, it's staff's position that the proposed rezone to C-5 and resulting facilities may be out of scale with the needs of the community; however, typically, that's up to the -- more to the market, because I can tell you my client wouldn't be spending money for this property unless he felt like there was a market.

But, you know, the staff does point out that should the rezoning be proposed -- as proposed, there will be nearly 272,000 square feet of self-storage, because there's another -- third

self-storage building to the north on Collier Boulevard, so that incorporates all of them.

Staff says, however, there is a growing need for facilities that store goods for the surrounding community. The proposed building will be limited to 35 feet of actual height -- zoned height and 30 actual, which is consistent with the building immediately to the east.

So of all that criteria -- there's 18 criteria -- there's really one that staff raises an issue with, and that's driven by the fact that this would be consistent with the East Naples Community Plan, which isn't in effect. I think it's -- it's not right to subject my client to this criteria which isn't in effect, shouldn't be applied. The Board of County Commissioners had the opportunity to approve a moratorium. They chose not to do that. And this was discussed about existing uses in process during that discussion.

Thank you.

CHAIRMAN FRYER: Thank you. That was kind of a rebuttal, but you got a head start.

Mr. Bosi, anything further from staff?

MR. BOSI: Nothing further from staff.

CHAIRMAN FRYER: Okay. Do we have any registered public speakers?

COMMISSIONER SHEA: May I ask Mike.

CHAIRMAN FRYER: Oh, yes, of course. Commissioner Shea.

COMMISSIONER SHEA: Mike, are you changing staff's recommendation based on what you've learned in the last few days?

MR. BOSI: Based upon the direction and the anticipation that Senate Bill 250 will become, if the Planning Commission makes a recommendation, the staff is going to get in line with that recommendation to the Board of County Commissioners.

COMMISSIONER SHEA: What's your recommendation?

MS. ASHTON-CICKO: I don't think you need to make any decisions based on Senate Bill 250 today. So proceed as you normally would regardless of what the bill says.

COMMISSIONER SHEA: So would your recommendation to this commission stand?

MR. BOSI: My recommendation -- our recommendation --
(Simultaneous crosstalk.)

MR. BOSI: -- does stand, that we're recommending denial because the neighborhood has expressed to us through our interactions with them, through the development of the East Naples -- or the U.S. 41 EZO Zoning Overlay, that they have concerns with storage facilities and would like to see better control of those land uses. That is a constant whether we're prohibited or not prohibited from implementing those desires.

But staff's perspective, we've heard from the community. They have expressed concerns over these auto-oriented type of uses such as storage facilities.

CHAIRMAN FRYER: Thank you.

Registered public speakers?

MS. PEDRON: Mr. Chairman, we do. We have an online speaker and in-person. We will go ahead and proceed with our online speaker first.

CHAIRMAN FRYER: All right.

MS. PEDRON: Frank Ferraiuolo.

Frank, do you hear me?

(Simultaneous crosstalk.)

CHAIRMAN FRYER: Yes. Spell your last name for us, sir.

MR. FERRAIUOLO: F-e --

CHAIRMAN FRYER: Yes.

MR. YOUNGBLOOD: Sorry about that.

CHAIRMAN FRYER: We lost him?

MR. FERRAIUOLO: Can you hear me?

CHAIRMAN FRYER: Now we can. Spell it again, please, sir.

MR. FERRAIUOLO: Okay. I'm sorry. F-e-r-r-a-i-u-o-l-o.

CHAIRMAN FRYER: All right, sir. You have five minutes. Please proceed.

MR. FERRAIUOLO: Okay. I'm the Falling Waters Beach Resort master president. I'm also president of Phase 4, which is the six buildings that are closest to the wall that we were speaking about.

I've had meetings several times with the developer before it was built, after it was built. They met all our conditions. The buildings are 70 or 80 feet from our wall. They repaired the wall, finished the wall that was done. They told me they would landscape our side, and they did. They painted the wall. It's been an -- it's been nice for the community. The wall is in good shape and good repair.

We have about 10 or 12 restaurants right across the street about 7- or 800 feet from our opening. We have Burger King, Wendy's, McDonald's, Miller's, Chipotle, Starbucks, and a few other restaurants and, you know, restaurants make smells.

The last two years we've had a problem with bears because of all the construction in the neighborhood, and bears have been on our property, upending our garbage and our recycling and our regular garbage, that we had to have special containers built to bear-proof ourselves.

So bringing anything other than a nice, clean business, which is the storage business -- because there's very little garbage, if any. There's no smells from those buildings at all.

And to maybe possibly have a restaurant or a convenience store there where their garbage will be open -- and if you go by any of these restaurants -- I was in business for 40 years. They don't take that great care of the garbage and how it's processed and how it's dumped in there and everything else. That will definitely affect our community and bring the bears back. So I'm worried about that.

The lighting that they put in doesn't affect the lighting. I've had no complaints from my neighbors about the lighting that was in the building there. And as far as I'm concerned, they're very good neighbors. So I would like to see a second storage facility put in there other than some use that might cause problems for our community.

Anybody have any questions?

CHAIRMAN FRYER: No, but thank you very much, sir.

Next speaker, please.

MS. PEDRON: Mr. Chairman, our next speaker is Gordon Brumwell.

MR. BRUMWELL: Hi. Gordon Brumwell from Crown Pointe.

I'd like to express that I'm grateful for the owner to try to sync with some of the elements of the upcoming zoning overlay even though it's still upcoming. I think that's a nice thing to do.

The East Naples Community Development Plan has been adopted. The 41 East Overlay is in the pipeline regardless of legalities. Both show the community wish to slow the trend of more and more storage.

And a separate element that hasn't really been touched on yet is to preserve our fast-disappearing natural heritage, both the aesthetics and the function. So the storage is not consistent with that sentiment that the community has.

Separately, the five or so palm trees in those sunbaked stark renderings certainly don't help preserve the aesthetic and natural functions that this area's had in the past. Those are blasting white walls with, I think, four palm trees in front of them along a rather long frontage.

So I guess one thing I might suggest is please keep the desires of the community to not want more storage around but, perhaps, also keep in mind there might be a happy medium in which, if this goes forward, you know, maybe take some of the landscape elements of the EZO, meet the buffer system halfway, plant some canopy trees along 41. That way what comes out of this would better match what we hope to see the EZO provide this area.

Thank you.

CHAIRMAN FRYER: Thank you.

Any further registered speakers?

MS. PEDRON: Mr. Chairman, we do not have additional speakers at this time.

CHAIRMAN FRYER: All right. Anyone in the room who's not registered but would like to be heard, please raise your hand.

(No response.)

CHAIRMAN FRYER: Seeing none, we will -- no members of the Planning Commission are signaling that they want to be heard, so we will close the public comment portion of the hearing at this time.

And, Mr. Mulhere, do you have rebuttal?

MR. MULHERE: No. I appreciate those comments. And there is -- as I mentioned -- I don't know. It might have got lost in the rest of the presentation -- but this property -- the frontage of this property was reduced significantly when that intersection was improved, and the state came in and took property here and reduced this for a long turn lane to go northbound on Collier Boulevard.

So there is only 10 feet in this area within which landscaping can go. There's 20 feet down here, and there are canopy trees within that.

I think that the gentleman was referring to the architectural rendering. I forget exactly where that is here, but -- there. This doesn't -- I mean, I should say a caveat. This does not show the existing landscaping along 41. And it does have some green elements in the building. It was primarily intended to show you the building architecture.

We'll meet or exceed the code as far as landscaping, but that buffer is already approved through an approved SDP and was reduced right here, again, when the county went in and -- or excuse me -- well, I don't know if it was the county or the state. But whenever they created that turn lane. That's why it was reduced. So when this happens -- you're not expected to now replace that buffer -- you've lost that land for public benefit.

Also, you can see that there's a frontage road here, and it would make no sense to jog that frontage road north. It would create a traffic condition that's very undesirable. This frontage road goes all the way east and west. And maybe someday there will be an interconnection through the CVS to get to the north, so it doesn't make any sense to change that.

I did appreciate the comments, though. I stand with the position that, you know, maybe this will be the last one that gets approved, if it does, prior to the actual regulatory component of the East Naples planning. The county looks at lots of plans. They don't force them until there's a regulatory component.

Thank you.

CHAIRMAN FRYER: Thank you. No one is signaling at this point. Any members of the Planning Commission desire to be heard at this time? If --

Commissioner Schumacher.

COMMISSIONER SCHUMACHER: So going back to Bob's point, I agree with him that it's a real limited use that you could use with this. The neighbor to the north, which is the president of the master association HOA, has said they desire to have this. They already have a good relationship with the developer on the first storage one that's built in there. So I'm having a hard time on agreeing with staff on this because it looks like this works.

CHAIRMAN FRYER: Thank you.

Commissioner Shea.

COMMISSIONER SHEA: I have the opposite opinion. I would -- I think we need more activity in an activity center, and I support staff's recommendation.

CHAIRMAN FRYER: Okay. Any further comments at this point?

(No response.)

CHAIRMAN FRYER: If not, we'd entertain a motion.

COMMISSIONER SHEA: I move we approve -- recommend approval consistent with the staff's recommendation.

CHAIRMAN FRYER: Staff's recommendation is denial.

COMMISSIONER SHEA: Denial, yes.

CHAIRMAN FRYER: Okay. Is there --
COMMISSIONER SHEA: I reinforce that.
CHAIRMAN FRYER: Is there a second?
(No response.)
CHAIRMAN FRYER: It fails for lack of second.
Entertain another motion.
COMMISSIONER SCHUMACHER: I'd make a motion to approve as presented by the applicant against the staff's recommendation.
CHAIRMAN FRYER: Motion to approve. Is there a second?
COMMISSIONER SPARRAZZA: Second.
CHAIRMAN FRYER: Any further discussion at this time?
MR. MULHERE: Mr. Chairman, I just wanted to mention, I did request the lighting be consistent with the existing lighting on 41.
CHAIRMAN FRYER: Twenty feet.
MR. MULHERE: Just on 41, yes.
CHAIRMAN FRYER: Understood, yeah. The movant and the seconder would accept that; instead of 15 feet, the lighting's going to be at 20 feet?
COMMISSIONER SPARRAZZA: Height?
MR. MULHERE: Correct.
COMMISSIONER SPARRAZZA: To match the current?
MR. MULHERE: Yes.
COMMISSIONER SPARRAZZA: Yes, approve.
COMMISSIONER SCHUMACHER: Approve.
CHAIRMAN FRYER: So that's going to be part of the motion. Any further discussion?
(No response.)
CHAIRMAN FRYER: If not, all those in favor, please say aye.
Aye.
COMMISSIONER SPARRAZZA: Aye.
COMMISSIONER SCHUMACHER: Aye.
CHAIRMAN FRYER: Opposed?
COMMISSIONER SHEA: Aye.
CHAIRMAN FRYER: It passes 3-1.
Thank you, applicant. Thank you, staff. Thank you, members of the public.
MR. MULHERE: Thank you.
CHAIRMAN FRYER: Thank you, Planning Commission.
Is there any old business to come before the Planning Commission at this time?
(No response.)
CHAIRMAN FRYER: If not, is there any new business?
(No response.)
CHAIRMAN FRYER: Any additional comments from members of the public that were not covered in our agenda today?
(No response.)
CHAIRMAN FRYER: If not, thank you very much. Without objection, we're adjourned.


May 4, 2023

There being no further business for the good of the County, the meeting was adjourned by order of the Chair at 2:04 p.m.

COLLIER COUNTY PLANNING COMMISSION



EDWIN FRYER, CHAIRMAN

These minutes approved by the Board on 6/1/23, 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.