

April 18, 2024

TRANSCRIPT OF THE MEETING OF THE  
COLLIER COUNTY PLANNING COMMISSION  
Naples, Florida  
April 18, 2024

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

Edwin Fryer, Chairman  
Joe Schmitt, Vice Chair  
Robert L. Klucik, Jr. (where indicated)  
Paul Shea  
Randy Sparrazza  
Chuck Schumacher  
Christopher T. Vernon  
Amy Lockhart, Collier County School Board Representative

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

CHAIRMAN FRYER: Thank you, Mr. Bosi.  
Good morning, everybody. Take your seats.  
This is the April 18, 2024, meeting of the Collier County Planning Commission. Am I being heard? Maybe just not close enough.  
Okay. Everyone please rise for the Pledge of Allegiance.  
(The Pledge of Allegiance was recited in unison.)  
CHAIRMAN FRYER: Sorry for the feedback.  
Mr. Secretary, please call the roll.  
COMMISSIONER SHEA: Commissioner Fryer, Chairman Fryer?  
CHAIRMAN FRYER: Here.  
COMMISSIONER SHEA: Vice Chair Schmitt.  
COMMISSIONER SCHMITT: Here.  
COMMISSIONER SHEA: Secretary Shea is here.  
Commissioner Vernon?  
COMMISSIONER VERNON: Here.  
COMMISSIONER SHEA: Commissioner Klucik?  
(No response.)  
COMMISSIONER SHEA: Is he online or --  
CHAIRMAN FRYER: Not that we know of.  
COMMISSIONER SHEA: Okay. Commissioner Sparrazza?  
COMMISSIONER SPARRAZZA: Here.  
COMMISSIONER SHEA: Commissioner Schumacher?  
COMMISSIONER SCHUMACHER: Here.  
COMMISSIONER SHEA: Ms. Lockhart?  
MS. LOCKHART: Here.  
COMMISSIONER SHEA: We have a quorum, sir.  
CHAIRMAN FRYER: Thank you, Secretary.  
Let's see. Planning Commission absences -- or excuse me. Addenda to the agenda first.  
Mr. Bellows, anything?  
MR. BELLOWS: Good morning, Commission.  
We don't have any changes to the agenda.  
CHAIRMAN FRYER: Thank you.  
Now, Planning Commission absences. Now, a little tricky here. The next meeting is actually scheduled for May 2, 2024, but as of today, nothing has been publicly noticed for hearing. So, really, unless we need to reconvene from a continuance of Fiddler's Creek matter today -- and I'm not suggesting we want to do that, but in the chance that that comes to pass, we will use that meeting time for the continuation of Fiddler's. If not, there will be no meeting on May 2. But since there's a possibility, I want to find out if anybody knows if he or she is not available to be here on May 2.  
COMMISSIONER SCHMITT: I will not be here on May 2nd.  
CHAIRMAN FRYER: Okay. Thank you.  
Then after that is May 16, 2024. Anyone know if he or she's not going to be able to be here for that day?

(No response.)

CHAIRMAN FRYER: All right. It looks like we'll have a quorum at that time. Approval of minutes. We have one set before us, and those are the minutes of March 7, 2024. Any changes, corrections, additions?

(No response.)

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

COMMISSIONER SCHUMACHER: Motion.

COMMISSIONER SCHMITT: Is there a second?

COMMISSIONER SHEA: Second.

CHAIRMAN FRYER: Any further discussion?

(No response.)

CHAIRMAN FRYER: If not, all those in favor of approving the minutes of March 7, 2024, please say aye.

COMMISSIONER VERNON: Aye.

COMMISSIONER SHEA: Aye.

CHAIRMAN FRYER: Aye.

COMMISSIONER SCHMITT: Aye.

COMMISSIONER SPARRAZZA: Aye.

COMMISSIONER SCHUMACHER: Aye.

CHAIRMAN FRYER: Opposed?

(No response.)

CHAIRMAN FRYER: It passes unanimously. Thank you very much.

BCC report, recap, Mr. Bellows.

MR. BELLOWES: Yes. On March the 12th, the NBC RV and mixed-use PUD was continued to the 4/9/24 BCC meeting, and on March 26th, the boathouse commercial PUD was approved on the summary agenda and its companion GMP amendment.

The Genesis PUD was approved by a vote of 5-0 on the public agenda, and the Home Depot southeast CPUD and companion amendment was also approved on the summary agenda on that meeting.

Then on March 9th, the NBC RV mixed-use PUD was approved by a vote of 5-0 subject to CCPC conditions.

CHAIRMAN FRYER: Thank you, sir.

Chairman's report. I actually have a brief report today, and before I give it, I want to ask the indulgence of the Planning Commission. If there are any questions, comments, or discussions arising out of what I'm about to say, I ask that they be held until new business, because we do have a full agenda, and I don't want to take more time before we get to our agenda than is necessary.

But just by way of a preface --

(Cell phone ringing.)

CHAIRMAN FRYER: And that reminds me to ask everyone to please mute your telephones so that we don't have those kinds of interruptions.

Thank you very much.

You may or may not know that under the Florida statutes, it's actually the county Planning Commission that makes the final recommendation to the Board of County Commissioners on Growth Management Plan amendments. And, of course, staff's recommendations are always of great value to the BCC, and nothing should be taken away from

that clear line of communication between staff and the Board.

Mr. Bosi and I met last Thursday and worked out a mechanism for the Planning Commissioners to have a more clear line of communication directly to the BCC, and I thank him for his flexibility and willingness to work with us on that.

The way it's going to work, I propose, is that after each Planning Commission meeting where we take action on a planning or zoning matter, and before the staff's deadline for printing its summary to the Board of County Commissioners, any planning commissioner who wishes to do so -- don't have to, but if you would like to do so, you may provide a brief report to the BCC on your perspective, if you will, of the issues that were presented on the matter voted on and the reasoning also of -- that went into whatever decision you made as part of your recommendation.

Staff will then -- and I recommend that -- first of all, that we not do this every time and, second, that we be very brief in choosing when we do so. And then staff will incorporate the write-up into its executive summary that goes to the Board of County Commissioners.

So, again, I recommend that we not exercise that on a routine basis and -- but I suggest it may be appropriate particularly when there are divided votes at the Planning Commission level or where Planning Commission votes unanimously in conflict with the staff's recommendation.

Mr. Bosi, did you want to say something?

MR. BOSI: No. You hit the context that I was looking for in our discussions. It was really those votes towards where there was a dissent and to give a little bit more explanation. The staff tries to just provide a generalization of what the issues were. But if a planning commissioner would like to have a little bit more explanation -- and we'll just include that within the executive summary where we talk about the Planning Commission hearing and then what the vote was, and then we'll add whatever the Planning Commission member would like to provide for more specific detail in terms of why they voted in the dissent, what was the motivation of the factors with that.

CHAIRMAN FRYER: Thank you. Thank you very much. And thanks, again, for your flexibility and willing to work with us, Mr. Bosi, on that. Appreciate it.

MS. ASHTON-CICKO: If I could just interject for a second.

CHAIRMAN FRYER: Go ahead.

MS. ASHTON-CICKO: The written material would have to reflect what the member said at the meeting. So, typically, if there is dissention, or dissenters, we do ask the dissenters, if they didn't previously state their reasons for the dissent, to state it on the record. If you want to supplement it, it's fine, but it has to be what was discussed -- what you mentioned in the meeting.

CHAIRMAN FRYER: You can't contradict what you -- what you said, but you can supplement; is that what you're saying?

MS. ASHTON-CICKO: No. I'm saying your reason for your no vote is during the. You don't get to provide additional reasons after by supplementing it in writing, so if you --

CHAIRMAN FRYER: Of course. Yeah, of course.

MS. ASHTON-CICKO: Okay.

CHAIRMAN FRYER: But -- so if someone is silent, a silent "no," then they're precluded, are you saying, from providing anything?

MS. ASHTON-CICKO: If somebody just said no and didn't make any statement, then I would be amiss at not requiring them to make a statement. So, yes, if they don't state their reason for their "no" during the meeting, then, no, they don't get to supplement.

CHAIRMAN FRYER: Okay. Well -- all right. So be sure to identify your reasoning,

and then the purpose of this additional step is simply to record your words as you said them, or as close as possible, for direct communication to the Board of County Commissioners; is that right?

MS. ASHTON-CICKO: Yeah. I would recommend either before the motion is made to make your statement as to the reasons, which typically happens, and that's where we extract what each commissioner says for the planning -- for the Board's meeting for the summary of the Planning Commission. If you don't say it before the motion, then we need you to state it after the motion.

CHAIRMAN FRYER: Yeah. That may be a little onerous for us. For instance, in my case I frequently raise concerns in the course of the questions that I ask, and I might neglect to summarize them at the end, but the fact that I've made a record in the record proper should be enough.

MS. ASHTON-CICKO: Yes, as long as it's in the record.

CHAIRMAN FRYER: Thank you. Okay.

All right. So if any planning commissioner wants to talk more about this, I'd like to put it off until new business.

So let's see, okay. Consent agenda, none today.

\*\*\*Public hearings, advertised. Our first hearing today is a Growth Management Plan amendment now coming back to us for adoption. It's PL20220006512. The land-use planning period changed to -- 2024 to 2050. And when we heard this on transmittal, the time frame was 2024 to 2045, but that's the only difference in the version that's now before us for adoption in comparison to the one that we heard at transmittal. So that's where it is.

And with that, since it's legislative in nature, we don't need to do swearing in or ex parte disclosures. I'll turn it over. Welcome back, Mr. David Weeks.

MR. WEEKS: Good morning, Commissioners.

CHAIRMAN FRYER: Mr. Miller, we've got a feedback problem.

MR. WEEKS: I'm David Weeks. I actually am employed by Nova Engineering and Environmental. I am a contract employee to Collier County after many years working for the county.

CHAIRMAN FRYER: We're glad to have you, whatever capacity you're in.

MR. WEEKS: Thank you.

This amendment, as you stated, is very simple. It is only to amend the Future Land Use Map planning horizon out to 2050. There are two things that changed during the life of this petition, which began in 2022. First of all, the projections of population from our source at the University of Florida only extended to 2045 when this petition began. Now their projections go out to 2050. So when this petition began, we could not go beyond 2045. We didn't have the necessary population projections.

Secondly, the Florida Legislature in 2023 changed the planning horizon requirement in Florida statutes from five and 10 years to 10 and 20 years.

CHAIRMAN FRYER: Do we need a recess?

COMMISSIONER SHEA: Keep talking so we can hear if it's still doing it.

CHAIRMAN FRYER: Yeah. If you don't mind continuing, Mr. Weeks.

MR. WEEKS: Sure. With the change to the 20-year horizon, if we kept the horizon year as 2045, we would only have one year before we would be back before you again asking for this extension. That's why the change now out to 2050. Population projections are available to 2050, and we want as much of a cushion to exist so that we don't have to come back

as frequently to request this type of map amendment.

Staff, of course, did conduct the necessary data and analysis to show that the county does have the ability to support the necessary commercial and residential and industrial and recreational and other types of land uses to support the Future Land Use Maps 2050 horizon year.

Your recommendation at transmittal was for approval, as was staff's recommendation. The Board unanimously approved it for transmittal, and now we're before you again recommending approval for adoption.

CHAIRMAN FRYER: Thank you.

Questions from the Planning Commission or comments?

(No response.)

CHAIRMAN FRYER: Apparently not. Oh, Vice Chairman.

MS. LOCKHART: I'd make a recommendation for approval of the amendment as proposed by staff.

CHAIRMAN FRYER: I'm going to ask if we can hold that in abeyance --

COMMISSIONER SCHMITT: Okay.

CHAIRMAN FRYER: -- run the traps on public comment.

COMMISSIONER SCHMITT: Thank you.

CHAIRMAN FRYER: Is that all right with you, movant?

COMMISSIONER SCHMITT: Yes.

CHAIRMAN FRYER: Okay. Is there any public comment? I'm guessing there isn't? From the back of the room, do we have any --

MR. BOSI: I'm not sure if they heard you.

CHAIRMAN FRYER: Okay. Any registered speakers on this item, please?

MR. SABO: No public speakers, Mr. Chairman.

CHAIRMAN FRYER: Thank you. Sorry to interrupt.

We've got a motion. Is there a second?

COMMISSIONER SHEA: Second.

CHAIRMAN FRYER: Any further discussion on this?

(No response.)

CHAIRMAN FRYER: All in favor of approval on adoption, please say aye.

COMMISSIONER VERNON: (No verbal response.)

COMMISSIONER SHEA: Aye.

CHAIRMAN FRYER: Aye.

COMMISSIONER SCHMITT: Aye.

COMMISSIONER SPARRAZZA: Aye.

COMMISSIONER SCHUMACHER: Aye.

CHAIRMAN FRYER: Opposed?

(No response.)

CHAIRMAN FRYER: It passes unanimously.

Thank you, Mr. Weeks. Thank you, staff.

\*\*\*All right. Our second and last hearing today is on three companions. They are PL20210003111, the Fiddler's Creek proposed Small-Scale Growth Management Plan amendment; PL20210003112, Fiddler's Creek proposed residential PUDA; and PL20210003115, the Fiddler's Creek proposed DRI development order amendment.

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

reporter.

(Commissioner Klucik is now present in the boardroom.)

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 very much.

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

MS. LOCKHART: None.

COMMISSIONER VERNON: Vernon, no disclosures.

COMMISSIONER SHEA: Staff materials and letters from the public.

CHAIRMAN FRYER: Thank you.

Matters of public record, meetings with staff, meetings with representatives of neighborhood groups, a conversation with the applicant's agent, and a site visit.

COMMISSIONER SCHMITT: I met with John Erario and Sue -- I want to pronounce the name -- Carolati [sic] -- I hope that's correct -- from Eagle Lakes to discuss the rezoning application and numerous issues associated with the proposed GMP amendment and the PUD amendment. I had lengthy discussions with Mr. Yovanovich, the attorney representing the petitioner, regarding the permit history related to the Estancia permit and the request to amend the biological assessment or otherwise known as the biological opinion for Section 29.

I want to note for the record that I'm going to recuse myself from voting on this petition. I currently serve as a senior advisor for a firm in Washington, D.C., titled Dawson & Associates, LLC. That is a consulting firm that provides technical services involving federal land, water, endangered species, environmental issues specifically focused on permitting issues relating to enforcement or permit activities related to the Endangered Species Act and Section 404 of the Clean Water Act.

Dawson & Associates provided consulting services to Gulf Bay related to the application for the U.S. Army Corps of Engineers Estancia permit and for the application of the U.S. Fish and Wildlife Services permit or the amendment -- request to amend the U.S. Fish and Wildlife existing biological opinion to remove the protective covenants for the proposed 59 acres in Section 29.

So I will serve in the capacity here just -- nothing more than as an expert in regards to I am the chair -- the environmental chair on this -- on the Planning Commission and as a former commander of the U.S. Army Corps of Engineers engineering district and extensive experience in the 404 permitting process, and Section 7 consultation.

And I had this discussion with some of the residents, and they preferred that I sit and actually help guide them through this process. I have no dog in the fight one way or the other in regards to this petition other than the past services provided to Gulf Bay.

So with that, I pass.

CHAIRMAN FRYER: Thank you. Before we go further, I just want to double-check with the County Attorney. Is all of this in order as far as you're concerned?

MS. ASHTON-CICKO: I do have concerns with testifying as an expert witness in this matter. I suppose that if the Planning Commission has some questions, he may be able to answer them, but I am concerned, as he said he was going to provide expert testimony.

COMMISSIONER SCHMITT: I would only provide expert background information on my experience with dealing with the federal permitting process.

MS. ASHTON-CICKO: We have discussed the issue -- you know, we have discussed

with Mr. Schmitt and, you know, we advise -- we're not mandating, so Mr. Schmitt can proceed as he feels is appropriate.

CHAIRMAN FRYER: Thank you.

Continuing with disclosures.

COMMISSIONER KLUCIK: Nothing to disclose. And all I would say is he is -- if you are, Commissioner, going to give testimony, then you obviously would need to be under oath.

COMMISSIONER SCHMITT: Yes.

CHAIRMAN FRYER: Thank you.

COMMISSIONER SPARRAZZA: Staff materials and a conversation with Mr. Yovanovich.

COMMISSIONER SCHUMACHER: Staff materials, site visit, and a brief conversation with Mr. Bosi and meeting -- in-person meeting with residents in the neighboring communities of the applicant.

CHAIRMAN FRYER: Thank you.

And let the record show, please, that Commissioner Klucik joined us right around 9 a.m. but just slightly after the roll was called. He is here.

And with that --

MS. ASHTON-CICKO: Mr. Chair, I do need to also make a statement. I don't know if you've spoken to the counselors representing the owners, but, typically, Mr. Klatzkow would recommend that they be afforded, you know, sufficient time to present their evidence and so forth, and they would be entitled to some cross-examination of experts.

CHAIRMAN FRYER: I see. Okay. Thank you very much. We certainly -- I was fully prepared to give the objectors every opportunity to present all the evidence they wish to, at least once, not repetitiously, but I was unaware of Mr. Klatzkow's recommendation about cross-examination.

MS. ASHTON-CICKO: It would be -- you know, it's limited to the attorney that's representing a large group of people. It doesn't afford, you know, public to do cross-examination, only that attorney.

CHAIRMAN FRYER: Okay. Well, thank you for communicating that. And before I comment on it, give me a chance to think a moment. I'm going to call on Commissioner Vernon.

COMMISSIONER VERNON: Yeah. That makes sense to me, especially given that the County Attorney's recommending it.

But the reason I was lit up was for Commissioner Schmitt. I'm deferential to what he wants to do, obviously. I just want to make sure I understand and give my thought process. My understanding of the statute -- and I didn't know this until I'd been on the Board for a while, and I think it's unusual -- is that under the statute -- he's appropriately recused himself, but under the statute, he's allowed to participate in discussions. That's my understanding of the law. That's -- and it's unusual. Usually when you recuse yourself, you're not allowed to participate in discussion, but that's not, as I read this statute, applicable to us.

MS. ASHTON-CICKO: As to -- so the statute is in 1 -- 112.3143, and (3)(a) applies that relates to public officers, which applies to whether he votes or not, which he stated he's not voting. Parenthetical 4 deals with the appointed public officer, and it states that no appointed officer shall participate in any manner which would inure to the officer's special -- sorry. It's the last litany on the list which says, "or which he or she knows would inure to the special



private gain or loss of a relative or business" association -- "associate of the public officer without first disclosing the nature of his interest." So it's the last item on the list under the statute allows him to participate --

COMMISSIONER VERNON: Right.

MS. ASHTON-CICKO: -- if he discloses --

COMMISSIONER VERNON: So I'm interpreting the statute correctly because he did disclose.

MS. ASHTON-CICKO: Yeah. If he's -- if he's applying the conflict to the last category, which is the one that says, "which he or she knows would inure to the special private gain or loss of a relative or business associate of the public officer without first disclosing." So if he discloses under that category, then there is no statutory prohibition.

COMMISSIONER VERNON: I think Commissioner Klucik's actually done this before --

(Simultaneous crosstalk.)

COMMISSIONER VERNON: -- where he's recused -- so I think you agree with me on the interpretation.

COMMISSIONER KLUCIK: Absolutely.

COMMISSIONER VERNON: And, again, I didn't know that interpretation until I was -- you know, been on the Board for a while. But that being -- so I think it's correct for him to be able to participate in the discussions.

And we have a couple of commissioners purposely on the Board who have specific expertise, and that's one of the reasons they're on the Board, and Commissioner Schmitt's of them. So, obviously, I'm deferential on however you want to proceed. But the way I view it is Commissioner Schmitt can participate. He's obviously going to use his expertise. That's one of the reasons he's here in discussions.

So I guess my point is, I don't know whether he needs to testify. I think he just participates as he does in every other meeting. And, obviously, I take under -- I take under advisement what he says based on, partially, like Paul's engineering background.

So I guess, again, it's his choice. But I don't know -- I think I can get just as much out of Commissioner Schmitt in terms of how I rule without him having to testify.

COMMISSIONER SCHMITT: Yeah. I have no intent on testifying from a standpoint of actual background. My only intent was to provide guidance and counseling in regards to the implementation and enforcement of the Endangered Species Act or the Clean Water Act and the application process since that seems to be one of the most contentious issues here is the issue with Section 404 of the Clean Water Act and the application to the U.S. Fish and Wildlife to amend the biologic -- the currently approved and existing biological assessment or biological opinion associated with Section 29 and the permit that was issued by the U.S. Army Corps of Engineers.

COMMISSIONER VERNON: So -- yes. And so I'm glad I brought this up. I just want to clarify. In my opinion, what you just said, you're just going to participate like you always do --

COMMISSIONER SCHMITT: Correct.

COMMISSIONER VERNON: -- bringing your expertise to bear, and I think what threw the lawyer off is you said the word "expert." You've transitioned to something new which you're not doing.

COMMISSIONER SCHMITT: No, I'm not the experts. We have enough experts.

My expertise is only in the --

COMMISSIONER VERNON: Yes.

COMMISSIONER SCHMITT: -- what I bring to this committee.

COMMISSIONER VERNON: Which is a lot.

CHAIRMAN FRYER: I think it would be a bad precedent for us to start swearing in planning commissioners.

COMMISSIONER VERNON: Well, that's what I wanted to clear up.

CHAIRMAN FRYER: And, you know, we have a long history of bringing our personal experience to bear in these matters. Certainly the Vice Chairman has; I have, too. And it's my understanding that that -- that he would participate fully. The only -- the only difference in his participation today is -- or at the conclusion of this matter is that he is not going to vote.

MS. ASHTON-CICKO: Yeah. I think we're dancing a fine line. If he continues to provide the guidance to the Board that he has in the past based on his knowledge with the U.S. Army Corps, then I think that has been helpful to the Board. So I think it's just going to be -- you know, I just -- we need to be careful on what is stated.

CHAIRMAN FRYER: Well, tell me if you disagree, but you've -- you have witnessed the Vice Chairman's explanations and recounting of his personal and professional history in many, many previous matters. I'm thinking that he's not going to go beyond that, and we will make use of it the way we always do.

MS. ASHTON-CICKO: Yes. In the past I think that he's provided appropriate information to the Board to help you all make your decisions. I think that it's going to depend on how it plays out. If it's -- if it doesn't reach the point of being expert testimony and -- you know, then I don't think he would be subject to cross-examination.

CHAIRMAN FRYER: Well, that's --

COMMISSIONER VERNON: Well, yeah. That's where -- I'm trying to clarify this. I think he just did a great job of explaining in great detail his thought process, and he's an engineer and not an attorney, and he used the word "expert," and I think we got caught up in that. And I wanted to clarify, he's not testifying as an expert. He is bringing his experience, his education to bear, which is the reason we're all here. I mean, I think I bring some legal expertise.

MS. ASHTON-CICKO: Yes.

COMMISSIONER VERNON: And so I'm not testifying as an expert on legal issues or quasi-judicial or something like that. I'm simply doing my job. And I'm thinking all he's going to do here today is do his job no different than he does in every -- every situation. The only thing is he made a disclosure, and he's not going to vote. Other than that, it's the same old, same old from my perspective. Therefore, unquestionably, he's not going to testify as an expert, and he's not going to be cross-examined.

(Simultaneous crosstalk.)

COMMISSIONER SHEA: If you think he's getting close to the line, interrupt us.

(Simultaneous crosstalk.)

MS. ASHTON-CICKO: Okay. Certainly, I can do that. When he used the word "expert," it did set the alarm off.

COMMISSIONER VERNON: Well, not even -- not to go too far with this, but I don't think there's a line. I think, you know, he is -- what his thoughts are are super important to us and the community and all of us. We all bring a unique expertise. None of us are up here

testifying as an expert or being cross-examined.

MS. ASHTON-CICKO: Yes. If he testifies as to his knowledge of how the process works that he's done in the past, which has been very helpful, the -- but here he has some personal knowledge, I believe, of the permits and the history. And so if we get into that, now we might be getting into fact testimony.

So -- I -- or expert testimony. So it just creates some concern here. But if we stick to the process and how the system works, then that should be okay.

COMMISSIONER VERNON: Well, I guess -- because I'm deferential to the counsel for the county. So I guess if he crosses the line then, yeah, you should advise him not to. But what you're saying doesn't -- doesn't make sense to me simply because we're quasi-judicial. We are encouraged to go out and view properties before we vote. Sometimes I've gone -- I've been out to Isles of Capri on a Fiddler's Creek project looking at the property. I don't think that, because now I have factual knowledge, that I'm subject to being cross-examined or having to be put under oath because I have some knowledge.

Now, his knowledge is based on much more formal fact-based knowledge, but at the same time, knowledge is knowledge. So I just don't -- I don't really want our -- anybody up here being subjected to cross-examining because they happen to have some factual knowledge. Some of the folks here may drive through the neighborhood where the -- so -- and that's part of -- that's why we're quasi-judicial and not judicial. So it just makes sense to me -- and I know I'm kind of maybe digging into this too deep. But I just don't want to put Commissioner Schmitt or anybody else in a position to be cross-examined.

CHAIRMAN FRYER: Let me respond, if I may. As the Chairman, I am not going to permit any planning commissioner to be cross-examined.

Vice Chairman.

COMMISSIONER SCHMITT: Yeah. I just failed to note, as well, that I also live in Fiddler's Creek. I'm a resident in Fiddler's Creek, 7629 Mulberry Lane. I've been there for 22 years. So I failed to note that as well, though I don't know what relevance that has other than I'm one of the 3,000 homes that are now part of Fiddler's Creek.

CHAIRMAN FRYER: Thank you. Any other precatory matters to be discussed before we go to this first matter?

(No response.)

CHAIRMAN FRYER: If not, Mr. Yovanovich, you have the floor.

MR. YOVANOVICH: Thank you. For the record, Rich Yovanovich on behalf of the petitioner, in all three petitions.

I think this -- I'm just going to, if you don't mind, comment on what just happened --

CHAIRMAN FRYER: Go ahead.

MR. YOVANOVICH: -- before I get into my presentation.

I, one, agree that Mr. Schmitt can stay up there and testify to whatever he wants to talk about. The reason, Mr. Vernon, that you have to do your disclosures ahead of time, if you did a site visit and things like that, is to give me an opportunity, or anybody else an opportunity, to delve into those facts to understand better where that information is coming from. So there is a safeguard already in place for that instance.

So I agree, unless you start introducing facts into a case -- which you all so far have not done. If you do start to introduce facts into the case, then I think we're starting to -- we're starting to blur the line between whether you're a witness or you're an actual judge. So if he ever gets to that point, then we probably need to address that, but I don't think Mr. Schmitt will.

Second of all, I just want to make it clear, I have no objections to the HOA's attorney having a little bit more time to put on the case.

I just want to make sure he's not a party to this proceeding, because he's not a party to the proceeding. He's allowed to put his case on -- I'm fine with that -- but I don't want him to somehow get party status and all the other benefits that may come along with having party status with regard to further proceedings if there are proceedings beyond the hearing in front of the Board of County Commissioners.

So I just want to clear that up for the record, that they're not a party, but you're giving them -- you're indulging them in being able to have a little bit more time. And if you want to allow him to cross-examine my experts -- and I'm not sure he has the right to do that, but I'm not going to object to that.

CHAIRMAN FRYER: Thank you. I'm inclined to agree with that. The neighbors are interested people, to be sure, but they're not parties.

Go ahead, sir.

MR. YOVANOVICH: Thank you.

Again, by way of introducing our team, the applicant is FCC Preserve, LLC, and Joe Parisi is here as a representative of the applicant. I'm the land-use attorney on this matter. Mr. Arnold is our professional planner, Mr. Minor is our professional engineer, Mr. Banks is our traffic consultant, and Mr. Hall is our environmental consultant.

All of these gentlemen have appeared before you in the past, have been qualified as experts in their respective fields, and I'm going to ask that you recognize them as experts in their specific fields.

CHAIRMAN FRYER: Without objection.

(No response.)

CHAIRMAN FRYER: Go ahead.

MR. YOVANOVICH: Thank you.

This is a rather lengthy proposed request for changes to the Fiddler's Creek PUD and DRI, and there is a companion Growth Management Plan amendment. There are several parts of what we're asking for that my understanding is there are no objections to -- and I'll give you some examples. And Mr. Arnold will get into the details when we get to the master plan -- is basically at the entrance of Fiddler's Creek, we're reconfiguring some of the parcels so that it better fits the use for a senior living facility.

COMMISSIONER KLUCIK: Mr. Chairman?

CHAIRMAN FRYER: Go ahead, Commissioner.

COMMISSIONER KLUCIK: Technical issue. I don't have the --

CHAIRMAN FRYER: Do we need Mr. Miller in?

COMMISSIONER KLUCIK: Yeah -- oh.

COMMISSIONER SCHMITT: There you go.

CHAIRMAN FRYER: We're set?

COMMISSIONER KLUCIK: Thank you. Sorry for the interruption.

CHAIRMAN FRYER: Go ahead, sir.

MR. YOVANOVICH: So I'm going to go through the list of what we're doing, and then I'm going to give you my two cents as to whether I think those are in controversy or not as we go through this process.

One of the main things that we're doing today is to revise the Future Land Use Element of the Growth Management Plan to permit up to 750 dwelling units on approximately 49.9 acres

located within Section 29 to occur. Currently, residential development is not permitted on that portion of Section 29.

We are adding an attainable housing condition to the PUD as well as the Future Land Use Element for this specific piece of property, and I'll take you through greater details. But it's a 30 percent commitment: 15 percent at the 80 percent and below and 15 percent at the 100 percent and below, which could result in up to 225 attainable housing units to be constructed.

We are modifying Map H in the PUD master plan to address what I just discussed as well as to reconfigure some parcels out on Collier Boulevard at the main entrance of Fiddler's Creek to address senior housing opportunity.

We are making some internal recalculation of acreage resulting from adding those 49.9 acres to become eligible for residential development, and that will increase that area from 1280 acres to 1330 acres.

We're adding an access to the project off of Auto Ranch Road. As I'll get into greater detail, we're also essentially reconstructing Auto Ranch Road as part of this project.

We're increasing the residential units within the Fiddler's Creek PUD and DRI from 6,000 dwelling units to 6,750 dwelling units related to the income restrictions I previously mentioned.

We're adding a conversion from single-family to multifamily. We already can convert from multifamily to single-family. That does not apply to the Section 29 units, but it applies to the 6,000 units that are in Fiddler's Creek. I'll call that "Fiddler's Creek proper" for purposes of this, and I'll refer to "Section 29" when I'm referring to Section 29. So the conversion does not apply to Section 29.

I don't think there are any objections that I've heard from anybody regarding that modification to the PUD, and I've not heard any objections to the reconfiguration of the parcels at the entrance of Fiddler's Creek off of Collier Boulevard. So far, I haven't heard any objections to that.

We're adding a floor area ratio for the group care, the group housing facilities, which is the typical way we handle that, and it's at a floor area ratio of .6 versus the older method of .45. So you'll see a deviation for that. I'm not aware of any objections to that requested revision to the PUD.

We're improving Auto Ranch Road. We're elevating it. We're adding sidewalks. Mark Minor will take you through in greater detail the modifications to Auto Ranch Road.

We're adding a CAT bus stop at the end of Auto Ranch Road where it intersects with U.S. 41, and we're contributing 480 general population cots and 84 special needs cots and providing a towable generator to Collier County as mitigation for the extra units that we're adding, and those were at Dan Summers' request.

Just by way of a little history, outlined in red is Fiddler's Creek. Fiddler's Creek wasn't always this large. There have been -- from the original approval of Fiddler's Creek, there were over 2200 acres added to Fiddler's Creek.

CHAIRMAN FRYER: Mr. Yovanovich, pardon me. I'm going to interrupt you, sir.

MR. YOVANOVICH: Sure.

CHAIRMAN FRYER: Would you go back to the previous slide, the proposed request. There is -- there's six bullets on there, and there were five bullets on the one that -- there were five bullets on the one that was shown at the NIM. And the sixth one that was added appears to be "add attainable housing condition commitment to FLUE language and PUD document." Is

that correct? Is that the difference?

MR. YOVANOVICH: At -- was that the NIM? I haven't gone back and looked at the NIM presentation.

CHAIRMAN FRYER: Okay. Well, I guess my question is is that what exactly was said to the attendees at the NIM regarding affordable housing?

MR. YOVANOVICH: We were always planning on affordable housing as part of the 750 units. What has evolved over time is initially it was a 10 percent requirement and now it's a 30 percent set-aside of those units. So it's gotten larger, but we've always had an affordable housing/attainable housing/workforce housing provision as part of this.

CHAIRMAN FRYER: What was -- what was said to the attendees at the NIM? Was it 10 percent, 22.6, or 30?

MR. YOVANOVICH: I'd have to go back and look. I don't know if we said 10 or we -- we had two NIMs, and it may have gone up to 22.6 at the -- I don't remember, Mr. Fryer.

CHAIRMAN FRYER: Okay. And I take it it's your view that there's not a third NIM required as a result of the material change in the number of affordable housing units?

MR. YOVANOVICH: Correct.

CHAIRMAN FRYER: Okay. Thank you. Go ahead.

MR. YOVANOVICH: Fiddler's Creek is part of a larger DRI that resulted from a settlement agreement related -- it's called the Deltona settlement agreement. The portion of Fiddler's Creek that was originally approved as part of that PUD was for 9,110 units.

In 1989 -- so the planned impact of Fiddler's Creek, which was a smaller envelope -- it's gotten larger, with a small -- the planned impacts for Fiddler's Creek was 9,110 residential dwelling units.

1989, that number was reduced down to 7,000 units, and in 1996, it was further reduced down to 6,000 units. But at one time this project was vested for over 9,000 units to be constructed in this area.

There were additional lands added. As I mentioned, 2,266 acres were added to the original footprint of Fiddler's Creek. No density was added when those acres were added. So that 6,000 number has been there since 1996.

CHAIRMAN FRYER: Commissioner Klucik.

COMMISSIONER KLUCIK: Is that something that the petitioner was forced to do or --

MR. YOVANOVICH: Elected to do.

COMMISSIONER KLUCIK: Oh, okay.

MR. YOVANOVICH: Elected to do.

COMMISSIONER KLUCIK: Okay. So what we have -- the history you've given so far is this is what the developer wanted to do with their land?

MR. YOVANOVICH: Correct.

COMMISSIONER KLUCIK: That's all. Because you're making it seem like --

MR. YOVANOVICH: No, we were not forced to do anything.

COMMISSIONER KLUCIK: Okay. Great.

MR. YOVANOVICH: It was because at the time that's what the development plans thought it would be. But I think it's important to know that at one time there was a greater impact anticipated from these properties.

COMMISSIONER KLUCIK: Right. But then subsequently -- when was that?

MR. YOVANOVICH: When was what?

COMMISSIONER KLUCIK: When was that that there was a greater density and a greater impact?

MR. YOVANOVICH: 1984.

COMMISSIONER KLUCIK: Okay. So it's 40 years later?

MR. YOVANOVICH: Yeah. And times change. So just -- if you let me --

COMMISSIONER KLUCIK: Yeah. No. And -- yeah. And the people have an expectation; government has an expectation. There was an agreement made.

MR. YOVANOVICH: Right.

COMMISSIONER KLUCIK: So I don't know how that's relevant, but you can continue.

MR. YOVANOVICH: Thank you.

CHAIRMAN FRYER: Let me, if I may follow along with Commissioner Klucik's question, the density was reduced twice. What'd you say, '92 and '96?

MR. YOVANOVICH: What I said was in 1989 and 1996.

CHAIRMAN FRYER: Okay. Thank you. Was there -- was there anything provided by the county in exchange for that reduction?

MR. YOVANOVICH: No. Lands were added to the PUD.

CHAIRMAN FRYER: Okay. I just -- okay. Thank you.

MR. YOVANOVICH: Yeah. In 1998, there was a further amendment to the PUD and DRI that added a little over 1300 acres to the PUD, as well as Section 29 was added to the PUD in 1988, and you've received a lot of correspondence about what actually happened.

COMMISSIONER KLUCIK: This is the same yellow box that was in the previous slide; you just zoomed in on it?

MR. YOVANOVICH: Yes, sir. That's Section 29.

COMMISSIONER KLUCIK: Okay.

MR. YOVANOVICH: What I think is the most -- what I've seen the most complaints or questions about for today's hearing is pertaining to Section 29.

In 1998, Section 29 was added to the PUD. And during the hearing, the developer at that time said, "We're not going to put residential units in Section 29." No question that's what the developer's intentions were at the time was not to put residential units on Section 29.

What I think hasn't been accurately reflected in a lot of the comments is the developer never said there will not be development in Section 29 and that Section 29 would become a preserve. That's not what was said. As you can see, this farm field right here is part of Section 29. When that property was added to the PUD in 1998, there was a specific section of the PUD, which is Section 8.5, that identified what can actually go on that piece of property as far as development goes. And that was always intended to be an active residential -- I mean, sorry -- active recreational site to serve the residents of Fiddler's Creek.

CHAIRMAN FRYER: I'm going to need to be clarified then, Mr. Yovanovich, based upon what you just said. Looking at the transcript of the NIM that relates back to the transcript of the 1998 hearing, Mr. Hall is quoted to have said, "Where our commitment today is to provide a conservation easement or a deed, whichever they wish, yes, it will be in perpetuity."

MR. YOVANOVICH: I don't understand the question.

CHAIRMAN FRYER: The question is, is did -- are you saying that Mr. Hall or the developer did not make a commitment to retain conservation in perpetuity for that property?

MR. YOVANOVICH: If you'll just bear with me and let me go through my presentation and talk about the history --

CHAIRMAN FRYER: Well, that's fine.

MR. YOVANOVICH: -- it really will be helpful if I -- I'm going to answer all of that, and Mr. Hall's going to get up here and address all of that.

CHAIRMAN FRYER: Well -- okay. But if I may, it defies credulity a little bit when you say something and I've got something right in front of me here, black-and-white language, where Mr. Hall said something different, unless you want to say that the transcript was in error?

MR. YOVANOVICH: No. What I'm going to say is when we start getting into the environmental permit history, which we will get into, Mr. Hall will explain everything you just asked him [sic].

CHAIRMAN FRYER: He's going to say that this was taken out of context.

MR. YOVANOVICH: He's going to say that the environmental history for the permitting of this project -- because what you're talking about in the environmental history had absolutely nothing to do with Section 29. It had to do with the development of Estancia within Fiddler's Creek.

So that was a totally separate issue with regard to when permit commitments were made with regard to what was or was not going to be in an environmental covenant. It had nothing to do with when the property was originally added in 1998. And I'm trying to go through that history of all of that to explain how things changed and what we perceive to be a misapplication of what was stated to the various facts as we're going through this process.

CHAIRMAN FRYER: I'm not trying to be argumentative. I just want to be sure I understand exactly what your position is. And let me tell you what I think you just said, and then correct me if I'm wrong.

But when I quoted the "where our commitment today is to provide a conservation easement or a deed, whichever they wish, yes, it will be in perpetuity," you're saying that that was not in reference to Section 29?

MR. YOVANOVICH: No, it was.

CHAIRMAN FRYER: It was.

MR. YOVANOVICH: It was, but it was not -- hang on. Let me take a second.

(Applause.)

CHAIRMAN FRYER: No. Now, let me make a statement right now. I mean, obviously interests and enthusiasm and feelings run very high on this matter, and there may be some frank and candid discussions going on today. But what we don't want to have and I, frankly, will not allow for, is applause, other interruptions of people who have the floor. So respectfully, to all concerned, please refrain from doing that.

Mr. Yovanovich.

MR. YOVANOVICH: The reason I'm making -- I'm going through this chronology is in the written materials that are in your record, my client is being accused of not putting all of Section 29 in a preserve that should have happened back in 1998. That's what the written materials say. And what I'm simply saying is, that was not the commitment in 1998, that all of Section 29 was going to be in a preserve.

So I just want the record to be clear that my client did not make a misrepresentation in 1998, and my client did not commit to all of Section 29 being put in a preserve. That's all I'm trying to say back in 1998 and as we work our way forward in the timeline.

CHAIRMAN FRYER: Okay. So what you're saying, then, is that the -- when he said, "The commitment today is to provide a conservation easement or a deed," et cetera, was referring to part of Section 29, not all of it?



MR. YOVANOVICH: Part of Section 29, and then it got -- and that occurred back in 2017. Am I right?

CHAIRMAN FRYER: '16.

MR. YOVANOVICH: 2016.

CHAIRMAN FRYER: Okay.

MR. YOVANOVICH: Not 1998, which has been represented to you-all in a lot of the written materials.

CHAIRMAN FRYER: Understood. And I knew that it was 2016. And I'll apologize right now for interrupting you, but this is a matter of great importance to a lot of people, and you probably should expect to be interrupted as time goes on.

MR. YOVANOVICH: And I promise you we will address every one of your questions if we're given the time, but you always have the right to interrupt me if you want to. But if you'll be a little patient, I promise we will address all of that.

CHAIRMAN FRYER: I, for one, will not interrupt you unless I need clarification about something right away.

MR. YOVANOVICH: Thank you.

And this is the master plan that was approved in 1998. There's a typo. It should say '98. This is the area right here of Section 29. That was always intended to be developed with recreation.

CHAIRMAN FRYER: I can't see where you're pointing.

MR. YOVANOVICH: You can't? Where did it go? Can you see the cursor right here?

CHAIRMAN FRYER: Yeah.

MR. YOVANOVICH: That's the section.

CHAIRMAN FRYER: The half --

COMMISSIONER KLUCIK: Oh, the dark gray or light gray?

MR. YOVANOVICH: All of this right here. This was the area that was intended to not be developed.

COMMISSIONER KLUCIK: So roughly the right half of that --

MR. YOVANOVICH: Correct, along with the access -- I'm sorry. Along with the access road to the piece was always intended to be utilized and developed as part of the Fiddler's Creek PUD. No residential units --

CHAIRMAN FRYER: Can you scroll that up so I can --

MR. YOVANOVICH: Scroll it up?

CHAIRMAN FRYER: Okay. Well, I've got something blocking me. So are --

MR. YOVANOVICH: Right here, if you see -- right here.

CHAIRMAN FRYER: Where that cursor is?

MR. YOVANOVICH: That was always intended to be developed.

CHAIRMAN FRYER: Is that -- is that the northeast quadrant of 29?

MR. YOVANOVICH: You're asking me directions?

COMMISSIONER SHEA: Yes.

MR. YOVANOVICH: It's about the east half.

CHAIRMAN FRYER: The east half was always intended not to be developed?

MR. YOVANOVICH: To be developed.

CHAIRMAN FRYER: To be developed.

COMMISSIONER VERNON: To be developed.

MR. YOVANOVICH: The west half, this area right here --

CHAIRMAN FRYER: All right.

MR. YOVANOVICH: I keep losing the cursor -- the light gray was intended to be placed in preserve.

CHAIRMAN FRYER: Okay. Go ahead.

MR. YOVANOVICH: That's all I'm trying to say. What we're here today to do is --

COMMISSIONER KLUCIK: Mr. Chairman.

CHAIRMAN FRYER: Go ahead, Commissioner Klucik.

COMMISSIONER KLUCIK: As we go forward -- and I guess this is also to my fellow commissioners -- I would like to see the -- right now the first issue that I see is the distinction as to what is being said is that -- was there a carve-out, or was it the whole area? And the documentation for that -- and I'm assuming that's going to be part of your presentation to document -- to show that this half wasn't committed?

MR. YOVANOVICH: Yes.

COMMISSIONER KLUCIK: All right.

MR. YOVANOVICH: Yes. This is the master plan right here that was approved. It was not committed to be a preserve. It was committed to be a park.

COMMISSIONER KLUCIK: And you're saying that the fact that that area has those markings on it is the indication that that was intended to be developed and not part of the preserve area?

MR. YOVANOVICH: And when you look at Section 8.5 of the PUD document itself, it tells you exactly what can go on that portion of Section 29.

COMMISSIONER KLUCIK: It seems really important for anyone presenting before this commission to address that issue head on, regardless of which side you're on in this.

MR. YOVANOVICH: And the reason I bring that up is we're -- my client's being accused of not fulfilling his commitment to put the entirety of Section 29 in a preserve as --

COMMISSIONER KLUCIK: Did they put the other part on?

MR. YOVANOVICH: Yeah. There's a -- there are actual conservation easement -- or conservation covenants on the property, yes.

So what we're here today to do is to modify the existing Future Land Use Element that right now says on Section 29 you cannot have residential development. We're here to make that change. We're here to also change the PUD provision that also says right now you cannot have residential development on Section 29. Yes, those changes happened as we went through the process of this development, and that was in 1998, and that was the thoughts in 1998.

Now, when you look at the legislative history of what was going on in 1998, there were people who were objecting to adding that 1300 acres because it was outside of the urban area.

So there was concern about residential development creeping, if you will, outside of the then urban area.

So my client said, "You know what? Okay, fine, I don't need to develop Section 29. I'm going to use it for amenities to serve my community," and that's where we stood in 1998.

Well, there were significant changes after 1998 in Collier County including, in 2001, the adoption of the future -- of the Rural Fringe Mixed-Use District provisions. That occurred in '01, right, Wayne?

MR. ARNOLD: Right.

MR. YOVANOVICH: '01. And what changed was -- here's the urban area, in yellow. Part of Fiddler's Creek is in the urban area. In 1998, we added, essentially, this portion of what

is now Neutral Lands to the PUD.

CHAIRMAN FRYER: Vice Chairman.

COMMISSIONER SCHMITT: I want to correct the record. I was the administrator for Community Development at that time when the Rural Lands Stewardships was adopted. The proposals actually started earlier than that, but it wasn't really adopted until, I think, 2020 -- 2002 or 2003 when the final adoption. This is 2003. It was the rural fringe amendments and the Rural Lands Stewardship. So I just want to make sure the record is correct.

MR. YOVANOVICH: You're right. I remember when -- I remember when the Governor basically imposed a moratorium --

COMMISSIONER SCHMITT: Yeah.

MR. YOVANOVICH: -- so we can address where should the urban line be and where should development occur and what protections should be in place.

So 2003 -- you're right, Mr. Schmitt. So what has changed since basically 1998 is this area right here in blue, it's Receiving Lands. Development's supposed to occur. That's roughly 6,000 acres. This area right here is Neutral Lands. Our property is in Neutral Lands. Basically what that meant, it was going to stay the way it was. There are density-blending provisions within the Rural Fringe Mixed-Use District for Neutral Lands adjacent to Receiving Lands.

And so you can see that development is intended to occur in this portion of Collier County. At the time in 1998, that was not the intention. That's why there were objections from people is we need to address this in a larger scale, a more thought-out, not on a parcel-by-parcel basis. So since the 1998 commitment, where development is going to occur and how development is going to occur has changed.

And what we're asking to do is also make some changes, because in 1998 and where we are today, the affordable housing issues have gotten nothing but worse, and my client is seeking to amend the Growth Management Plan to provide for an affordable housing project in an area of Collier County that will be seeing a lot of development in the future. This piece of property right here, like I said, is roughly 6,000 acres. That's going to be something. It's probably going to be another town, is my guess, because it's so large an area.

The lands that are within Fiddler's Creek have multiple designations under today's Growth Management Plan. I showed you the yellow line. This is where the yellow line is. This is Urban Residential Fringe. This is Urban Coastal Fringe. In just that area right now, under today's Growth Management Plan, we can request 6,747 units, which is more than the 6,000 that currently exist under today's Growth Management Plan.

Adding this neutral land, we could ask for another 208 units. We're not asking for any density on 29. And my point is, on today's -- under today's Growth Management Plan, we can ask for 6,955 units.

CHAIRMAN FRYER: Commissioner Vernon.

COMMISSIONER VERNON: Sorry to interrupt. I just -- okay. I'm getting caught up in a little nuance. Can you go back one slide?

MR. YOVANOVICH: Sure.

COMMISSIONER VERNON: Okay. So the -- I'm kind of colorblind. But the parcel, Receiving Land you were just talking -- that one right there, show me where Section 29 is compared to that.

MR. YOVANOVICH: Section 29 is right about here. Right here.

COMMISSIONER VERNON: Got it. Thank you.

MR. YOVANOVICH: It's immediately -- it's in -- it's actually in here in this crosshatched neutral area.

COMMISSIONER VERNON: Okay.

MR. YOVANOVICH: It's not in -- it's not in this area, which is basically preserve.

COMMISSIONER VERNON: It's adjacent to it, close to adjacent?

MR. YOVANOVICH: Yes, yes.

COMMISSIONER VERNON: Got it. Thank you.

MR. YOVANOVICH: This is -- this is -- I forget the name of the -- when I played at the golf course, it was called Boyne South. I forget the name of the new community. But this is a residential golf course community right here which is immediately to the north of Section 29. And, Mr. Vernon, all these lands up here and further to the east are those 6,000 acres I was talking about.

COMMISSIONER VERNON: Got it. Thank you.

MR. YOVANOVICH: Okay. So what we're asking for is 6,750 multifamily units under a Comp Plan designation that I could ask for 6,950 units.

What I can't do is put any of those units on Section 29. So I'm not asking you for any new density that I can -- that I can't already generate under the Growth Management Plan. I'm asking you to let me place it on Section 29 for an affordable housing project.

We're not asking for any new density that we can't already ask for. We just can't put it on the farm field portion of Section 29.

Our overall PUD density will go from 1.53 units per acre to 1.72 units per acre, an increase of less than two-tenths of a unit per acre for this request.

Section 29, if you just look at Section 29, we're only asking for 2.25 units per acre on the 332 acres that is currently within the PUD within Section 29. But if you want to get -- which we don't do. But if you want to get very site specific on the actual area that's being impacted, we're asking for 15 dwelling units on the area that's actually been impacted by this request.

That is not an exorbitant number. Fifteen units per acre is not an exorbitant number for an affordable housing project if you just want to look at it as just being that 50-acre parcel.

As your staff points out in your staff report, since 1996, the DRI development order in Section 4.E.4, the housing commitments, it specifically says, "The developer shall explore the economic feasibility of providing residences within Fiddler's Creek that are affordable by middle- or lower-income families." The DRI development order says, "We shall look at economic viable alternatives," and that's what we've done. We're looking at economic viable alternatives to provide affordable housing for middle- or lower-income families.

The PUD itself and the Growth Management Plan itself has the, I'll call it, standard affordable housing language that has evolved over time. We have a 30 percent requirement. Fifteen percent of those units will be at the 80 percent and below income categories, 15 percent of those units will be at the 100 percent and below income categories. It will be a 30-year commitment, and it will serve the same ESP groups that we've been defining over these last several -- I guess, last couple years.

So we are seeking to make a change --

CHAIRMAN FRYER: Commissioner Klucik.

MR. YOVANOVICH: -- to the existing development to address affordable housing.

COMMISSIONER KLUCIK: Thank you, Mr. Chairman.

Could you get the large map up there that shows the whole thing?

MR. YOVANOVICH: The whole thing? This one?

COMMISSIONER KLUCIK: Great. Okay. So RFN --

MR. YOVANOVICH: Rural fringe neutral.

COMMISSIONER KLUCIK: -- is that the same designation as the area that you want to do now?

MR. YOVANOVICH: Yes.

COMMISSIONER KLUCIK: So you couldn't put -- could you put the project there?

MR. YOVANOVICH: It's already -- I'll show you the master plan. That's already -- that's already developed.

COMMISSIONER KLUCIK: That's already developed. Oh, it is? Because I don't -- on here --

MR. YOVANOVICH: I'll show you the master plan. We haven't gotten that far yet, Mr. Klucik.

COMMISSIONER KLUCIK: On the -- yeah, on Google Maps, it shows that it isn't, but --

MR. YOVANOVICH: You can see -- this area right here, I'll show you where the master plan is.

COMMISSIONER KLUCIK: But that's -- that's already under development then or --

MR. YOVANOVICH: It's being developed, yes.

COMMISSIONER KLUCIK: It's being developed. Okay. And the area, the preserve area there, or --

MR. YOVANOVICH: This area is not. This is preserve. This is -- and this is Section 29.

COMMISSIONER KLUCIK: And the preserve area there has to be maintained what it is now?

MR. YOVANOVICH: What's -- yeah. We have preserves out there. Yes, sir.

COMMISSIONER KLUCIK: I guess -- yeah. At the southern end of the bigger chunk to the left of the yellow box.

MR. YOVANOVICH: Yes. I think you're talking -- oops, I'm sorry. I didn't mean to do that. Just so you and I are on the same page, are you talking about this?

COMMISSIONER KLUCIK: Right there, yeah. So that's -- that has to stay preserved?

MR. YOVANOVICH: Yes. Yes, sir.

COMMISSIONER KLUCIK: Okay. Because I'm just -- I'm trying to figure out, you're saying that you can do -- you can -- you know, you can ask for more if the land -- you know, but, like, what could you do now if you --

MR. YOVANOVICH: Well, what I'm suggesting is we have the ability if we wanted to -- I hate saying things like this because then people think we're going to do this. We're not. But there are open space areas within Fiddler's Creek that could be modified to be affordable housing.

COMMISSIONER KLUCIK: Yeah, where? Show me on --

MR. YOVANOVICH: You have a huge -- you have golf courses throughout this.

COMMISSIONER KLUCIK: Show me on the map right there where you could do it.

MR. YOVANOVICH: Well, there's -- I'd have to get the master plan.

Let me have Wayne address that --

COMMISSIONER KLUCIK: The reason I ask that is it seems like you're sloughing it

off onto the people that are not in the red box that are neighbors who are, it looks like, single-family homes.

MR. YOVANOVICH: Well, you know, that's a --

COMMISSIONER KLUCIK: That's the impact. You're sloughing the impact off onto them.

MR. YOVANOVICH: What we're doing is we're developing an affordable housing project. I don't think we're sloughing anything off.

COMMISSIONER KLUCIK: What is -- what is the name of that development where it says "Auto Ranch Road" right above the yellow box?

CHAIRMAN FRYER: Boyne.

MR. YOVANOVICH: Eagle Lakes I think is what it's called now.

CHAIRMAN FRYER: It used to be called Boyne.

COMMISSIONER SCHMITT: Boyne South, and now it's Eagle Lakes.

COMMISSIONER KLUCIK: Okay. So, yeah. So it seems like they're going to bear the brunt of the visual impact of this.

MR. YOVANOVICH: And we're going to show you the visual impact.

COMMISSIONER KLUCIK: Pardon?

MR. YOVANOVICH: We're going to show you the visual impact.

COMMISSIONER KLUCIK: No, I know. And all I'm saying is your point is, oh, well, we could -- we could already -- you know, we're asking for less density than we have the right to now on the -- you know, even if we didn't -- if you didn't -- I think what you're saying is, without getting any permission, you could go ahead and --

MR. YOVANOVICH: I'd have to come in and amend. I'd have to --

COMMISSIONER KLUCIK: Well -- but you'd have to change -- you know, without having to change the designation of the area.

MR. YOVANOVICH: What I'm trying to -- and maybe I didn't say it clearly enough --

COMMISSIONER KLUCIK: Well, let me finish my thought. And my point is that if you can do that, then you can do it. So don't -- you know, like -- so you can already do 6900 units.

MR. YOVANOVICH: What I'm suggesting is --

COMMISSIONER KLUCIK: And you're saying somehow that it's -- your petition is justified because you're doing 6700. What's --

MR. YOVANOVICH: That's not what I'm saying.

COMMISSIONER KLUCIK: Okay. Well, that's what it sounds like you're saying or that you -- you hope people might take away from what you say.

MR. YOVANOVICH: No, we're not --

COMMISSIONER KLUCIK: I get it. You can say something technically very different and give an impression that you hope people walk away with. That's done every day. That's -- that's -- you do it all the time. And I'm not even saying that's a bad thing to do. Lawyers do that all the time, and I'm a lawyer, so...

MR. YOVANOVICH: I know. I know you are. I know you are.

COMMISSIONER KLUCIK: So that's all I'm saying is that -- you know -- and obviously I always do this to you. I pierce through, you know, the puffery that you come up with and -- to find out what's really going on to see how much of what you say is -- is easily discernible and how much is kind of an attempt to hope people see something else.

And I think what you're saying is you could do 6900 units, but it's way better for us if

we shove this project over where our other Fiddler's Creek people don't have to see it, and these -- and so they won't complain. That's -- that's -- and, fine, maybe I'm wrong, and you can help me understand why I'm wrong. But that's certainly a way -- a reasonable way that you could look at this.

MR. YOVANOVICH: What -- and you're entitled to your opinion.

COMMISSIONER KLUCIK: Is it unreasonable for me to think that?

MR. YOVANOVICH: I think that it's a way to look at it, but it's not what --

COMMISSIONER KLUCIK: It's not what?

MR. YOVANOVICH: It's a way to look at it.

COMMISSIONER KLUCIK: Right. No, and you have a chance to show me that that's actually not reasonable.

MR. YOVANOVICH: What I was trying to say in going through this is it was always anticipated under the Growth Management Plan that we can have up to 6,955 units on this within the boundaries of Fiddler's Creek.

COMMISSIONER KLUCIK: Okay. And 29 is the particular tiny little area that you want to develop or, you know, the smaller area in the yellow box is called 29?

MR. YOVANOVICH: Yes.

COMMISSIONER KLUCIK: And what density could you put right there without any change?

MR. YOVANOVICH: Zero. That's why I'm here, because I could put zero.

COMMISSIONER KLUCIK: Right. Okay. So you showed us the map earlier that you had always intended to do something on it.

MR. YOVANOVICH: Correct.

COMMISSIONER KLUCIK: And yet you never had -- you don't -- you don't have the ability to do it.

MR. YOVANOVICH: That's why I'm here.

COMMISSIONER KLUCIK: So I -- yeah.

COMMISSIONER SPARRAZZA: Mr. Chairman, if I may, I'd like to strongly recommend that we allow Mr. Yovanovich to finish his entire presentation and then we can, piece by piece, address questions that we have on it, because my thought is many of our questions will be answered by the end of his presentation. And if not, we can then address those concerns to Mr. Yovanovich. Is that okay?

CHAIRMAN FRYER: Well, our tradition is is that we attempt to -- when we can logically, allow the presentation to go forward, we do, but when we need a question answered right away in order to understand what is being said at the present time, then we should exercise our prerogative to interrupt.

COMMISSIONER SPARRAZZA: Very good.

CHAIRMAN FRYER: Thank you. Go ahead, sir.

MR. YOVANOVICH: We are -- we are attempting to do an affordable housing project. That's what we're trying to do. There's no question that there's a need for affordable housing in Collier County. This project is an area that -- we will be able to extend utility services to this project, it's an area that's close to employment opportunities, it's close to existing development.

I don't know a single affordable housing project where I haven't heard someone use words similar to -- we're not trying to slough anything off on anybody. We're trying to build an affordable housing project.

COMMISSIONER KLUCIK: No, no. My point is, it's how many stories tall?

MR. YOVANOVICH: It's four over one-story parking.

COMMISSIONER KLUCIK: Pardon? Four over one?

MR. YOVANOVICH: Four over one.

COMMISSIONER KLUCIK: So it's five stories is what you're looking at?

MR. YOVANOVICH: Correct.

COMMISSIONER KLUCIK: And are there any five -- what's the tallest elsewhere in Fiddler's Creek?

MR. YOVANOVICH: We can go up to --

COMMISSIONER KLUCIK: No. No. Existing.

MR. YOVANOVICH: I would have to ask Wayne. What's -- we have our corporate building that's three stories. We have -- we have a plan for other -- other projects that have -- there's all different types of development being looked at.

COMMISSIONER KLUCIK: Is there any place where it's five stories?

MR. YOVANOVICH: Not today.

COMMISSIONER KLUCIK: Right. And that's all I'm saying is -- nothing to do with affordable housing. The visual impact -- and I believe I referenced something like that. The impact of this project, a five-story building at the edge of a -- I don't know if it's a golf course community, but a one-story residential community, the impact is all being sloughed off onto a non-Fiddler's Creek housing development, and that -- I think that's relevant.

And since you already -- you, yourself, have pointed out that you have, currently, the ability to have the density without doing this project and getting this change approved, you could still do the number of housing -- even more housing units, and that's all I'm pointing out.

You -- you know, I don't understand why you made that point except to have the insinuation that you said you didn't intend. But the whole point of it is that you can do more housing right now without sloughing off this huge project, this five-story building, which is kind of not in -- you know, it's very incongruent with that area, and that's all.

MR. YOVANOVICH: I appreciate your perspective.

COMMISSIONER KLUCIK: Thank you.

MR. YOVANOVICH: The income categories that we are going to serve are -- I said the 80 percent and below and the 50 [sic] percent and below. I don't remember if I got to say we're looking at 225 units or not. I was interrupted a few times.

So we would be able to do up to 225 income-restricted units on this parcel of property. And those -- you can see the incomes of people, ranging from one, two, and four people per unit for the low category, is roughly \$56,000, and for a family of four is roughly \$80,000.

That is, I think, the essential service personnel categories that we've been trying to address throughout Collier County.

CHAIRMAN FRYER: Vice Chairman.

COMMISSIONER SCHMITT: Mr. Yovanovich, would you go back to the map that shows the boundary overlay? Because there's an error on that map, and I want to note it for the record. The other one. The one that shows -- there.

Down in the middle portion, there's a large triangle. You see below the creek area that was adjacent to the preserve, there's a large triangle that's part of what is called the Marco Shores drainfield. That is not part of the Fiddler's Creek. Yes, right there. That is -- that -- that boundary there is incorrect. That is not part of the Fiddler's Creek PUD or DRI. That belongs to Marco Utilities and is not -- it's not part of Fiddler's Creek. I just want to point, for the record, that the map show -- is an error.



CHAIRMAN FRYER: Thank you.

MR. YOVANOVICH: It is actually in the boundary, and it's listed as "U" for utilities.

COMMISSIONER SCHMITT: It's not in the PUD boundary.

MR. YOVANOVICH: Well, I've got my team that says it is. I don't want to delve into an area that maybe we probably shouldn't get into as part of the --

COMMISSIONER SCHMITT: I wanted to point it out. If you say it is, then that's a matter of the record, and that's fine.

MR. YOVANOVICH: Our desire and the owner and developer of Fiddler's Creek's desire for the past few years has been to address an issue that we all know is an issue in Collier County, and that's affordable housing, and this is a location that, when we finally get to our presentation and we go through the improvements we're going to be making to Auto Ranch Road and we go through the sightline analysis and we go through the actual PUD master plan, is an appropriate location, is compatible with the development around us. And it isn't just my experts that say this. The county's experts say it as well, that this project is compatible. This is not environmentally sensitive land, and that this project does, in fact, address a critical need in Collier County.

That's the framework of how we got to where we are today. We are asking to make changes to what was previously discussed to occur on this property. We're not apologizing for that. Things have changed. Twenty-five years ago, in 1998, there was one set of circumstances in Collier County. In 2023/2024, it's changed, and my client is attempting to address that change.

With that, I'm going to ask Wayne to come up and take you through the master plan, what's actually going to happen on the property, how it is, in fact, compatible. After Wayne, Mark Minor's going to come up, talk about water management. He's going to talk about improvements to Auto Ranch Road.

After him, we're going to have both -- we're going to have Tim Hall come and talk about the environmental aspects of this land, the permitting history on how we got to where we are today, and we're going to have Jim Banks talk about traffic.

Then we'll be done and be happy to answer any questions at the end. Hopefully we've anticipated most of the questions in our presentation.

And with that, I'm going to turn it over to Mr. Arnold.

CHAIRMAN FRYER: Mr. Yovanovich, we're going to be taking our mid-morning break at 10:30. I just wanted to be sure you were aware of that.

MR. YOVANOVICH: Okay.

CHAIRMAN FRYER: Thank you. Thank you.

MR. ARNOLD: Good morning. For the record, I'm Wayne Arnold. I'm a certified planner with American Institute of Certified Planners, and I'm with Q. Grady Minor & Associates.

As of part our application process for the three applications, we create the application, we create narratives in support of it, we create data and analysis. And I've prepared a set of data and analyses for each application that, one, addresses the Land Development Code criteria for them, also address the statutory requirements under Chapter 163 relative to Comprehensive Plan amendments, and also, then, your application has some other factors in it that aren't necessarily in the Land Development Code but address certain things about suitability of the land and density and things of that nature.

So I've prepared all those. And I don't want to go through each and every one of those

20-something criteria, but based on what we heard at our neighborhood information meeting and what I think you're going to hear from some of the opponents today, I really wanted to take a few minutes and focus on those aspects that we do address as part of our application, and then happy to address anything else that may not be answered there.

But I did want to point out that, you know, as Rich concluded, we're here largely because the developer wants to develop an affordable housing project. And when you look at the balance of Fiddler's Creek, what doesn't get reflected in an aerial, Mr. Klucik, is that there have been land transactions made with other people who have purchased land in Fiddler's Creek that have yet to come out of the ground with it. So when you look at the blank area that's off of Auto Ranch Road, those have been committed largely to a company called Taylor Morrison that will be developing phases of that project, which makes that area not available for us to build this particular project.

And I know Rich mentioned --

COMMISSIONER KLUCIK: Can I interrupt, then, Mr. Chairman?

CHAIRMAN FRYER: Go ahead, sir.

COMMISSIONER KLUCIK: So -- fine. So factoring in all the land that's already committed, legally obligated, I guess, you know, under other provisions where, you know, it has limitations on the density or that the owner is expecting, what would be the maximum number of units that you could do right now without any changes?

MR. ARNOLD: Well, without any changes, I can only do 6,000 dwelling units. That's what's approved in the DRI and the PUD. So part of our amendment establishes an increase in the overall number.

COMMISSIONER KLUCIK: Right. So then what is the 6900, then, that Mr. Yovanovich was talking about?

MR. ARNOLD: That's based on the current Comprehensive Plan. We can attain that density under your Growth Management Plan. Our PUD doesn't support that, and the Rural Fringe Mixed-Use District doesn't allow those residential units on Section 29.

So those are the two key components of how we get from 6,000 to 6,750.

COMMISSIONER KLUCIK: So if we didn't -- if you just built what you could build now and you got the improved density on something other than Section 29, what would be the maximum number of units that you could do?

MR. ARNOLD: I don't think I know that specific answer off the top of my head.

COMMISSIONER KLUCIK: You know -- because it seems important because Mr. Yovanovich raised it, and so I'm going to -- you know, I'm not going to be satisfied unless someone can help me understand that particular question.

MR. ARNOLD: What I would tell you is that there are areas within Fiddler's Creek where you can put additional residential units that are undeveloped today, but that would mean reconfiguring the golf course or doing away with portions of the golf course, but there are commitments made to homeowners associations for those tracts of land and certain number of golf courses.

So pretty unlikely that those are going to go away in support of more units. We have the business tracts. We have one that --

COMMISSIONER KLUCIK: Can you get me that -- rather than have you try to, on the fly, can you just, you know, come back and get me that number?

MR. ARNOLD: I can probably give you a very broad estimate. I don't know that I can give you any specific number. But I can tell you the areas that I'm thinking of where you

might support units, but few at a time. You're not going to find 49 contiguous acres in Fiddler's Creek where we can put the type and the number of units that we're proposing to do, because as you know from the other applications you've seen over the last couple of years, when affordable housing has reached such a crisis level, there has to be a market-rate component to support the affordable housing unless it's subsidized by something. And in this case it gets subsidized by the developer, not Collier County. So there has to be an economic return for the developer to be able to deliver affordable units.

And you have an economy of scale. You know, most developers are not going to go out and say -- where the Publix shopping center's located on the U.S. 41 frontage, we amended that to get a Publix approved there. There are a few acres left, but I don't think the developer's going to come back and build 50 units and then commit 30 percent of those to be affordable. That's just not economically viable for the developer to do that.

You have another business tract up here to the north that has a commitment for police and our sheriff and EMS station next to it. That's a small tract. That's not going to support anywhere close.

COMMISSIONER KLUCIK: So maybe -- maybe Mr. Yovanovich can confirm this or not. So this -- the idea is you could be asking for even more density or more units on this Section 29 to get up to 6900, but you're not. You're only asking for the smaller amount; is that it?

MR. ARNOLD: I can answer that. We're asking for 200 fewer units than the Comprehensive Plan supports today without using any of the Section 29 land toward that density calculation, and that just goes to the issue --

COMMISSIONER KLUCIK: Right. But can you actually do that today? Like, if you wanted to, could you move forward and do the 6900 units?

MR. ARNOLD: We would have to amend the PUD to do that, to add the density, and then we would have to figure out where within the Fiddler's Creek, outside of Section 29, where those could actually fit in a meaningful way.

COMMISSIONER KLUCIK: Well, that was -- I mean, that was the whole point of Mr. Yovanovich saying that. So, I mean, you're acting like I'm being unreasonable in asking you to be specific. That's what it seems like --

MR. ARNOLD: No.

COMMISSIONER KLUCIK: -- or that my conjecture is sort of weird. Why would you ask us to talk about that? Because we're not doing that.

I'm saying, if you're bringing that up as an argument to say, "We're asking for less than we can do now," then I want to -- I want you to confirm that you could do it now and where and how. I think that's relevant. I think if you're going to make that argument, then I can suss that out to find out what you really mean.

MR. ARNOLD: Okay.

COMMISSIONER KLUCIK: And I have sensed some resistance, and that's fine, but we're going -- you know me, we're going to talk about it, and we're going to get to the bottom of what I would like to get to the bottom of.

MR. YOVANOVICH: Sure.

COMMISSIONER KLUCIK: And so it's better to just do it than try to fight it.

MR. ARNOLD: And I think my bottom-line answer to you is, as Fiddler's Creek is currently planned within -- outside of Section 29, there is not a location where we could put a meaningful number of affordable housing units. It just isn't available to do that.

But I think, to Rich's point, under the Growth Management Plan, there's adequate density that we can accumulate, which is why we can shift those units into Section 29 without having to try to figure out that these are new added units under the Comp Plan. They're not. They're units that are entitled under the Comp Plan for the property in total. And that's no different than we do for --

COMMISSIONER KLUCIK: So if you were going to do the 6900 units somewhere other than Section 29, is there something that would prevent you from making a lot of those -- the same proportion of those to be affordable housing?

MR. ARNOLD: Well, we would have to make some significant changes internally to platted tracts of land in order to do that where, like I said, you know --

COMMISSIONER KLUCIK: So you could do it. If you had the will, you could do it?

MR. ARNOLD: I think it's more than the will. There are some, probably, legal challenges because -- Mr. Schmitt can address this. He's on the CDD board and one of the golf members. But there are commitments that have been made to those groups, the CDDs and the HOAs and the golf club members, that there will be a certain number of golf holes. I guess there could be some reconfiguration. But what I'm saying is, it's not like I can just take one of the big green spots that's golf course and now --

COMMISSIONER KLUCIK: But you -- let's go back. You said you could do 6900 today without using this --

MR. ARNOLD: Yeah.

COMMISSIONER KLUCIK: -- you know, and you're asking for less.

MR. ARNOLD: Mr. Klucik --

COMMISSIONER KLUCIK: And if you're going to say that, and now you're going to say, "Oh, but we really couldn't," then why did you say you could?

MR. ARNOLD: No.

COMMISSIONER KLUCIK: I know. I said you said, and I asked you to answer the question for the record, okay. I'm not -- I'm the one who wanted to pepper you with the questions, not your colleague.

MR. YOVANOVICH: Could I get back up?

COMMISSIONER KLUCIK: Great, great.

MR. ARNOLD: I'll step aside and let Rich respond to your comment.

MR. YOVANOVICH: The distinction I was trying to make is probably every affordable housing project that we've brought has had a concurrent Growth Management Plan amendment to ask for a density bonus. We're not asking for a density bonus here. What I'm simply saying is most people have said --

COMMISSIONER KLUCIK: You're not asking for more units for the overall project. I get it.

MR. YOVANOVICH: That's all I was trying to say. That's all --

COMMISSIONER KLUCIK: Great. That would have been an easier thing to say.

MR. YOVANOVICH: Well, thank you for giving me the opportunity to clarify that. That's all I was trying to say.

COMMISSIONER KLUCIK: Thank you.

MR. ARNOLD: So with that, I'll try to delve into some of the issues. You know, what's on the screen is the existing Fiddler's Creek PUD master plan. This plan has evolved over the years in several ways. It's -- you know, part of it's evolved because of the developer. Part of it's evolved because of the way that the county has viewed PUDs and how much detail

we show.

And as we've -- Rich and I have become involved with this project over the last several years, the plan attempt has been to try to true up the plan with regard to how things have developed because, you know, here we are on 25 years. A lot doesn't look like just a big broad brush of colors on a plan. So we've tried to true that up to show where the golf and the development areas are.

And on this plan, the Section 29 in the last iteration -- and this is from 2018 down on the very far right corner. So that it culls out reserve area, which is preserve for most other projects, and reconfigured the park area that we had, and that was the 2018 amendment.

We also showed what was known as Estancia as this big -- big just yellow/orange area. What that's become with our proposal today, you can see where we've, in Section 29, reconfigured the reserve, reconfigured the park, and added a residential tract in orange that reflects the 49.9 acres that we're proposing.

The area that we've culled out for Estancia is in this area, and it's culled out as Estancia because it's mentioned elsewhere in the PUD document, and the County Attorney rightly said, "You need to identify that on the master plan because it's not clear what Estancia is."

And then you can see up here along U.S. 41, if you drive out there today, you'll see that much of this has been developed by Taylor Morrison, and it's continuing to be under construction.

So those areas have been largely committed for future development.

COMMISSIONER SHEA: So it looks like you're reducing the preserve area in Section 29 in this revised plan, right?

MR. ARNOLD: It is being reconfigured and slightly reduced.

COMMISSIONER SHEA: Reduced, yeah.

MR. ARNOLD: So, yeah, it's back closer to what was originally approved back in '98 when this was approved in the PUD.

COMMISSIONER KLUCIK: Can you go back --

COMMISSIONER SHEA: Just going back to the last map, the green area was much bigger on the last one.

MR. ARNOLD: Correct. When we did this in 2018 --

COMMISSIONER SHEA: Much bigger.

MR. ARNOLD: -- and Rich and I were trying to figure out exactly why we made those changes, it's unclear to us. But we are modifying it. No doubt about it, we are modifying that area.

But as Rich mentioned, the reason we're here is to talk largely about Section 29 and trying to deliver a good number of affordable housing units, up to 225 of them. That's a large number to meet the need in Collier County. But the opponents have raised several issues, one of which was density, and Rich touched on that. But I'll just take you through the other couple of amended areas that were originally talked about.

CHAIRMAN FRYER: It sounds like we're changing subjects slightly, and this is probably, then, a good time to take a break.

MR. ARNOLD: Okay. Fine.

CHAIRMAN FRYER: All right. So it's 10:28. We'll stand in recess until 10:38.

(A brief recess was had from 10:28 a.m. to 10:38 a.m.)

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

CHAIRMAN FRYER: Thank you, Mr. Bosi.

Let's come to order, please.

Everyone return to your seats. Please come to order. We've got a long day. Take your seats, please.

Mr. Arnold.

MR. ARNOLD: Thank you. I'll continue.

So what I was pointing out on the screen, we have -- identifying the two areas of reconfiguration for the Fiddler's Creek PUD, we culled it out as just Area 1 and 2 for ease of reference here. One is the -- near the main entrance on Collier Boulevard. The other is Section 29.

So these are highlighted areas near the entrance, and this is reconfigured a little differently. You can see that on the left is what's been approved. To the right is what we're proposing. And we've reconfigured the business tract into two. The southern business tract reflects where the corporate offices for Fiddler's Creek have been located. The other business tract has been relocated off of the Collier Boulevard hard frontage for residential. We think that's probably where the commitment for the continuing care or assisted living facility would be located.

COMMISSIONER KLUCIK: Which one?

MR. ARNOLD: The right, where the R and the asterisk is, that would be the candidate where our assisted living would probably go, and the black outline around it corresponds to the note on the master plan that says that's where the assisted living can go ahead at the .6 FAR.

Section 29, again, reconfiguring the area to reflect the park reserve and now residential tract. To the north is existing. To the south bottom is as proposed.

CHAIRMAN FRYER: Excuse me. Would you go back to the previous slide? I'm sorry.

MR. ARNOLD: Yes, sir.

CHAIRMAN FRYER: On Collier Boulevard -- and I see where the asterisk is, and that's the possible group living.

MR. ARNOLD: Yes.

CHAIRMAN FRYER: What other commercial activities would be along that strip of Collier Boulevard; are or will be?

MR. ARNOLD: There's a whole host in our business section that allows a full range of commercial uses. It would allow grocery store uses. It allows a lot of retail, residences, medical office, a full range of --

CHAIRMAN FRYER: Can you use the pointer to show on the map where that would be?

MR. ARNOLD: Under the current master plan, the business tract is here, and then also here, and then the main entrance and gatehouse to Fiddler's Creek is sort of where the cursor is now, to the --

CHAIRMAN FRYER: Okay. So is there -- is there a way for people to get from Tract 29 over to those commercial activities without going out on public streets?

MR. ARNOLD: No, sir.

CHAIRMAN FRYER: Okay. Go ahead.

MR. ARNOLD: So we've been through the Section 29. You're well customized to that. So this is an exhibit that we had prepared and showed at our second neighborhood information meeting that tried to -- gives you some perspective of where we are in relation to our neighbors. Because one of the issues that they addressed were density. And Rich talked

about the density. And as you all know, we don't really reflect this as 750 units on 49.8 acres. It's really 750 units added to the overall PUD for Fiddler's Creek. So the incremental increase in density, as Rich mentioned, is very small.

We don't take portions of projects, because if you did that, you would go to Pelican Bay and find that where they have a 22-story tower building at 200 units per acre, that's not how you reflect the density for Pelican Bay. That's not how you reflect the density in any of your PUDs. You don't look at a net density on one parcel.

So the density that's being proposed is a low density and, yes, if you did the net density on 49.9 acres, it's 15 dwelling units per acre, but that's not how you measure density in Collier County.

One of the other things that I would note, you know, the applicants [sic] are saying that this is just such an absurdly high density in the surrounding area, and I would argue that it's not really, because as Rich mentioned, to the northeast, you're going to have a town. It's going to have a lot of density, and it's going to have -- you've got the project immediately north of us. It was Royal Palm Golf Estates. You know it as Boyne South. You know it as Eagle Lakes. They're a PUD. They're also in the Rural Fringe Neutral Lands. They were a vested project in that.

And I will also point out -- and I'll let Mr. Bosi tell me if I'm wrong, but the way I read the Comprehensive Plan and the Land Development Code, if I had agricultural land, which this was, I could put farmworker dormitory housing in the Rural Fringe Neutral Lands at 22 dwelling units per acre.

So the Rural Fringe designation does permit higher densities. It allows single-family at 11 dwelling units per acre, it allows dormitories at 22 units per acre if you put in farmworker housing.

CHAIRMAN FRYER: And I take it, if Section 29 did not touch corners with what I call Fiddler's Creek proper, then it couldn't be included in the PUD, correct?

MR. ARNOLD: There are some provisions for non-contiguity if separated by a road, and I think we have another example where they touched corners, but obviously this is part of Fiddler's Creek, yes.

CHAIRMAN FRYER: Yeah. I'm just getting clarification. So there are some cases where you've got noncontiguous pieces of PUDs.

MR. ARNOLD: Yes.

CHAIRMAN FRYER: Okay. Thank you.

MR. ARNOLD: So we created this exhibit to just give you some perspective from our neighbors to the north, because what we've outlined is the area that's part of our request, which is the acreage that's part of the 49.8 acres, which is this black dotted line.

So the area of development is not contiguous to Royal Palm Golf Estates. And when you apply some setbacks and internal arrangement of buildings that are likely to occur, our separation is going to be 500 feet from the nearest residence to our first apartment. It's a 242-foot separation from the 100-foot-wide canal to our Section 29, 49.8-acre. So that's in this dimension where the yellow line is. That reflects the landscape buffer that staff has asked us to commit to.

So that landscape buffer is 240 feet south of the canal. Our development area is going to be at least 360 feet south with a 500-foot separation between the nearest units.

So when they talk about us being in their backyard and adjacent to them, we're not. We're not either. The development area is not adjacent to them, and we're going to be 500 feet

away.

CHAIRMAN FRYER: While we're talking about distances, take an imaginary point in the middle of where the apartments and amenities are and then imagine someone traveling by some means from there out to 41 east along Auto Ranch. What would that distance be?

MR. ARNOLD: I think it's about a mile and a half.

CHAIRMAN FRYER: Mile and a half?

MR. ARNOLD: Yes, sir.

CHAIRMAN FRYER: Okay. All right. Well, we'll hear other evidence. Go ahead.

MR. ARNOLD: So in this particular slide, what we have is a photo point that we're identifying at the top of the page. One of our field inspectors went out and took some very recent photos across the canal from Royal Palm Estates still reflecting the same distances, and across the bottom is a cross-section that's identified at this location.

So what it reflects is we've got, obviously, a home setback. We have the canal. We have, then, the distance from the 360 feet to what's going to be the development area property line, a landscape buffer, and then the apartments.

So, again, showing you quite the separation that we have. So these are photos that were taken this past week showing you a couple different views across the canal looking south. So this is taken from inside Royal Palm Golf Estates. We've superimposed "four story over one level of parking" buildings into that image. That's an approximate location. I actually think that, from a perspective, those buildings might be able to be pushed farther back, but I wanted to err on the side of caution and show you something that, you know, might be the absolute worst-case scenario, because if I go back to the other image, what happens in all of this area between us and the nearest residences, you've got a canal. It's 100 feet wide. You've got a vegetated berm along that canal, and then you've got all this area that remains undeveloped that's outside our development footprint. So you've got all of this land that remains as the park area surrounding the development.

So --

COMMISSIONER SCHMITT: Wayne, can I interrupt? Who owns the canal? Mark will probably talk about that.

MR. ARNOLD: I think it's on what I still call the Boyne South property, and they can --

COMMISSIONER SCHMITT: Eagle Creek -- I mean Eagle Lakes, as it's called now.

MR. ARNOLD: I think the golf club is Eagle Lakes. The community's called Royal Palm Golf Estates.

CHAIRMAN FRYER: Now, just a moment, everyone. Please remember what I said. I'm going to insist --

COMMISSIONER SCHMITT: Royal Palm. But that is -- that is the HOA property? That's their property. That's not -- that's not --

MR. ARNOLD: That's not Fiddler's Creek property.

COMMISSIONER SCHMITT: That's not Fiddler's Creek property.

MR. ARNOLD: No, sir.

CHAIRMAN FRYER: I want to just reiterate, I know everyone is emotionally involved, as you should be, and I understand, and if I were in your shoes, I would be as well, but we've got to conduct this in an appropriate professional judicial fashion. And so I, again, with the utmost respect, ask everyone to please not speak or gesticulate or clap or make noises until you have the floor, and you're all going to be given the floor if you wish it. Thank you.



Go ahead.

MR. ARNOLD: So what I would point out here with regard to the height of the buildings, we've asked for a 55-foot zoned height with a 69-foot actual height. That supports a four-story nice building over parking, and that's what's reflected in this image.

And while some of the opponents are saying that's outrageously tall -- they call it a high-rise. And in planning school that I attended many, many moons ago, high-rise was not a "four story over parking" building. That's not even raising the level to a mid-rise building.

But if you look around the county and you look at just relationships -- and you've heard us talk about this many times. Height always becomes a sensitive issue. And we can demonstrate that there are so many locations in Collier County where you have exceedingly different heights that are somehow compatible because they have separation, they have buffers.

I look at Pelican Bay. Again, it's a perfect example where you have high-rise buildings of 20 stories across a, you know, four-lane boulevard from two- and three-story condominium buildings. That's -- it's some of the highest attainable land values in Collier County, and you have this height relationship that doesn't seem to be the problem.

You know, I've heard Rich mention before, the area that's near Vanderbilt Beach Road and U.S. 41, there's an activity center there. There were some lands taken out of the activity center that are still zoned RMF-16, and that's the highest intensity conventional zoning district we have in Collier County. It requires half -- half the distance from the property line as its setback. Those buildings can be 75 feet tall. They're adjacent to RS-1 zoned property, which is the lowest order that allows 30-foot-height buildings.

So we have 75-foot-tall buildings adjacent to one- and two-story buildings separated by a landscape buffer. Those are, again, two of the higher valued properties in Collier County, and those are compatible. Your Land Development Code makes them compatible by separation and buffers, and that's what we've provided here. And I think from the exhibit that I showed you, there's far separation. You know, the picture's painted that these are in their backyard, and they're clearly not.

So we also heard people say that this is just a totally inappropriate location for housing, and I would argue that it's not for several reasons because, one, it is impacted land -- and you're going to hear more from Mr. Hall shortly about the status of the land, but it's a cleared agricultural field and has been. It doesn't support native vegetation today. It's been cleared, and it's always been anticipated for something. It could be a golf course. It could be a lake. It was going to be an excavation. You know, in my lifetime, it could have been a large recreational park.

So it still would have been impacted land whether it's for residential development, and in this case one that includes a strong component of affordable housing, which we need, and that was a large thrust of our plan amendment support providing the ULI study and others that support the need for the affordable housing.

So we have area that's been cleared. You're going to hear that the ecological value is actually very low. We've gone through the criteria. This is not urban sprawl. You're going to have urban lands to the north and east of this property by way of having the Rural Fringe Mixed-Use program that allows Receiving Lands to develop at higher densities, and this is contiguous and part of the balance of Fiddler's Creek. So it's not an isolated parcel.

We worked with Dan Summers in your emergency management department to come up with the appropriate mitigation because, as some of the opposition are going to tell you that -- they're going to say that the state somehow tells you you can't develop in our Coastal

High Hazard Areas, and that's simply not true, and that's not what your Comprehensive Plan says either. The statute says you can as long as you do appropriate mitigation.

We worked with Mr. Summers to come up with the mitigation, which included cots and a generator. That's what he asked for to mitigate for the impacts of having more units than are technically in the Coastal High Hazard Area. You've seen that same on other projects. So we're consistent with that.

And under the county's Comprehensive Plan, it's always made an exception in the Coastal High Hazard Area for increased density for affordable housing, and I think Mr. Bosi in his presentation will probably tell you that as well. But that's always been the case in Collier County since the more current iterations of our Growth Management Plan since 1989, that the carve-out for increasing densities, if you weren't vested, was always for affordable housing projects. So what we're asking for is not inconsistent with the concept of your Comprehensive Plan.

So, also, what I would point out is the need for affordable housing is so great in Collier County. I mean, this will -- this will make an impact in it. But the last time I spoke with Mr. Giblin about it, I think their internal studies are documenting that we may have a deficit of close to 50,000 units for affordable housing. I mean, that's just an incredible deficit to try to make up, and there's not the perfect location for it. You know, everybody says, "Why don't you put it somewhere else?" Well, that's easier said than done in Collier County because so much of our land has either been committed or it is committed, and we have to find those locations. And that's why, as Rich mentioned, a lot of these are accompanied by a Growth Management Plan amendment so we can support the increase in density that we need.

CHAIRMAN FRYER: Going back to your reference to the commitments made to Dan Summers, I take it -- correct me if I'm wrong, but I take it these commitments, the cots and the generator, are primarily for people who are remaining and will shelter in place as opposed to people who are going to evacuate; is that correct?

MR. ARNOLD: My understanding is it would be for people who are evacuating to one of the county's shelters. So they wouldn't remain on premises necessarily. They would be available for people who decide to evacuate.

CHAIRMAN FRYER: So the cots and generator would not be in Section 29?

MR. ARNOLD: I don't think so. I think, from Mr. Summer's perspective, those go in areas that are already dedicated for shelter space.

CHAIRMAN FRYER: Thank you.

MR. ARNOLD: So one of the other things -- and, Mike, could I switch to the visualizer for one moment?

MR. BOSI: Sure.

MR. ARNOLD: So we prepared another graphic to support the application that shows the yellow square -- yellow rectangle as being the Section 29 portion of Fiddler's Creek, and we drew a 10-mile radius to determine, you know, is this really an isolated location?

Well, a 10-mile radius gets you to I-75. It takes in all of Marco Island. What we've identified on this exhibit are the local sheriff's offices, hospitals, hotels, schools, EMS stations, fire stations that are there. I didn't even bother to locate all of the golf courses that have club facilities that require employment opportunities, or the retailers. You just approved a Home Depot. We have a Lowe's. We have large-scale format shopping with Walmart nearby.

I mean, this, yes, requires somebody to drive a mile and a half to get to U.S. 41, but I have employees driving, you know, 50 miles to work. Fifty miles you're on the road a day. I

mean, you think about that, how long that's sustainable for somebody to come to your office to work when they have to drive an hour-plus each way to get to your office.

CHAIRMAN FRYER: But the access to employment opportunities doesn't end at the point that Auto Ranch and the East Trail intersect because -- unless someone is driving. Otherwise, they would have to be able to park their car and take a bus, right?

MR. ARNOLD: Correct. We've also -- and, you know, to my point in trying to summarize where we are, we have -- one, we have the major employment opportunities, and we also -- those people, if you're living here and you need affordable housing or you're a worker that's at one of these locations, you want to be fairly proximate to it. Driving a mile and a half to get to the main arterial road is not a big deal. Having to drive 30, 40, 50 miles to get to your place of employment is a big deal.

But in this particular case what we have is -- and you're going to hear from Mr. Minor following me -- we made a commitment to the county to work with DOT to get a CAT stop with bicycle racks installed at U.S. 41 and Auto Ranch Road, and you're going to hear Mr. Minor talk about the many improvements we're proposing to make to Auto Ranch Road, because we heard residents talk about the condition of Auto Ranch Road. And so we have responded to that by proposing a series of changes to Auto Ranch Road that I think address all of those issues, and then you're going to hear from Mr. Banks shortly to talk about the capacity of Auto Ranch Road and the intersection at U.S. 41 and Auto Ranch Road.

CHAIRMAN FRYER: Mr. Arnold, you mentioned CAT, and I think you probably have some access to specialized information on CAT. Maybe you know, maybe you don't know about the routes that run along the East Trail there. I am given to understand that there's just one bus route, one line? Do you happen to know the --

MR. ARNOLD: I don't know specifically. It's my understanding there's one today. It doesn't mean -- there may be changes in those routes in the future.

CHAIRMAN FRYER: Yeah. I mean, things can always change, but --

MR. ARNOLD: And they will. I think, as Rich mentioned, the 6L Farm land that's part of the receiving areas, fully anticipate that within the next decade to become likely a town, if not, a series of one or two villages.

So that will necessitate probably some conditions from your review through that process for transit facilities and things of that nature for that.

CHAIRMAN FRYER: Well -- and I apologize again for interrupting, and you don't have to do it right now if you're going to do it, but I'm going to want to hear more about these plans for a town, because this is the first I'm hearing about it. And, you know, is this something we're to speculate about, or is there something really in the works that would help us understand better what the near future might bring?

Mr. Bosi?

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

CHAIRMAN FRYER: Well, before you start, I -- is it acceptable to the applicant that we interrupt for this now, or do you want to do it later?

MR. ARNOLD: No. Perfectly fine.

CHAIRMAN FRYER: Go ahead, Mr. Bosi.

MR. BOSI: As part of the Rural Fringe Mixed-Use District, allocations for land uses within the receiving area, that area is entitled to one village -- it's not entitled to a town, but it's entitled to village development. It's anticipated that each one of the receiving areas could host and is permitted to host a village, which is a higher density -- a higher density development that

will support commercial and light industrial services to provide more sustainability and internal capture within that individual village.

CHAIRMAN FRYER: Are there any plans in front of Growth Management now with respect to that?

MR. BOSI: There are none -- there are none. It's -- there's the permission within the GMP, but there's nothing from a zoning application to move that forward right now.

CHAIRMAN FRYER: Okay. So from your point of view as an expert in this area, how many years out would you say there would be a village there?

MR. BOSI: I would say within 10. There's a lot of pressure. We've had a lot of discussion with a lot of different developers for projects within that receiving area. Nothing of the status and the size of a village. I think the largest property owner in that village is the 6L Farms, which I believe there's still active agricultural activity on those properties, but surrounding that 6L holdings, there have been -- Habitat has a number of acres within there, and there's other development proposals that we are currently entertaining within that receiving area. So we do expect that there will be additional population pressure and a need for goods/services as time goes by.

CHAIRMAN FRYER: Ten years out, roughly?

MR. BOSI: Yes.

CHAIRMAN FRYER: Thank you.

MR. ARNOLD: Thank you.

So I will just wrap up by saying, again, in my professional opinion, I've evaluated the height, I've evaluated the density, looked at the opportunity for affordable housing in what we're doing with regard to infrastructure improvements on Auto Ranch Road that you're going to hear about, and in my professional opinion, this is the right location and the right project, and it's complementary, it's compatible, and the height we're asking for is not inconsistent with the area. I would ask you to recommend approval.

CHAIRMAN FRYER: Thank you. Any questions or comments from the Planning Commission?

(No response.)

CHAIRMAN FRYER: Thank you, Mr. Arnold.

MR. ARNOLD: Thank you.

CHAIRMAN FRYER: Commissioner Schumacher.

COMMISSIONER SCHUMACHER: I had one for Mr. Arnold. I'm sorry.

CHAIRMAN FRYER: Go ahead.

COMMISSIONER SCHUMACHER: I won't let you run away too quick.

MR. ARNOLD: Thank you.

COMMISSIONER SCHUMACHER: Just a quick question. Why not have access from San Marco? Because it looks like there's already a road that was going to that agricultural section as though it would be an easement that probably would went with the old owner.

MR. ARNOLD: I'll go back to an aerial that may show it.

So it doesn't go all the way over to San Marco, unfortunately, but that is part of the state park, it's my understanding, a lot of that land. There's just not a pathway through that land that's part of the preservation area.

CHAIRMAN FRYER: Would this be east of 29?

MR. ARNOLD: That would be --

CHAIRMAN FRYER: San Marco is east of 29?

MR. ARNOLD: It's west.

CHAIRMAN FRYER: It's west of 29?

MR. ARNOLD: I believe so.

CHAIRMAN FRYER: I think it's --

MR. ARNOLD: San Marco is the other back way that goes to Goodland.

CHAIRMAN FRYER: No, I know what it is. I just --

COMMISSIONER SCHUMACHER: If you go one slide forward for me, see that dirt road that comes up from that south portion? That ties into San Marco Road. No, not that one. The one -- there you go.

CHAIRMAN FRYER: Okay. So it's, I guess, south and east?

COMMISSIONER SCHUMACHER: Yeah.

CHAIRMAN FRYER: Okay. Thank you.

COMMISSIONER SCHUMACHER: That's what I was trying to understand, because it looks like at one point in time it would have been an easement for that property.

CHAIRMAN FRYER: Thank you.

Do you have other questions for this witness?

COMMISSIONER SCHUMACHER: No, sir.

CHAIRMAN FRYER: Thank you.

MR. ARNOLD: Thank you. I'll turn it over to Mr. Minor.

CHAIRMAN FRYER: Okay.

MR. MINOR: Good morning, Commissioners. My name is Mark Minor. I'm a civil engineer with Grady Minor, and I'm representing Fiddler's Creek, the petitioners. And I'm here to talk about, firstly, the access to Section 29, which would be via Auto Ranch Road.

The slide that you see here -- and I don't know if you got this in your packet or not -- it has 10 points. And what I thought I would do was turn to another slide that shows Auto Ranch Road and Section 29, and then I would read each one of these points -- they're short -- and then add some commentary to it.

So if I could, I will go to this exhibit here, which is a blow-up of a section of Auto Ranch Road from 41 down to Section 29, and then it shows a road that would be built by the developer, by us, along an existing road that runs through there, or trail, the old Belle Meade grade, it's referred to, to get you to the pasture.

So Auto Ranch Road exists today as a 20-foot-wide asphalt paved roadway, two-lane road, in a public road right-of-way of 60 feet in width. From the intersection at U.S. 41 down to Section 29 is a little bit over a mile, and almost all of it is paved. There's a short portion down right before it hits the 29 that is just lime rock.

There's open ditches and swales and -- shallow swales and deep swales and straight-walled swales along both sides of the road today, numerous driveways to homes or businesses, trailers that are along Auto Ranch Road.

The swales are inconsistent. They're not well-maintained. Not even all of the driveways that connect off of Auto Ranch Road contain culverts. The culverts that are there are of various sizes and shapes and materials and conditions. Some are crushed, some are -- blockage in them, and at least one does not exist.

So we've been working down in Fiddler's Creek for more than 25 years, and we've had an opportunity to observe Auto Ranch Road, surveyed it, measured it. We've observed the road -- portions of the road being inundated in a regular wet season in the summer after a few days of rains, measured the depths of the water over the road, surveyed the center line of the

road and elevations, and measured the width of the asphalt in several places and also hired a geotechnical engineer to come and core bore the road so we could determine what the structural validity of it is.

CHAIRMAN FRYER: Commissioner Shea.

COMMISSIONER SHEA: Who owns the roads?

MR. MINOR: Collier County. It's a -- there's a 60-foot-wide right-of-way strip of land that's 30 feet each side of the section line. And I believe it was 1980 or '81, it was deeded to Collier County as public road right-of-way.

CHAIRMAN FRYER: Vice Chairman.

COMMISSIONER SCHMITT: Mark, the -- what's the elevation of the road right now above grade?

MR. MINOR: Yeah. It ranges from about 4 and a half to 3.27.

COMMISSIONER SCHMITT: And you would have to bring it up to at least 5 and a half?

MR. MINOR: That's 5 and a half NGVD.

COMMISSIONER SCHMITT: NGVD.

MR. MINOR: The 29 data, which is 4.3 NAVD 88.

COMMISSIONER SCHMITT: And you're proposing, what, a 60-foot road -- 30-foot each side, 60-foot roadway?

MR. MINOR: We would propose improvements within the existing road right-of-way.

COMMISSIONER SCHMITT: And that would be for -- and then the improvements would also have to involve all the driveway aprons to every existing home?

MR. MINOR: Correct. Yes, sir.

COMMISSIONER SCHMITT: And then to include swales or drainage pipe?

MR. MINOR: Both.

COMMISSIONER SCHMITT: Both.

MR. MINOR: Yes.

COMMISSIONER SCHMITT: So that's all the improvements of parking -- or driveway aprons and the roadway.

Just out of curiosity, what type of cost are we estimating? This is all going to be developer contributions, then?

MR. MINOR: It would -- millions of dollars, yes.

COMMISSIONER SCHMITT: And is this -- is this in lieu of impact fees?

MR. MINOR: That, I don't know. I'm the engineer.

COMMISSIONER SCHMITT: You don't know.

MR. YOVANOVICH: It's in addition to.

COMMISSIONER SCHMITT: It's in addition to impact. So this is considered, quote, a developer contribution or developer -- Mr. Yovanovich.

MR. YOVANOVICH: Yeah. Mr. Strain [sic], this is a site-related improvement.

COMMISSIONER SCHMITT: Say again, please.

MR. YOVANOVICH: Site-related improvement.

COMMISSIONER SCHMITT: Site-related improvement.

MR. YOVANOVICH: My client's dime to do everything that Mr. Minor's going to take you through, including building a sidewalk, water management, elevating the road, and the CAT bus stop at the end.

COMMISSIONER SCHMITT: And the box is entirely -- your 60-foot here is all

within the county right-of-way?

MR. YOVANOVICH: Correct.

COMMISSIONER SCHMITT: Are you going to require any type of legal easements or access to do -- the individual homeowners will have to agree to have their driveways improved?

MR. YOVANOVICH: We're going to probably -- I guess what we'll do is we'll get a right-of-way permit from Collier County.

COMMISSIONER SCHMITT: Yes.

MR. YOVANOVICH: Basically rebuild the road, and any connections to that road that we need to make, we will make within the right-of-way. We're not going on anybody else's property.

COMMISSIONER SCHMITT: I'm very familiar with the road, and I know it's inundated with water, especially -- and the residents certainly can attest to that.

This is a roadway that the county owns -- and probably Mike Sawyer would have to answer some of this. But it really has been poorly maintained. I mean, I have to -- I'll use that term, it is poorly maintained, or has been, and the swales, Mark, from a standpoint of an engineering, do not convey any of the water, or very poorly convey water.

MR. MINOR: Yes. The drainage -- the roadside swales are not functional today.

COMMISSIONER SCHMITT: Okay.

CHAIRMAN FRYER: Mr. Minor, it may not be exactly within your expertise, but it's going to be much closer to yours than mine. We heard Mr. Arnold testify that it was about a mile and a half, it would be, roughly, from maybe the imaginary center point of the development out to the CAT bus stop, or at least out to the East Trail. How long would it take, do you think, a pedestrian to walk that?

MR. MINOR: It's a little over a mile and a half. It's about 1.2 miles from Auto Ranch Road to get to Section 29, and then it's a little over a half a mile to get to the centroid of the apartments, so --

CHAIRMAN FRYER: So are we talking about --

MR. MINOR: -- one and three quarters, and most people walk three miles an hour, so 40 minutes. Commissioner Schmitt could do it in 10.

CHAIRMAN FRYER: Well, we're all not as athletically inclined as --

MR. MINOR: Handsome, too.

CHAIRMAN FRYER: Okay. Thank you.

COMMISSIONER SCHMITT: I'm an old man, now. Come on.

CHAIRMAN FRYER: Thank you.

MR. MINOR: Anyway -- well, I think Joe touched on about all of our improvements, but I'm going to go through them anyway.

Number 1 is U.S. 41 and Auto Ranch Road intersection improvements as described in the TIS -- and Jim Banks is an expert in transportation. I think he's better to walk us through that. But we're going to -- we're proposing, and we're going to need to do, install a left-turn lane. It's a northbound left-turn lane on 41 that would turn into Auto Ranch Road and then extend the right-turn lane that's there now to an appropriate length.

CHAIRMAN FRYER: Handsome Vice Chairman.

COMMISSIONER SCHMITT: Do you have a -- thank you. Do you have an -- do you have an overview -- so you're going to have a decel lane to turn right coming west to east. You're going to have a decel lane, I'm heading east onto -- from 41 to Auto Ranch Road? That

will be a developer improvement as well?

MR. MINOR: Correct.

MR. YOVANOVICH: Yes, and that's a later slide.

COMMISSIONER SCHMITT: A later slide. Oh, Jim Banks is going to --

MR. MINOR: Yeah, Jim's here.

COMMISSIONER SCHMITT: Well, we'll hold off for Jim because -- oh, I see him way back there. He's an old guy, too.

COMMISSIONER SHEA: He's handsome.

COMMISSIONER SCHMITT: What's that?

COMMISSIONER SHEA: He's handsome.

COMMISSIONER SCHMITT: Yeah. He's handsome, yeah.

MR. MINOR: Number 2 is the reconstruction of portions of Auto Ranch Road to elevate the finished ground above the 25-year, three-day storm. Again, we touched on that. Auto Ranch, it's inundated periodically, especially in the wet season.

About midway down Auto Ranch, there's a belly, and those are the lowest grades that we measured down -- we're just over three. So we'd raise those about a foot or more above the 25-year storm. So it will be determined. And that would include raising the shoulders, too. Not just the pavement, but the shoulders. As you can see on the cross-section slide that's up there now, the center line of the road is how we grade roads, so -- and we talk about a minimum of the old 5.5, which is now 4.3 NAVD 1988. That would be the center line. So we're well aware of that.

Secondly that I talked about, a 20-foot-wide strip of asphalt. That's not wide enough for this type of road. So we proposed two 11-foot travel lanes with a four-foot paved shoulder, which is 26 feet of asphalt. The paved shoulder would give some clearance for a school bus or a bicyclist. And we feel that that is a sufficient and a very safe road cross-section that we have.

Number 4 is construct a 5-foot-wide sidewalk on one side of the road. In the cross-section you can see a sidewalk. On the edge of the pavement, we are proposing a treatment that's a non-mountable curb, and non-mountable means that a car's tire does not mount the curb, where it's almost a vertical section of curb 8-inches tall. So it would deflect a car back into the street. That's to provide added protection for the pedestrians that are on that sidewalk, with a three-foot utility strip between that and the sidewalk. Today there's no -- if you were to walk Auto Ranch Road, you'd need to walk in the travel lane.

Number 5 is re-grade the roadside shoulders. As you can see, on one side of the street we're proposing a utility strip with a curb and on the other a four-foot paved shoulder.

Number 6 is replace existing driveway culverts within the right-of-way. We talked about that at the beginning, that the culverts are of different sizes, materials, and shape. None of them are any good. So in rebuilding the road, we would start at 41, and we would establish a gradient for the swale, a center line gradient for the bottom of the swale at each side. The gradient would be level and consistent -- not level, but be consistent all the way from 41 to Section 29. The -- we would tear out every driveway and every driveway culvert within the right-of-way, replace it with the correct size, reinforced concrete within sections on it at the appropriate grade.

We would reconstruct the residents' driveway from the new road to the right-of-way line where we would tie into their driveway at that point, and that, then, will -- after reconstruction of the swales and the driveway culverts, it will allow the water to flow freely along both sides of the road.



MS. ASHTON-CICKO: For the Commission's awareness, these requirements that he's citing are not in your PUD. Your PUD does not have the intersection improvements that he mentioned nor the turn lanes. It doesn't have the cross-sections. And the PUD currently only requires that they provide the construction plans to the county. There is "no build" requirement in there. So if that's going to be a commitment, then that will need to be fleshed out.

MR. YOVANOVICH: Well, we have every intention to not only design and permit it but to build it. So if that's not clear, we will clarify that. I talked to -- I talked to Ms. Ashton about that. We were absolutely planning on building all of this.

This is -- this is actually the conceptual until we do the actual design of the road that will get reviewed and permitted by Collier County. That's all our obligation, and we'll make whatever revisions to the commitment if -- that Ms. Ashton suggests we do.

The turn lanes we're telling you are what will be site related when we come in for our Site Development Plan. You don't typically have anything short of saying, "We will build all site related improvements." If you need something more in detail, happy to put that in the detail.

I talked to Mr. Sawyer before the meeting as well. We're designing it, we're permitting it, and we're building it.

CHAIRMAN FRYER: Okay. Commissioner Schumacher.

COMMISSIONER SCHUMACHER: Just a couple quick questions, sir. Who is responsible for the culverts now? Who's responsible for the maintenance of the culverts? Maybe -- if not you, Mike, who's responsible for those?

COMMISSIONER SCHMITT: County.

COMMISSIONER SCHUMACHER: County?

COMMISSIONER SCHMITT: County road.

MR. BOSI: The county has the obligation for maintenance.

COMMISSIONER SCHUMACHER: Okay. These culverts, are they designed to flow in one direction, or is this to retain in place?

MR. BOSI: I would have to have someone from Transportation/Stormwater Management to provide an accurate assessment. I'm not familiar with the design nor functionality.

COMMISSIONER SCHUMACHER: Sir, with the design of your culverts, where are they flowing to, or are they retaining in place?

MR. MINOR: Water does make its way through it, but not as designed. There's blockage and whatnot. But it flows from 41 to -- towards Section 29.

COMMISSIONER SCHUMACHER: Towards Section 29.

MR. SABO: South. Southerly is the plan.

COMMISSIONER SCHUMACHER: To the south?

MR. MINOR: Yeah.

COMMISSIONER SCHUMACHER: Okay. Thank you.

MR. MINOR: Yes, sir.

So let's see. We're going to replace all the driveway culverts, replace the existing driveway aprons within the road right-of-way. Install cross-culverts as required. Some of the water migrates towards the south and west, and there is a few places along Auto Ranch Road, and especially where it tops over, that we'll facilitate that water to equalize by installing cross-drains, which are culverts that run under the road that allow the water to pass from -- in this case it would be from the east to the west, or the west to the east, depending on the flows,

so -- and then they would continue -- be able to continue along in the roadside swales to the south.

Number 9 is we plan on constructing potable or municipal water with fire hydrants down Auto Ranch Road. Of course, we need potable water to service the apartments in Section 29, if you-all approve them, and also construct a sanitary sewer force main.

So we worked that out with Utilities, but a good place for the utility lines is under the sidewalk. So it's a benefit to everyone around for you to have pressurized fire hydrants at no more than 500 feet along Auto Ranch Road all the way down.

CHAIRMAN FRYER: Vice Chairman.

COMMISSIONER SCHMITT: The -- this is probably a question for staff. There is going to be water/sewer service -- you're going to run water/sewer service down Auto Ranch Road in the right-of-way -- or in the -- I would have to assume it's going to be in this 60-foot right-of-way will be the infrastructure for water/sewer.

MR. MINOR: Correct.

COMMISSIONER SCHMITT: Conveyance of water/sewer.

MR. MINOR: Yes.

COMMISSIONER SCHMITT: What's the requirement for the homes along Auto Ranch now that water/sewer will be going all the way down Auto Ranch? At one time I thought if the -- the service was run through that area, there was a requirement for the homes to connect. I don't know if that's the case anymore.

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

We'll reach out to one of our -- one of our colleagues within Utilities and ask that question specifically.

COMMISSIONER SCHMITT: Yeah. Because I thought at one time when I was with county staff, we -- some cases they were required, sometimes they weren't. But that would be either -- that would have to be, I guess, a county -- the Board of County Commissioners to make that final determination.

But if, in fact, the homeowner did decide to connect -- because I have to assume they're on well water now, septic and well. If they did connect, they would be subject to the impact fees required to connect.

MR. BOSI: Yes.

COMMISSIONER SCHMITT: Okay. But the option would be there that they could connect if they so desire at their own expense?

MR. BOSI: Yes.

COMMISSIONER SCHMITT: Okay.

MR. MINOR: And then, lastly, No. 10, says the owner of the property in Section 29 -- it's us -- should coordinate with Collier County Transportation/FDOT to install the CAT bus shelter that you guys already talked about, so I'll skip over that one, and I'll go to this slide again.

So improving Auto Ranch Road and the culverts on both sides will be very beneficial to water backing up and slowly receding. I don't think it's going to do a whole lot to reduce the peak elevation of the water after significant storm events, but it will certainly reduce the duration of that standing water in the peak water stages.

So the water will be able to flow in these new culverts and swale all the way down to Section 29. As you can see those arrows that we put in there, they represent the direction of surface water flow, and the water would then flow -- you see it on the west side of Auto Ranch

Road -- down through that preserve area.

So the old Belle Meade grade exists through there. You can go out -- I think Tim Hall's been out there recently. There's one or two old culverts that are under it, and basically it acts as a damn up there. We would construct a new road from the terminus of Auto Ranch Road right at Section 29, follow that old Belle Meade trail down to the pasture and then to the proposed development area.

And under -- to facilitate and improve surface water sheet flow from the golf course community to our north, we would have multiple cross drains that would go underneath not only the road, but the road right-of-way and a water-quality area that we're going to construct for the new road, totally bypass all of that, and we're planning a spreader swale along the length of the new road that we're going to build, which is a few thousand feet, which will greatly improve the surface -- the sheet flow that discharges from our neighbors to the north in the golf course community.

CHAIRMAN FRYER: Vice Chairman.

COMMISSIONER SCHMITT: Mark, one of my concerns -- of course, you're well aware of the history of what the -- when it was first permitted was the Boyne South. It was a -- significant issues out there with elevation of the existing homes, and then when -- I can't remember who went in there and did the redevelopment of certain areas.

But could you go through that process. I see your areas here, looks like the sheet flow, you're designing sheet flow to move north to south. But from an ERP, environmental resource permit, perspective, you're submitting -- going to have to submit through South Florida Water Management District. Can you, for the record, make it clear so that we understand the requirements that you cannot have any of the water from this development trespass and move north. You have to control all the water on your property, and that has to be demonstrated through the South Florida Water Management permit process. Can you please highlight that and explain that?

MR. MINOR: Yes, sir. Any new development that we may do on Section 29, including the access road, the apartments, the amenity sites, and the entryway, are going to be within their own surface water management system.

So we'll have -- we'll construct lakes to do water detention, have a berm to make sure our water's detained on the development site, the 50 acres, and then we would have a controlled discharge that would discharge on the south side of the apartment complex. I show one little arrow there. That's about the location of a control structure that would control the flow -- outflow of water from the apartments into the pasture or the lower lands there.

So, no, no water from the development that we're proposing on 29 would migrate to the north.

COMMISSIONER SCHMITT: Do you think this would have any -- one of the significant impacts out there has been that perimeter lake. That's why I asked the question previously. And I know that property is outside the Fiddler's Creek boundary.

But in the past -- and when I was visiting with the residents out there, we chatted about the stormwater or runoff and, in fact, the impacts, especially the last several heavy rains or hurricanes that we've had.

I don't know if the existing -- I would have to believe the existing topography land -- or water did move south to north into that canal. Now, there will be no water from this acreage. It will all be moving south is the way you're going to design this and go through the ERP process; is that correct?

MR. MINOR: Yes, sir. I think that the water may be migrating back to the north today because of the Belle Meade grade.

COMMISSIONER SCHMITT: Yeah, Belle Meade grade. And, of course, there's nothing controlling. I don't even know if that farm field -- which, of course, it's been a fallow farm field for years, but I don't know if there's any perimeter ditch or anything on that farm field. But maybe Tim Hall can address that.

MR. MINOR: So when we -- if we construct the new road from Auto Ranch to the 50-acre apartment site, we would breach the Belle Meade grade.

COMMISSIONER SCHMITT: Okay.

MR. MINOR: All right. And then install culverts so the water from the north end has a way to travel underneath our new road to the south side. So we're eliminating the berm or dike that's there because -- ever since they built the Belle Meade grade.

You know, I don't think that the developer would be opposed to working with our neighbors to the north to construct a more direct outfall from that canal long their south side to get either a ditch or a canal or a small lake across some portion of the farm field and then into a culvert so they have more of a direct outfall to south of where the Belle Meade grade is today.

COMMISSIONER SCHMITT: I would have to say that would probably be a tremendous improvement if, in fact, you can move some of that water that comes from the north, especially in the Royal Palm area, that that -- that would certainly be beneficial, because many of those homes, especially along that southern boundary -- and I'd have to look in the records. I know there's a map that delineates those who are part of the HOA and those who are outside the HOA of this development.

But one of the more -- and I go back to when Commissioner Fiala was working with this community, that they had significant problems with localized flooding, but it certainly would be certainly beneficial if there was some way to convey -- even that perimeter ditch or that perimeter lake on your northern boundary, that you could help convey water to the south. That would certainly be something that would be beneficial both to the -- well, it would be beneficial certainly to the community to the north.

MR. MINOR: Yeah, I agree. It would move their water out there a lot faster and more efficiently.

COMMISSIONER SCHMITT: Okay.

MR. MINOR: Anyway, that's all I've got.

CHAIRMAN FRYER: Commissioner Shea.

COMMISSIONER SHEA: A quick question, more of a clarification just for the record. You mentioned that the residents along Auto Ranch Road would be able to connect to the utilities. Just a clarification, they'd probably be able to connect to the water, but the wastewater's probably going to be a pressure main, so they won't be able to connect to the wastewater side. I'd be shocked if you had any ability to do that with that distance in the low head differentials in this area. So they would only be able to connect really to the water line, not the wastewater line.

MR. MINOR: They could connect to the --

COMMISSIONER SHEA: Pressure line.

MR. MINOR: -- one of the pressure mains with a small grinder pump station, but...

COMMISSIONER SHEA: That would be allowed?

MR. MINOR: Yeah.

COMMISSIONER SCHMITT: You'd have to have --

MR. MINOR: A deviation through the county utilities. And they grant those on case-by-case basis.

COMMISSIONER SHEA: So it is more complicated, for the record, just to hook onto the wastewater side? Yeah.

MR. MINOR: Yes, sir, it is.

MR. BOSI: And just -- sorry to interrupt. Just -- we did get clarification that those properties are zoned agricultural, and per the regulations, that means that it would be at their discretion if they wanted to interact or interconnect with the potable water and whether they could or not with the --

COMMISSIONER SCHMITT: Excellent. Thank you for clarifying that, because that is important. So there would be no requirement. But if they choose to enter in the county water, they could. And I agree that that would probably be more difficult engineering-wise to connect a sewer.

I have to -- well, of course, they're all on septic out there, well and septic, so...

Okay, thanks. Good point.

CHAIRMAN FRYER: Ms. Lockhart.

MS. LOCKHART: Yes. I have a question. It might be for staff as well. Were there any thoughts or plans to connecting this project to the south Curcie Road, I think it is, so that it connects to San Marco? It might be somewhat of a dirt road, but I just see it on the maps. And I ask that because this project is in Tommie Barfield, and that would be a good route to take, Tommie Barfield Elementary.

MR. ARNOLD: Again, it's Wayne Arnold. Our plans have no -- no connection point to what you're referring to as Curcie Road.

MS. LOCKHART: Okay. Is staff aware of any plans for that, Curcie?

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

So the lands surrounding Section 29 to the east and south are all in dedicated preserves to Collier Seminole State Park, to Conservation Collier, and to the National Park Service, so a road through there is probably not feasible.

MS. LOCKHART: Thank you.

MS. COOK: Yep.

CHAIRMAN FRYER: Who's next up, Mr. Yovanovich?

MR. YOVANOVICH: I lost Jim Banks. There he is. Mr. Banks is up.

MR. BANKS: Good morning, Commissioners. For the record, Jim Banks. I'm here on behalf of the applicant. And I have a weak voice today, but I'm going to get through my presentation as best as I can.

My firm was responsible for preparing the traffic impact study for this subject property. The traffic study was prepared pursuant to the criteria set forth by Collier County Government. Your staff reviewed the report and agreed with its findings and conclusions.

The report was based upon the proposed project of developing 750 apartment units. We then determined what the site-generated traffic would be using the methodology set forth by the ITE Trip Generation Manual and determined that the p.m. peak-hour two-way trip would be 343 trips. That's both directions, south and -- north and south on Auto Ranch Road.

I want to make it clear also that the traffic estimates of the ITE include all trips that would be generated from this project. That includes the residents that live there, service calls, landscapers, deliveries, UPS, mailman. All of the trips are accounted for in the ITE Trip Generation Manual. So it doesn't focus just on what trips would be generated by the residents

that live there. It also includes the trips associated with the development of the incidental trips as well.

We then assigned the project trips to the adjacent road network and determined that Auto Ranch Road -- we established, based upon the improvements that Mark Minor went over, that the road's maximum allowable capacity would be 600 vehicles per hour peak direction. Now, I want to make it clear when I use that number 600, because there's always confusion. I'm saying that's what the capacity of the road is. I'm not saying that's how many trips will be on the road.

We determined that at project buildout, including the background traffic on Auto Ranch Road, that the peak-hour, peak-direction trips would be 250 vehicles per hour in a peak direction.

And that at the completion of the project and with the improvements that were proposed, that the road would operate at 42 percent of its capacity. That means that there's a surplus -- unused surplus of 58 percent of the road's capacity. So the road will operate at a high level of service, and because it's a local road, we only classify it as a Level of Service C. It won't operate better than a Level of Service C.

We also looked at U.S. 41 and determined that it would also continue to operate at acceptable level of services. This was based on the traffic counts that we obtained. The latest AUIR report actually has U.S. 41 operating at a better level of service than what I have included in the traffic study, which is, per the AUIR, that two-lane section of U.S. 41 operates at Level of Service B.

As concluded by the traffic study, the project -- the apartment complex will not significantly impact the surrounding road network and that there is a surplus of capacity on the adjacent road network to accommodate the traffic that will be generated by this project, and that's based on the consideration of the improvements to Auto Ranch Road, which Mark Minor outlined.

I think it was at staff's request -- I got it through one of my team members -- that they also wanted us to look at the crash data for the intersection of Auto Ranch Road and U.S. 41. We did obtain the crash data for six years. We typically do five years, which we did at first, and then the additional data became available, so we did a six-year-window review of the intersection. And over that six-year period, six crashes were reported, so that averages one crash per year at that intersection. So it's a very low crash-event location.

Of those six crashes that occurred, two were single-car accidents. One was reported that they hit an object in the road, and the other one was reported that they hit an animal in the road. So there was only one car involved. And then the other four, they were two-car crash events, which we've documented here. Of those, there were no severe crashes, and there was no injuries sustained that warranted the dispatch of an ambulance. So there were crashes, but nobody was significantly injured in those crashes.

The intersection at Auto Ranch Road and U.S. 41, you can see that the -- there is an existing right-turn lane as you're traveling westbound or southbound, however, you want to classify 41, there is a very -- it's a substandard right-turn lane, but it does exist there today, and there is no left-turn lane if you're heading westbound on U.S. 41 to turn into Auto Ranch Road.

And in 2023, as it turns out, there was two crashes that occurred that vehicles were stopped to make a left turn onto Auto Ranch Road, and they were rear-ended. And of those two crashes, nobody was significantly injured, but it did occur.

And so what we're proposing to do is reconstruct this intersection. It's going to require

us to coordinate with the Florida Department of Transportation because U.S. 41 is their road. Staff will also be reviewing the design. But we are going to reconstruct that intersection to provide a left-turn lane. So if you're traveling westbound on U.S. 41, you can exit the through lane, and then you can wait in the left-turn lane until you have a gap in traffic so you can make the left-turn lane. So that should alleviate any rear-ending issues at that location.

We're also going -- and that left-turn lane will be over 300 feet long. So when you're coming up U.S. 41, you can maintain your speed limit and then get in the left-turn lane, and you have plenty of time to decelerate at that intersection.

And the right-turn lane, which is there today, is substandard, so we're going to reconstruct it in its entirety, because the widening will all occur to the south of the intersection, because that's where the available right-of-way is. But that right-turn lane also will be over 300 feet long. So if you're traveling eastbound on U.S. 41 and you've got somebody directly behind you, you're going to have -- the length of the turn lane will let you exit the through lane and then decelerate to make that entrance. So that would eliminate a rear-ending issue with people turning right into the intersection.

Also, this intersection, if you see, it's at an angle. So when you pull up to the intersection today, you have to look over your right shoulder to see if there's any cars coming westbound to wait, you know, and that makes it a little bit difficult for that intersection. So our expectation is FDOT is going to ask us to curve that northbound approach to where it's more at a right angle. It won't be exactly a right angle, but it will be much better than it is today.

So those improvements at that intersection are going to provide the safety measures necessary to accommodate the traffic associated with our project as well as it would be a benefit for the residents that live along Auto Ranch today.

That concludes my testimony, and I'm happy to answer any questions that you may have.

CHAIRMAN FRYER: Thank you. I have a question. Did your study, in any way, factor in the CAT bus line and the effect, if any, that it would have on traffic on the East Trail?

MR. BANKS: No. We did not -- the bus -- the bus stop would actually result in a reduction in -- those that would use the bus stop would most likely ride a bike to it. Those residents that live on Auto Ranch Road closer may walk to it. But that, effectively, would reduce the amount of traffic that would be generated by the existing single-family homes that are on Auto Ranch today, as well as the apartment. But we did not discount the traffic for the bus stop. We looked at a more conservative measure of the impacts onto the adjacent road.

CHAIRMAN FRYER: Thank you.

Vice Chairman.

COMMISSIONER SCHMITT: Heidi, you mentioned there's no -- I didn't see anything in the PUD that specified any type of improvements at this intersection, so we have to make sure, again, that that's included in the -- either in the conditions that -- based on approval, correct?

MS. ASHTON-CICKO: Correct, correct. You could add something that indicates that at the site development stage, they'll be installing the turn lanes with FDOT approval.

MR. BANKS: I'm sorry. I didn't mean to interrupt, Heidi. But it's in the Traffic Impact Statement, which is part of your record. I'm not saying not to make it a part of your PUD, but it is in the traffic statement that is on the record that you have on file that we will be constructing that right-turn lane and the left-turn lane for -- on -- along U.S. 41.

CHAIRMAN FRYER: Thank you.

Nobody is signaling at this time.

Mr. Yovanovich.

MR. YOVANOVICH: Based upon the level of questions that came my way in this section of our presentation, Mr. Chairman, do you want to start it? Because I don't think we'll necessarily finish the environmental permitting before your normal lunch, or would you want to take an early lunch and then come back and start fresh with the topic?

CHAIRMAN FRYER: I'm going to poll the Planning Commission on that one. But before I do, I would like your assurances that all of your experts will be returning after lunch.

MR. YOVANOVICH: Absolutely.

CHAIRMAN FRYER: Planning Commission, what is your pleasure?

COMMISSIONER SHEA: Keep going. I'd like to hear.

CHAIRMAN FRYER: Okay. Well -- so are we going to be shooting for, like, 12:30 or 1 o'clock for lunch? Because we know we're going to have to break for lunch.

MR. YOVANOVICH: Right.

COMMISSIONER SHEA: Works for me.

CHAIRMAN FRYER: Is that what everybody wants to do?

(No response.)

CHAIRMAN FRYER: All right. Let's continue on with environmental, then.

MR. HALL: Good afternoon. For the record, my name is Tim Hall with Turrell, Hall & Associates. I've been acting as the environmental consultant for this project since 2015, I believe.

I guess the -- to start with, I know a lot of the questions. I was going to start just showing the overview of the property. It has been a pasture. It started off as a row crop agricultural field. It converted to a nursery for a short period of time.

Since then, the past couple of decades it's been used as a pasture, pasture area for cows, cattle pasture.

In looking at the viability of a project or property to support wildlife, you look at, you know, how it's been impacted in the past, what those uses were, and the species of animals that are in the area that would potentially be using it. And there's no question that there are, you know, species that can utilize this property, but in terms of valuing it towards wildlife, this would be at the lower end of the scale because of those past impacts, the lack of forested cover, the uses with the agricultural and some of the improvements that were done for the cattle pasture and all. And so while there is some use, the level of it in terms of value to wildlife is at the lower end of the scale.

And, specifically, when we get to talking about some of the bigger animals, panthers, bears, what these properties do is they can act as kind of barriers to movement. Not to say that at night they won't cross it, but their preference, for most of those animals, is to stay under cover. So they will go hit the open area of that pasture and then travel around, you know, the south side or at times there is a narrow band on the north side with vegetation there as well.

But looking at the radio telemetry over the past -- since they started collecting it in 1998, most of the movement to the site is across 41 and down by Collier-Seminole State Park. I guess there's a -- there is. So it kind of comes down here. So the movement of the animals runs down, and then from this area, there's movement this way and this way up through the ranchettes.

And I don't have an expanded-out aerial, but undeveloped areas that are still available to the north of 41. But the animals do have to cross 41 going back and forth to this area.



There hasn't been any documented denning of panthers. They seem to use this area. A lot of times it's young cats. There have been a couple, though, that, over a course of time, have periodically come through, and it seems to be more of a transient-type use, not a -- not a denning type use there.

COMMISSIONER SHEA: Can we ask a question on that?

CHAIRMAN FRYER: Go ahead.

MR. HALL: Yes, sir.

COMMISSIONER SHEA: I guess I look at this. I don't know how you know which way they're going. I just see a lot of dots which show a lot of activities. Can you explain the difference -- I mean, to me, there's a lot of dots on there, which means there's a lot of sightings. I don't know how you tell which way the animals are moving or --

MR. HALL: So that's all of the -- I believe the document you're looking at shows all of the recorded radio telemetry data points --

COMMISSIONER SHEA: That's it.

MR. HALL: -- from 1998 till now. So it's over the course of however long that is, 40 -- 35 years, and multiple cats at different times. So they're not there all the time. They kind of pass through the area. The reason -- or the way I can tell which way the cat's moving was because each one of those data points has a day associated with it. There's a date, and so you can track how the cats move based on the days and where they were located on those days.

COMMISSIONER SHEA: Okay. Thank you.

MR. HALL: So these -- this property was a part of a commitment that was made with the -- with the permitting of the Estancia development to the north in Fiddler's Creek. At the time, it kind of was a surprise.

This area is outside of the -- the property is outside of the actual panther priority zones that Fish and Wildlife has established. If you look at the recovery plan for the Florida panther, Fish and Wildlife Service, Fish and Wildlife Conservation kind of got together. They looked at the properties that they felt were most important for the recovery of the panther, and those were ones that provided either really good habitat that supported panther populations or that provided corridors between those areas of population density or good habitat.

And this exhibit just shows where those lines are -- or where those areas are with respect to that management plan. And you can see that the priority zones that Fish and Wildlife Service established are north of 41. Basically, 41 and Collier Boulevard are the limits of those areas.

So this is kind of a little cul-de-sac, if you will, to the south where animals do occasionally -- they come across 41. They'll wander around to the south of the development, and then they'll either come back and cross the way they came, or they've been documented going up through -- like I said, through Auto Ranch Road and a couple of areas further to the east as well.

So when the Estancia development was originally permitted, we had a lot of discussion with Fish and Wildlife Service and the Corps of Engineers through the permitting. The telemetry that Fish and Wildlife Service had did show that there was panther use through this area. There was a couple of documented locations actually within the Estancia development itself. Some of those preserves areas had been set aside.

So there was some concerns raised. They wanted to be able to provide some protections for the panther in conjunction with the potential impacts that were associated with the Estancia development going in.

At the time there were -- there's different options that you have available to you with respect to panther mitigation. You can purchase PHU credits. You can put other areas within your property under development. You can -- you can help support ongoing research activities. There's different ways to mitigate for impacts. Because of that panther telemetry, Fish and Wildlife asked if the developer would be willing to put some of that land, Section 19 and Section 29, into conservation easement, and at that time they had no plans to do anything with that land. So they agreed to put those under conservation easement.

It's important to note, though, that the value that Fish and Wildlife gave to those with respect to the mitigation for those was at the lowest value that they assigned to properties. So they didn't -- they didn't say that this was high-quality habitat. They basically said it was one-third of the value of their high-quality habitat when they -- when they assigned the value to it and the PHU credits, which I think some of the documents that you have talk about the split between how many PHUs were purchased from the conservation bank and how many PHUs were associated with this property.

So the way that this was looked at was at a -- at a lower value. If this had been a high-value habitat, they could have compensated for all of their PHU requirements without having to purchase additional PHUs from the mitigation bank. Because it was valued low, they had a shortage with the -- with the preservation of this land so they had to go and purchase additional.

I also wanted to kind of walk you through the timeline. There's been a lot of accusations, I guess, that the developer hasn't lived up to their commitments and was, you know, putting everything off. I wanted to show you, you know, kind of the timeline of how that -- how everything has gone on and why I don't believe we have been -- we've been technically noncompliant with the permits, but we have been in coordination with Fish and Wildlife Service so that that was not a hidden noncompliance. They were fully aware of what we were doing and what we were trying to do for the entire time frame that we've been working on this.

The original BO was issued in April of 2017. The commitment to preserve the land, I believe, was made in February or March of that year. Six months later, the Corps permit was actually issued. Immediately, you know, following that, the transfer of the PHUs from the conservation bank was done. There was some coordination -- additional coordination in 2018 related to a site plan change. The original proposal for the development included a golf course. Because of all of the internal stuff that they were doing, the golf course was going to go away, and some of the lakes and stormwater management was changing, the number of units was changing. So we had to go back to the Corps of Engineers and Fish and Wildlife to kind of memorialize, let them know of those proposed changes, make sure they agreed with them, and all that was actually done in August of 2018. Fish and Wildlife said that they had no objections to those -- to those changes, and then in December the plan -- the actual permit -- Corps permit was amended.

CHAIRMAN FRYER: Mr. Hall?

MR. HALL: Yes, sir.

CHAIRMAN FRYER: Taking you back to 2016, 2017, the result of that -- those changes to the zoning and planning documents seem to -- excuse me -- seem to involve some give and take, and at the time, it appeared that there was a willingness to exceed [sic], on the developer's part, to restrictions that were at least worded to be perpetual in nature. Would you agree so far to what I've said?

MR. HALL: Yes, sir.

CHAIRMAN FRYER: Okay. And you were there at the time?

MR. HALL: Yes, sir.

CHAIRMAN FRYER: Okay. Now, in that same time frame, approximately, if you can recall, when -- when did you first become aware that the developer was contemplating actual residential improvements on Section 29?

MR. HALL: That would have been probably in August, maybe July or August of 2019.

CHAIRMAN FRYER: So back in 2016, 2017, there was no contemplation of residential housing?

MR. HALL: Not as far as I was aware, no, sir.

CHAIRMAN FRYER: Okay, thank you.

MR. HALL: No. The issue then was whether or not they could still do a park on that property or allow for passive use within that easement area.

CHAIRMAN FRYER: All right. You heard me -- you heard me inquire about commitments that had been made with respect to perpetuity and conservation. Were you -- what was your understanding of whether a whole or a part of Section 29 was to be included in those commitments?

MR. HALL: The commitment was for the entire portion of Section 29.

CHAIRMAN FRYER: Thank you. Nothing further.

COMMISSIONER SCHMITT: I have a question.

CHAIRMAN FRYER: Vice Chairman.

COMMISSIONER SCHMITT: Yeah, just for clarity. Tim, you mentioned -- and I'll just -- for clarity of those listening, if the -- during the endangered species process, so you go through the Army Corps of Engineer permit. The Army Corps is Section 404 of the Clean Water Act. So you have to go through a wetland determination out there, and whether there's any wetland issues is jurisdictional determination, but also a Section 7 consultation. That triggered the U.S. Fish and Wildlife to comment on the permit. The end result is, as you stated -- and I'm trying to make it a little bit clearer for the audience. But you avoid, you mitigate, or you compensate. In this case, there was the two issues -- you're not -- avoid is you just don't develop. So you mitigate or you compensate.

The mitigation was in PHUs. These are Panther Habitat Units, 1,309. Do you know what the cost was to purchase those, and where does that money go?

MR. HALL: That money -- I believe those were \$750 per PHU. So whatever 1,309 times 750 is. And that money goes to the conservation bank, so --

COMMISSIONER SCHMITT: The bank, then, sets aside, for perpetuity, properties, which is another Army Corps of Engineer permit, but it's for perpetuity, and it is in regards to panther habitat, and panther habitat in Hendry County or somewhere. I can't remember where.

MR. HALL: It's -- the panther passage bank is in northern -- like, northern Collier, south Lee.

COMMISSIONER SCHMITT: Yeah, okay, northern Collier.

MR. HALL: And then they have another bank that is -- that is further north that's in the expansion area, which is in northern Lee County.

COMMISSIONER SCHMITT: So they -- just to get to the timeline, then, can you clarify, was it -- the lands in Section 29 were not technically -- they had a conservation easement, but they were still -- there was no change in preserve. There was still preserve and what could be technically a park, whatever, from the zoning perspective, but there was a

conservation easement?

MR. HALL: Well -- so the initial -- the initial desire was to actually give the land to the state park.

COMMISSIONER SCHMITT: Correct, okay. All right.

MR. HALL: So within that time frame, after those permits were issued, you know, 2017, and then specifically between 2018 and 2019, had some conversations with the -- with the state park. Section 29 and Section 19 both, neither one of them were in the park's acquisition boundary. So in order for them to take ownership, they would have had to expand their acquisition boundary, which they say it's an act of Congress. I guess it may literally be an act of Congress. I don't know.

They have to redo their management plan and go in front of whoever their guiding people are to be able to expand the boundary. And after some discussions, they decided they were not going to do that at that time. So the thought of giving it to the park was no longer there.

And then when we started the conversations, you know, with Fish and Wildlife Service initially, like I have on my timeline, between August and February, the discussions morphed. Initially, we were going to take all of the pasture area out; 150 acres was the initial request to take out. And whether or not we could use a conservation easement or covenant, because without an active permit application in hand, there was nobody to give a conservation easement to.

So the -- you know, we went back and forth with a lot of that. It eventually got narrowed down to the design you see now over the course of a couple years.

The other thing that I will say that complicated these discussions, 2020 into 2021, in March of 2020, COVID pretty much shut a lot of things down. So coordinating with the wildlife agencies became very difficult.

And then at the end of 2020, the Corps -- the State of Florida took over the 404 permit requirements for inland properties from the Corps of Engineers.

So we had an additional kind of difficulty of we couldn't then amend the Corps permit because the Corps was no longer the entity that was overseeing that kind of work. So we had to work through the issues of trying to get the Fish and Wildlife Service to look at the proposal given that, you know, the Corps was no longer the permitting entity, though they still had a valid permit on the property. That got sorted out. Fish and Wildlife said they would review the request.

So in June or July of 2022, I think I made the initial request to Fish and Wildlife Service to modify the BO. And keep in mind that the modification that we were asking for was not to develop this property. The modification was related back to the Estancia property, and it was to amend the panther mitigation associated with that permit. It was simply to take this area out and provide the compensating PHUs that were associated with that property through mitigation bank purchase, and that would still keep the Estancia property, correct, you know, legal.

Any development on this site would have to be reviewed at a later time under different permit things. And all of the issues -- a lot of the issues that I have seen that have been brought up would be addressed at that time when this is going forward, the initial --

COMMISSIONER SCHMITT: Tim, what you don't have on here, though, is the Corps-issued permit. The permit was very specific in requiring the conservation easements -- or conservation covenants to be -- to be filed and placed over Section 29. But there -- also there was -- which I read in the documentation that was forwarded. There was a

cited noncompliance because work had already started in the Estancia area without the protective covenants being filed. That's not in your timeline here.

And then we're back down to 11/2/22, and then the covenants were filed, and that resolved the issue with the Army Corps of Engineers in regards to the cited noncompliance or violation. You could use either word, but it's cited noncompliance.

MR. HALL: Correct.

COMMISSIONER SCHMITT: And that abated the violation from -- as far as the Army Corps was concerned. So I don't see that on the timeline here.

MR. HALL: Thank you. No, I don't have -- I don't remember what the actual date of that was. It would have been sometime between the -- it was after we made the submittal for the BO request, so it would be between July and November.

So we made the request to modify the BO. As part of that, they requested that we do a compliance analysis or compliance check to see what was or was not done with respect to the permitting. We notified them and, you know, we told them that, no, the easements have not been filed yet. They hadn't been filed because we had been in discussions to change this area. And to my mind, it made no sense to put a Conservation Collier easement on the property to then take it off.

As part of those discussions, they basically said, well, we need you to put that on so it's compliant, then we will -- we will look at the possibility of amending the easement and making those changes, so that's what we did.

COMMISSIONER SCHMITT: Yeah, and that's -- the Army Corps permit also included restoration of wetlands in the Estancia area, or mitigation.

MR. HALL: Yeah.

COMMISSIONER SCHMITT: It also included two other areas that were going to be put in protection -- preserve.

MR. HALL: There were four that were --

COMMISSIONER SCHMITT: Four areas.

MR. HALL: All of the wetland -- all of the wetland compensation was done through preservation and enhancement of the four wetland areas that are within the main development area of that Estancia property, yes.

This project wasn't used for wetland mitigation at all. It was completely associated with Fish and Wildlife Service and the panther mitigation, which is one of the reasons why it's not specifically addressed in the Corps' permit conditions. It's included in the Corps permit because the permit incorporates the terms and conditions of the biological opinion, but it's not a -- it's not a Corps-specific special condition of the permit. All of the Corps' special conditions are related specifically to the wetlands.

COMMISSIONER SCHMITT: To wetlands, 404.

MR. HALL: Correct.

CHAIRMAN FRYER: Mr. Hall, I'm still having an issue with chronology. I just want to test something with you. And you were there back in 2017 --

MR. HALL: Yes, sir.

CHAIRMAN FRYER: -- participating in this, and you were probably part of the team working with the federal government, the Corps, and the Department of Interior on the various commitments that were being made with respect to Section 29, correct?

MR. HALL: Yes, sir.

CHAIRMAN FRYER: Okay. Then -- and that was in 2017. Then in 2022,

conservation covenants were ultimately filed?

MR. HALL: Yes, sir.

CHAIRMAN FRYER: Correct. Okay. Now, here's -- here is an exchange that I want to read to you and then ask you to comment on it. One of the neighbors at the NIM said, "Now, I know that Tim just said that those conservation covenants were filed. No one can deny that. They're on record at Collier County in November of 1992." I think he meant 2022.

MR. HALL: 2022, yeah.

CHAIRMAN FRYER: 2022, yeah. "But for five years they were not filed. I'd like to know why." Now, the five years, wouldn't you say, was between 2017 and 2022?

MR. HALL: Yes, sir.

CHAIRMAN FRYER: Correct. Okay.

Then, Mr. Arnold said, "I don't know the history of that, Tim. You may know. I would say it's probably simply because development didn't ensue during that five-year period."

Then, Mr. Hall, here's what you said. "The reason they weren't filed was because the development of Section 29 was being contemplated as far back as then."

Your comment, sir?

MR. HALL: No, I don't think -- I mean, if that's what I said, that's what I said. But, I mean, I know that when we addressed this and the development of it -- the removal of that area was being contemplated in 2018. That's when I went to Fish and Wildlife Service to start discussing that. That's when the owners had me start those discussions.

CHAIRMAN FRYER: Sure. But you did -- you were -- you said -- you used the word "development," and presumably you were talking about the development that's now before us, correct?

MR. YOVANOVICH: No. Estancia.

MR. HALL: I don't think so. I think I was referring to the development in Estancia. I would need to, I guess, see that record, and if I said that, that's --

CHAIRMAN FRYER: Okay. But the -- I mean, you agreed with me on this timeline, 2017, 2022. And so my question originally to you was, is when was their first thinking about the development in Section 29, which is not Estancia?

MR. HALL: Correct. And as I said, I was first approached by them in the middle of 2022.

CHAIRMAN FRYER: Yeah. But, again, you said, the reason they weren't filed was because --

MR. HALL: Sorry, middle of 2019.

CHAIRMAN FRYER: May I, please, if you don't mind.

What you said was, "The reason they weren't filed was because the development of Section 29 was being contemplated as far back as then," i.e., 2017.

MR. HALL: No. I don't think -- I mean, I think there may be a lack of context or whatever because the development on the site started in 2018, and in 2018 is when they approached me about the -- making those changes to Section 29.

So the -- in context of the timing for the easements, the easements didn't have to be filed until construction started, and so that would have been in 2018 for some of Estancia stuff, and then the conservation easements, you know, when we started approaching Fish and Wildlife Service in August of 2018, that's when -- that's when I started that process with them.

CHAIRMAN FRYER: So what is your testimony today about that five-year period that you brought up and Mr. Arnold brought up? What was the beginning time and the end time of

that five-year period?

MR. HALL: Well, the -- I mean, the five-year period associated with the permit is 2017 to 2022.

CHAIRMAN FRYER: Thank you. Okay. That's all I have for now.

COMMISSIONER SCHMITT: But just --

CHAIRMAN FRYER: Vice Chairman.

COMMISSIONER SCHMITT: That permit was for -- not just for Section 29. That was for all of what we now term Estancia, which is Section 13 and Section --

MR. HALL: The permit didn't include any development or anything in Section 29 aside from the preservation. That was what was included in that permit.

CHAIRMAN FRYER: Yeah. And your testimony, again, was why the covenants weren't filed between 2017 and 2022. The reason they weren't filed was because the development of Section 29 -- Section 29 was being contemplated as far back as then. That's 2017. That's your testimony.

MR. HALL: Well -- and I can't -- I mean, if that's what I said, that's what I said, but what I meant was the -- from the 2018 time frame when they would have been required to be recorded, because that's when construction started. From that time frame through to when they were actually filed, that was not done because we were in talks with Fish and Wildlife Service in coordination with them to try to get some of that land removed. And as I said, initially it was 149 -- it was the entire pasture area was the initial request, was to remove all of that, and then that got whittled down over time to the 58-plus-or-minus acres that we're talking about now.

CHAIRMAN FRYER: Commissioner Klucik.

COMMISSIONER KLUCIK: Thank you, Mr. Chairman.

Okay. So help me understand this. So the original requirement for this easement that wasn't filed was -- what was the genesis of that again?

MR. HALL: The easement would --

COMMISSIONER KLUCIK: The easement that was supposed to be filed in 29 and the sections surrounding it.

MR. HALL: Was --

COMMISSIONER KLUCIK: Was -- the genesis of that was what?

MR. HALL: The genesis --

COMMISSIONER KLUCIK: The date and the event or the agreement, why did that come into existence, that idea that that needed to be conservation easement on that land?

MR. HALL: That came about with discussions with Fish and Wildlife Service regarding potential impacts to panther habitat in association with the development of the Estancia property in Sections 18 and 19.

COMMISSIONER KLUCIK: Okay. So -- and that was -- when was that?

MR. HALL: The permitting for that started in --

COMMISSIONER KLUCIK: When was this imposed, this idea that there was going to be a conservation easement required? When was that?

MR. HALL: It would have been in late 2016 or early 2017. It was memorialized in the biological opinion in April of 2017.

COMMISSIONER KLUCIK: Okay. So that said, if you're going to do Estancia, you have to do this easement?

MR. HALL: Correct. And the easement has to be put in place in conjunction with the

start of construction.

COMMISSIONER KLUCIK: And is it -- was it -- what land did that easement contemplate -- at that time, what land was contemplated as requiring that easement in order that you could go forward with developing Estancia?

MR. HALL: It was about 600-odd acres. It's kind of the south half of Section 19 and the north half of Section 29.

COMMISSIONER KLUCIK: Okay. So was it the entire yellow triangle that was on the first slide?

MR. HALL: Yes, sir.

COMMISSIONER KLUCIK: Okay. And that wasn't done?

MR. HALL: The easement was not filed, no, sir.

COMMISSIONER KLUCIK: Okay. And what are those remarks from that you've been quoting, Mr. Chairman?

CHAIRMAN FRYER: The NIM. 2023 --

COMMISSIONER KLUCIK: So at the NIM your recollection was, hey, yeah, no, we never filed that because, apparently, right away you decided you were -- you know, the company was going to develop that area, so, of course, you weren't going to file -- you know, someone approaches this and says, so you got this requirement that in order to develop Estancia you had to have this easement, but then you said, oh, well, we want to develop the land in the easement, so we're not going to do that, even though you were required to do it.

So I'm confused as to -- you know, I mean, obviously, that seems like that would be rather blatant, obnoxious, and maybe even unlawful, I don't know, but what am I getting wrong in putting -- piecing it together the way I just did?

MR. HALL: I think what you're saying may not be wrong. The way you're characterizing it I would not agree with. We were in discussions with Fish and Wildlife Service. We informed them in 2018 that we were not filing the conservation easement until we resolved this coordination. They never pushed us to do so until 2022, and I can explain why that happened in --

COMMISSIONER KLUCIK: So what happened with the land that was supposed to be developed -- so you said, we'll do this easement, you know. This is -- we're thinking, hey, yeah, we'll do this easement on this big yellow rectangle, the area in question, 29 and surrounding, right?

MR. HALL: Yes, sir.

COMMISSIONER KLUCIK: Okay. So we'll do that easement because we have to in order to get permission to do the development on Estancia; is that generally what was going on?

MR. HALL: We have to unless they agree to make changes.

COMMISSIONER KLUCIK: Okay. And, now, did Estancia get developed?

MR. HALL: It's under development now.

COMMISSIONER KLUCIK: Okay. And during that time, you went ahead with that development, and you were in -- you're saying you were in communication with Fish and Wildlife the whole time, and they never required that easement and never asked you to record it or --

MR. HALL: They under- -- yes, sir. They understood that it had not been recorded. They understood first that we went through the process with the park service, and the park service was not going to take the property. So after that -- which took up some time. That was happening, you know, from 2017 to mid 2018, 2019. And then the -- so we talked about



them -- about alternatives as opposed to the donation, whether it would be Conservation Collier easement or covenant, removal of some of the area, whether it could be compensated for through donation of alternative lands. All of those different things were discussed with them, so we were kept involved with what we were doing through the course of the entire time frame.

And if at any time they had said, "We are not going to process or look at this anymore until you file those easements," those easements would have been filed. They were, you know, the -- when the Corps permit was coming up for expiration, the Corps permit was going to expire in October of 2022. That's what triggered the Corps and Fish and Wildlife saying, "With this permit expiring and without the Corps having the ability to renew or extend the permit" -- because 404 had been ceded to the state, both of those agencies, the Corps and the Fish and Wildlife Service says, "You have to file those now, and we will talk to you about redressing those after they're filed." So that's when they were filed.

COMMISSIONER KLUCIK: Okay. And then did you file them?

MR. HALL: Yes, sir.

COMMISSIONER KLUCIK: Okay. For the whole land?

MR. HALL: Yes, sir.

COMMISSIONER KLUCIK: So that whole area now has a conservation easement?

MR. HALL: There's two easements, two covenants. I keep calling them easements. They're a conservation covenant. One of them is specific to 500 and some acres. The second covenant is actually specific to the 58 acres associated with this, and there's a clause in that covenant.

COMMISSIONER KLUCIK: It's the 5829?

MR. HALL: Yes, sir.

COMMISSIONER KLUCIK: So you had -- 29 had one covenant, and the rest of the land has another?

MR. HALL: Just this portion of 29. Not all of 29, just a portion.

COMMISSIONER KLUCIK: Okay. And that is being honored or dishonored going forward if you get to go forward with this petition and it gets approved?

MR. HALL: It's honored. That covenant actually has a clause that states that this process is going to be moving forward. Both the agencies accepted that covenant with that clause in it knowing that we were moving forward with this process and so, I mean, that can --

COMMISSIONER KLUCIK: Okay. And back in 2017 when you -- when -- the genesis of this requirement for the easement, right -- or for this covenant, why did you have -- feel like you had to get this covenant? What process was going on? So you were trying to develop -- what's the name of that place?

MR. HALL: Estancia.

COMMISSIONER KLUCIK: Estancia, okay. So you're trying to develop Estancia, your company, and they are, like, hey, wait a second. We're not going to be able to do this unless we get the -- we negotiate with the environmental agencies, right? Is that correct?

MR. HALL: Well, that's the permitting process, yes.

COMMISSIONER KLUCIK: Right. So it's -- the permitting process for the county required you -- in order to get your permit, you had to go to the Fish and Wildlife and then negotiate with them, and they came up with this solution, and so you're -- the approval and the permitting process was dependent on your compliance with this agreement with the Fish and Wildlife?

MR. HALL: Permit compliance for the Corps permit was dependent upon that. The

county approvals, I don't believe, had any mention of that in it. It was not part of any of the county approvals.

CHAIRMAN FRYER: Commissioner, may I interrupt you, sir, for just a moment? I want to check with the court reporter. Do we need a break now, or can we go to 1?

THE COURT REPORTER: I'm fine.

CHAIRMAN FRYER: One is fine, okay. Thank you.  
I'm sorry, sir. Go ahead.

COMMISSIONER KLUCIK: Okay. So in order to be able to develop this land, this Estancia, you had to jump through whatever hoops for the permitting process, and as part of that, you had to approach Fish and Wildlife, correct, which is a state agency?

MR. HALL: No. Fish and Wildlife Service is federal.

COMMISSIONER KLUCIK: Is a federal agency, okay. And you were required to do that because the county was requiring you to do that, or who was requiring you to do that?

MR. HALL: It's part of the 404 permitting process with the Corps of Engineers. It's part of the federal --

COMMISSIONER KLUCIK: Okay. And is the 404 compliance a requirement of the county process?

MR. HALL: No, sir.

COMMISSIONER KLUCIK: No. Okay. So the county could care less whether or not you go through your 404?

MR. HALL: I would not say --

COMMISSIONER KLUCIK: They don't even ask about it?

MR. HALL: I wouldn't say they would care less. They ask if we --

COMMISSIONER KLUCIK: Will they approve a project if you haven't shown that you've gone through that 404 process?

MR. HALL: If there's no wetlands, yeah, then you don't need a 404. If there are wetlands, then they require you to show that you have the permits in hand before they will let you start --

COMMISSIONER KLUCIK: And is this -- does this particular land -- did Estancia have wetlands?

MR. HALL: It did have wetlands, yes, sir, but --

COMMISSIONER KLUCIK: So it was required?

MR. HALL: But none of those wetlands were being impacted under the development that's underway right now.

COMMISSIONER KLUCIK: All right. Did you have to get -- in order -- because this was wetlands, Estancia had wetlands on it, in order to have the county approve that development, did you have to approach the federal government environmental agencies and show that you had gone through that process before the county would approve it because it had wetlands on it?

It's a pretty straightforward question. I'm trying to pierce through some of the dancing that's going on.

MR. HALL: I don't -- the county requires me to show that we have the Corps permit when we -- when --

(Simultaneous crosstalk.)

COMMISSIONER KLUCIK: Right. And you couldn't have gotten the Corps permit without this negotiation; is that right?

MR. HALL: The negotiation -- we couldn't -- I mean, without -- without addressing --

COMMISSIONER KLUCIK: Was part of the permitting process with the federal agency -- was part of that that you walked through this and you said, okay, yeah, you can -- we'll approve that if you do this conservation covenant? I think the answer is yes, right?

MR. HALL: In this case, the requirement to address the panther impacts was being satisfied through a mix of purchase of PHUs and these covenants.

COMMISSIONER KLUCIK: Right, okay. So -- so in order to get what you needed to go back to the county and say, look, we did what we had to do with the feds, that was the process. So that -- the approval that the county did was you have to go make sure the feds are satisfied. And so is your argument today that the feds don't care anymore, and they're fine with what you're doing and the changes you're making?

MR. HALL: No.

COMMISSIONER KLUCIK: Because what I don't understand is --

COMMISSIONER VERNON: Wait, wait, wait, wait, wait. I'm so sorry to interrupt, but I would prefer the questioning continue without Mr. Yovanovich stepping in.

MR. YOVANOVICH: Well, these are legal issues.

COMMISSIONER VERNON: Very much so.

MR. YOVANOVICH: They're legal issues.

(Simultaneous crosstalk.)

COMMISSIONER VERNON: Very much so. I prefer no --

CHAIRMAN FRYER: Mr. Yovanovich, you'll have an opportunity to bring your -- to repair any damage you feel has been done.

COMMISSIONER KLUCIK: Okay. So what I'm trying to get at is, you had a process. You did some negotiation. You made a commitment. You never followed through with your commitment, but that commitment was something that was required -- the negotiation and committing to that was required for the county to give you -- you know, to finish your permitting process.

MR. HALL: Right. But you're saying we never followed through with the commitment. The covenants are on the property now.

COMMISSIONER KLUCIK: Well, right, five years later.

MR. HALL: And there is a reason --

COMMISSIONER KLUCIK: Oh, five years later, and with something -- I don't know if it was anticipated that there would be this carve-out for 29 to do whatever the hell you wanted on it. Because it's -- like, what is a covenant that says, oh, we can build a five-story 750-unit building? That doesn't seem like a conservation easement to me, does it? Is that a -- is that a -- is that a -- is that what most people would think is a conservation easement that, well, you're going to conserve this, but, if you feel like it, you can build five-story buildings with 750 units, but it's -- you know, it's got a conservation easement on it?

MR. HALL: I'm sorry --

COMMISSIONER KLUCIK: I'm trying to --

MR. HALL: Have you read the covenant?

COMMISSIONER KLUCIK: Common sense. Common sense. I just want a -- common sense -- my frame -- my question is very reasonable. It's how Joe Schmo would think about it. I'm Joe Schmo, and I just want, like, a reasonable answer. I don't want, like --

MR. HALL: I feel like you're asking the same question. I thought I'd answered it several times.

COMMISSIONER KLUCIK: I don't -- well, I don't think so, but --

MR. HALL: Well, I mean, restate your question then.

COMMISSIONER KLUCIK: So the conservation easement or conservation -- what is it called -- covenant says this land is conserved unless you don't want to conserve it. That's essentially what it says, and that's -- that was the conservation -- that was what you agreed to in 2017. That's what --

MR. HALL: That is --

COMMISSIONER KLUCIK: That's what all the parties thought you were doing.

MR. HALL: That is not what it says. Have you read the covenant?

COMMISSIONER KLUCIK: No. Do you want to read it to me?

MR. HALL: Sure.

COMMISSIONER KLUCIK: Great. This is the 29 one? And I'd also like to know the documentation of 2017, what the requirement was. So you never did it until five years later, but what did you actually agree to in order to get the approval of Fish and Wildlife so that you could go back to the county and say "we've complied"? Did you catch that question? Because I know you were trying to find the --

MR. HALL: We agreed to preserving that land.

COMMISSIONER KLUCIK: Okay. So is building -- is building a five-story building with 750 units, does that seem like that's what the parties thought could happen on that land in 2017 when you made that agreement?

MR. HALL: No, sir.

COMMISSIONER KLUCIK: Okay. So you never did the thing that you were -- you'd negotiated to do. You went back and said, "We got our approval from the feds," and you gave it to the county so that the county would approve your thing, and then you never did what you had agreed to.

MR. HALL: I guess by you saying "never," you just mean for --

COMMISSIONER KLUCIK: Five years later, yes, which doesn't seem like, again, that that was contemplated when you made the agreement, but --

MR. HALL: And again --

COMMISSIONER KLUCIK: And what you're -- I guess the argument -- again, I've said this before, but, ultimately, the agency that we negotiated with ultimately agreed to this thing that we did in 2022, so it doesn't matter. So my concern is kind of moot.

MR. HALL: The agency was aware of what we were doing.

COMMISSIONER KLUCIK: FWS agreed with, ultimately, what the easement was, or the conservation covenant was?

MR. HALL: They agreed with the conservation covenants, yes.

COMMISSIONER KLUCIK: Right.

MR. HALL: And as you can see on here, all it does is it gives us the ability to modify the biological opinion to use the property as may be modified for additional housing related to that. So it doesn't say we're going to build, you know, how many houses or whatever. It gives us the ability to go back to them to request the removal of this in order to do something else. That's all it is. And if --

COMMISSIONER KLUCIK: Okay. Where's the original language from 2017 that showed what you had originally agreed to do?

MR. HALL: There is no -- the original language in 2017 was to give it to the park. That was what was in my management plan that's a part of the biological opinion.

COMMISSIONER KLUCIK: So the approval by the Fish and Wildlife agency in 2017, they made a demand of you -- or one of the requirements for them to sign off on it was that you would agree to have this conservation covenant on all of 29 -- or all of the -- that area?

MR. HALL: The agreement was to preserve the land in whatever means that entailed: Conservation easement, a covenant, donation to another entity.

COMMISSIONER KLUCIK: And you ultimately -- you ultimately didn't do that?

MR. HALL: Well, the land is still there. It hasn't been impacted.

COMMISSIONER KLUCIK: Okay. But you ultimately -- you ultimately didn't preserve it. You signed something that said, if we -- you know, if later on we feel like, you know, the situation is right, we'll use it. Which to me is -- like, when I think something has a conservation easement or covenant, it seems like that building a five-story 750-unit building is not contemplated by that.

MR. HALL: And I don't disagree with you. I don't disagree with you on that.

COMMISSIONER KLUCIK: Okay.

MR. HALL: But the intent that has been met is that currently those lands are under a conservation covenant. They are preserved. And unless the agency that holds the ability to modify that, in this case the Corps of Engineers, Fish and Wildlife Service, if they don't agree to allow us to modify that, it doesn't come out.

COMMISSIONER KLUCIK: So right now that -- you don't have that approval. So the exception that you've highlighted here -- so you could develop this land, this 29, if -- if the analysis in that highlighted area goes in your favor and they readjust and say, "Yeah, we've reevaluated it, and now you can go ahead and do it." Has that process happened yet, or is that in process or --

MR. HALL: There's two things that would have to happen. They'd have to agree to allow us to amend the panther mitigation that was provided for the existing development. They'd also, then, have to approve whatever impacts may be associated with whatever development gets proposed on this property. So it's kind of -- it would be kind of a two-step process.

COMMISSIONER KLUCIK: And your timeline before, did that indicate that it hadn't been approved yet or --

MR. HALL: This -- yeah. There was a -- there was a letter that I was provided by Fish and Wildlife Service March 6th, I believe. For some reason the letter's dated in January, but we never received it until March -- where they -- the submittal that I had made to modify the BO, they declined to process at that time. And they cited several reasons. The biggest one was that because the Corps permit had expired, there was no nexus for their involvement under a Section 7 consultation. It has to be done through -- Joe can probably explain this better than me, but it has to be done through a -- some kind of federal action. Because the Corps permit had expired, the Fish and Wildlife Service basically said that they were not able to process it at that time, and the direction we were given was that we would have to come in for a Corps permit application in order for them to look at it again.

COMMISSIONER KLUCIK: And so to the extent anyone wants to assert that, well, you never did -- you know, you waited five years to follow through with what you had negotiated with Fish and Wildlife, well, that's between the landowner and Fish and Wildlife, and that's how you resolve it, between those two parties. And as long as that gets resolved, then there's nothing -- no commitment was made to anybody else, whether it was the county -- regarding preservation, whether it was the county or anybody else, that's really a

matter for the petitioner and the federal agency to work out.

MR. HALL: To comply, correct.

COMMISSIONER KLUCIK: And so whether it doesn't smell right -- a lot of the things don't smell right that are lawful and legitimate, you know. And so that's the legal argument, which is really -- whether it smells right or not is not really how I'm -- you know, how I'm charged with making my decision as a commissioner, so...

MR. HALL: I try to stay as far away from legal arguments as I can. But the -- yeah, I mean, the agreement and all of this coordination was between the agencies that were party to it. I mean, this didn't involve the county at all.

CHAIRMAN FRYER: Commissioner, I've got five other people signaling. Thank you very much.

COMMISSIONER KLUCIK: I appreciate your indulgence to go through all that.

CHAIRMAN FRYER: Thank you. Starting with Commissioner Vernon.

COMMISSIONER VERNON: Yeah, actually, I have a question, I think, for Rich.

MR. YOVANOVICH: Oh, thank God. Don't run away.

COMMISSIONER VERNON: Just as a really common-sense matter, why wouldn't we tell you to go get your approvals from Army Corps and Fish and Wildlife and then come back to us with this?

MR. YOVANOVICH: Because you legally can't. You can't. You can't condition an approval of a PUD amendment on my getting state and federal permits.

COMMISSIONER VERNON: But I can deny it --

MR. YOVANOVICH: You can deny it.

COMMISSIONER VERNON: -- because you don't have approval.

MR. YOVANOVICH: You can deny it.

COMMISSIONER VERNON: But I can deny it. I can't condition it.

MR. YOVANOVICH: Of course.

COMMISSIONER VERNON: So I can deny it because you don't have approval.

MR. YOVANOVICH: No.

MS. ASHTON-CICKO: Not really.

MR. YOVANOVICH: You can't deny it for that reason. Every project, Commissioner, if you look at the PUDs, it says, this approval is subject to you getting all the other required permits. Every project we ever come through.

So we still have to go -- on any other project, we've still got to go get a Water Management District permit. If applicable, you have to get an Army Corps of Engineers permit. So every project has that subsequent requirement.

We don't come with all of that first and then ask you, "Is it okay if we do a Growth Management Plan amendment or we rezone the property as applicable?"

MS. ASHTON-CICKO: So there's a statute that specifically addresses this. It's Section 125.022(5), and it reads, "For any development permit application filed with the county after July 1st, 2012, a county may not require, as a condition of processing or issuing a development permit or a development order, that an applicant obtain a permit or approval from any state or federal agency unless the agency has issued a final" action -- "final agency action that denies the federal or state permit before the county action on the local development permit."

And there are various sections of the Florida statute that do define development permit as a rezone.

COMMISSIONER VERNON: And they have not declined?

MR. YOVANOVICH: No.

COMMISSIONER VERNON: Okay. So what the other two lawyers -- I'm the third lawyer that has shared, I think, a similar view. The perception -- and you can respond to this. Perception is in 2017 you got approvals for, what was it, 18 and 19, with the promise of not developing Section 29, and, instead, having a conservation covenant over the entire parcel. That's the perception. "Hey, if you give me this, I'll do this," and we're now seven years later -- seven years later, and you haven't done it.

MR. YOVANOVICH: Not true.

COMMISSIONER VERNON: Well, that's what I want -- I'm saying, my perception is. So I'm giving you an opportunity to explain in your words how our perception is wrong.

MR. YOVANOVICH: Let me do that. First of all, the requirement to record or, as Tim explained first, try to give it to the park wasn't an obligation until construction started in Estancia, which I believe was around 2018ish. Taylor Morrison's the developer of Estancia, not my client. My client sold them the land, but Taylor Morrison is the developer.

So what ended up happening is we approached U.S. Fish and Wildlife Service and said, we want to consider, instead of putting 29 in preservation, taking either the -- initially, as he said, the entire farm field out. We'll reduce it down to 59 acres out because we want to consider doing an affordable housing project. So we were talking to the agency that imposed the initial requirement in the first place. We were not hiding the ball from them.

Eventually -- and I'm assuming -- we were talking back and forth and finally they said, "You know what, put the restriction in there first, and then let's talk about whether or not we can modify that restriction."

In 2022, finally the agency said, "Let's just get this of record." We got it of record. We were not hiding the ball. There was conversations occurring. We weren't saying, "Screw you; catch us."

We were saying, "Here's what we're thinking about doing." No different than if I'd have said to the county, "You know what, we had this permit condition. Do you want me to record it and then un-record it?" Because you can go back to an agency and say, "You've got a conservation easement on it. I'd like to take that out. Let's amend it, and I'll provide you X, Y, or Z as alternative mitigation." That's what we were doing.

But the thing we didn't do is we didn't record it first, because it becomes messy to then amend it. Eventually they said, "Record something." We recorded it with all the protections you need with something that says, if I get the permission from the people who benefit from this, I can amend it to delete. I don't have the unilateral right to just do whatever the heck I want. I've got to ask the beneficiaries of this for permission.

So we have not hidden the ball from anybody. We have done exactly what we said we were going to do. There were circumstances that I think make common sense. You're talking to the agency about, "Hey, let's modify this."

First of all, we didn't have to put all 600 acres into mitigation. We could have bought PHUs. Hindsight, we should have just bought the PHUs. But we didn't buy the PHUs. We said, "Okay, we'll do this mitigation by preserving, for Estancia, Section 29."

So we're saying, "We'd like to modify that." And as recently as -- I have it in my notes, but I don't have that page open. U.S. Fish and Wildlife said, "Sure" -- Tim hasn't gotten to this part of his presentation -- "Yeah, we'll modify it." Go buy I think it's 120 acres in -- is it Glades County?

MR. HALL: Glades County.

MR. YOVANOVICH: "Go buy 120 acres in Glades County for a million six, and we'll release this covenant." Now, a million six is nowhere near what it would have cost to buy the Panther Habitat Units.

So we said, "Wait a minute. We want to talk through this process," and we're talking through this process with U.S. Fish and Wildlife, the Army Corps of Engineers. We now know the Army Corps of Engineers is back in charge. We didn't know who to talk to, candidly, at some points. Now we know, so we're going to go through this process.

And if they ultimately say no, then if I get my -- if I get my rezone approved and I can't get the federal permits, guess what? I don't build the project, just like any other project that I bring in front of you.

If I don't get the project -- if I don't get the permits I need to build the project, I don't build the project. But we want to get the approval because this is a good project, and we want to deal with the U.S. Fish and Wildlife Service about getting their permission -- not to do willy-nilly whatever we want. Getting their permission to modify this covenant. We've been totally above board -- totally above board with every agency.

COMMISSIONER VERNON: But the first -- as I hear the evidence, the first time you guys talked to either one of these agencies about modifying this would have been either 2018 or 2019, correct?

MR. YOVANOVICH: Correct.

COMMISSIONER VERNON: Okay. When was the first record evidence that you guys wanted to do affordable housing?

MR. YOVANOVICH: I need to go back.

COMMISSIONER VERNON: Just give me a year, roughly.

MR. YOVANOVICH: I've got to go back and look at notes. I can't remember if it was '19 or '20.

COMMISSIONER VERNON: Okay.

MR. YOVANOVICH: I think we started this process in '21.

COMMISSIONER VERNON: And the agreement and concept was in 2017?

MR. YOVANOVICH: Correct.

COMMISSIONER VERNON: Okay. Thanks.

CHAIRMAN FRYER: Commissioner Sparrazza.

COMMISSIONER SPARRAZZA: Thank you, Mr. Chairman.

Actually, a question for Mr. Hall, if you could, please, and bring up your presentation off of the visualizer.

Thank you, Mike.

Mr. Hall, if you could -- and I'm not trying to put you on the spot. I'm just trying to understand. Could you explain the last three dates, the June 2nd, June 22nd, and then the March 6th of 2024 and what those three bullets mean, especially as it pertains to the last line that says "unable to process the modification requested." I'm concerned with -- to me, not to be funny, but the scary word, "crocodile." Thank you.

MR. HALL: So that's actually something else that kind of changed in the course of this. When we originally permitted this back in 2017, the crocodile was not an issue in that area.

In 2020, there was some -- I believe it was two crocodile nests that were located off of the Curcie Road that was brought up earlier. There was Curcie fill pits, the lakes that are kind of to the south of Section 29. In that area, there was a couple of crocodiles that nested. And



nesting in the county isn't a -- isn't a new thing. Around the Marco airport, it's been happening for years. But the difference is that these actually nested successfully. They had young crocodiles that hatched that were documented.

So after we had had the submittal in, Fish and Wildlife had mentioned that now with this new nesting that there was some concerns regarding whether or not there might be crocodiles within the Section 29 property. So we did a follow-up survey or went out and looked for crocodile nests and nesting activity and verified that within the area that we were talking about, there was no -- no nesting happening.

CHAIRMAN FRYER: I need to clarify that -- if I -- and correct me if I'm wrong, but we've seen a letter dated January 31st of 2024. I think that's one and the same as the one that you're referring to as March 6th, is it not?

MR. HALL: And that's what I said. The letter is dated January, but we never received it until March 6th, and then I received it -- the copy I received on March 6th was actually not signed, and he sent us a signed copy on March 7th.

CHAIRMAN FRYER: Okay. But I wanted to connect that, because I don't have any record in my files of anything happening on March 6th.

MR. HALL: That was when that letter was actually transmitted to me.

CHAIRMAN FRYER: Okay. Thank you. Anything else, Commissioner?

MR. HALL: And your question about "unable to process the modification at this time."

COMMISSIONER SPARRAZZA: Yes, sir.

MR. HALL: That paragraph that begins, "Finally the Corps' permit," that's what I had been talking about earlier where the permit is the federal action that allows Section 7 consultation to actually occur under the Endangered Species Act. And they noted that because the permit's now expired, there's no ongoing discretion or ability for them to reinstate under their -- under their regulations.

So modifying the project and the BO in context with that original permit is not possible. So what he was saying there is they couldn't process it as a Section 7 consultation given that there was no actual active federal action for them to act under. So we were going to have to make a new Corps permit application, and then they could review it at that time.

COMMISSIONER SPARRAZZA: Very good. Thank you.

CHAIRMAN FRYER: Vice Chairman.

COMMISSIONER SCHMITT: Yeah. I just want to, again, clarify, because there's, again, confusion and obfuscation.

For clarity, the U.S. Fish and Wildlife is not a permitting agency. They are a -- when the Army Corps of Engineers receives an application for a 404 permit, they go out to all agencies. U.S. Marines and Fisheries and U.S. Fish and Wildlife, and other -- all various aspects of the -- either the Clean Water Act or the Endangered Species Act.

In this case, U.S. Fish and Wildlife is a consulting agency. The issuing agency of the permit was the U.S. Army Corps of Engineers in 2017.

Again, complicating the issue, just for edification, it was, I believe, what, now, four years ago -- or three or four years ago when the state took over the 404 process. That has finally gone through litigation. I think it was -- Tim, was it 2021 when the State took over?

MR. HALL: It was December. It was Christmas Day 2020.

COMMISSIONER SCHMITT: 2020.

MR. HALL: That was the gift of the Corps to the State.

COMMISSIONER SCHMITT: And the Corps said, "Thank you very much. I'm done

with this. Have fun. I don't want to ever see this again."

There were several lawsuits filed, and the judge just ruled this past week that closed the case, found the State of Florida in violation of the EPA requirements for the permitting process. The 404 process is back in the Corps' hands officially. The Corps is not prepared to take it over yet because they pretty much laid everybody off and pretty much closed their offices for the -- for the wetland permit process.

So that was part of this whole -- I looked at Tim's dates, and it's pretty clear this was part of the whole process. But, again, the U.S. Fish and Wildlife is a commenting agency. They have to go back to the issuing -- the applicant who filed with, at that time, Corps of Engineers. It then went to the State. The State now has the application back.

But regardless, another -- just for clarification again, as far as the permitting process -- and I want to make -- because Mr. Yovanovich stated this, but the rezoning and the ability to get a Corps permit are mutually exclusive. And I explained this to the residents when I met with them as well. It is mutually exclusive. I can go in today and ask for a rezoning, but if I can't get permits -- this is a wetland area. I've been back there. I know it's a wetland. There's jurisdictional wetlands. Tim knows that as well.

They're going to have to go through a whole new Army Corps process, a 404 process, go through all the consultation process, and all the agencies get to comment and review on this. But in this, as well, in order to proceed with the development, they're going to have to amend the biological opinion that tied all of the restrictions and covenants and requirements, and that was in the biological opinion.

So regardless of whether a rezoning is approved, the county cannot issue a development order until they then know and get the heads-up from the applicant that all permitting has been -- all federal permitting has gone through the federal permitting process and the federal permit is approved.

CHAIRMAN FRYER: Vice Chairman.

COMMISSIONER SCHMITT: And then they can -- then they can issue a local development order. Yes?

CHAIRMAN FRYER: Pardon me, sir, but we've got nine minutes, and I've got three commissioners that probably want to be heard before lunch, if you don't mind.

COMMISSIONER SCHMITT: Well, I do mind, as I was talking.

CHAIRMAN FRYER: Okay.

COMMISSIONER SCHMITT: Thank you very much. Then let's take our break now.

CHAIRMAN FRYER: No. We'll continue. Go ahead.

COMMISSIONER SCHMITT: Well, I was trying to explain the process, and the process does require a permit before they can proceed. And so there was some just -- I'm trying to clarify the confusion. And the U.S. Fish and Wildlife is a commenting agency. It has to go back to the Corps. The Corps then has to issue the final approval order.

I'm done.

CHAIRMAN FRYER: Thank you. Commissioner Schumacher.

COMMISSIONER SCHUMACHER: Chair, if I may, I'd like to hold my question till after lunch.

COMMISSIONER KLUCIK: He's holding till after lunch.

COMMISSIONER SCHUMACHER: Can I hold my question till after lunch, Chair?

CHAIRMAN FRYER: Of course.

Commissioner Shea.

COMMISSIONER SHEA: Well, I'm not an attorney, and all this permitting process I don't want to fully understand. But I find it hard to believe that I can vote on something until the covenants are released. To me it's like a lien on a land. You can't buy the land because there's a lien on it. You have to lift the covenants before we can vote on the project. It makes no sense to do one ahead of the other.

MR. YOVANOVICH: And I'm sure Heidi will jump in. But you don't enforce private covenants. That's not your job. You don't enforce them. You look at, from a planning perspective, do I meet the Growth Management Plan? Do I meet the rezone criteria? And if I do, then you say, "Okay, I'm going to approve it."

There may be other legal impediments to my actually getting to come out of the ground and build a project, but one of them isn't, I don't have to -- I don't have to clear title issues for that to happen. That's something I will have to address in the future. We are here to deal with the legislative action of whether or not amending the Growth Management Plan and the zoning action of amending the PUD is appropriate.

We are going to go through this process with the right agencies to hopefully deal both with Estancia, because we have to, and then deal with the permitting for the impacts on Section 29 because they're -- they're distinct and they're required. But that's the process we do all the time.

I mean, there are other projects that I brought to you that have got deed restrictions on them, and I have to deal with those deed restrictions. The Board of County Commissioners and the Planning Commission don't address those title issues.

MS. ASHTON-CICKO: If the easements were county easements in favor of the Board of County Commissioners or the public in general, they'd have to go through a vacation petition process, and those items would be heard. The easement vacation would be either before the Board hearing on the rezone or it would be at the same time.

CHAIRMAN FRYER: Anything further?

COMMISSIONER SHEA: No, sir.

CHAIRMAN FRYER: Okay. Commissioner Vernon?

COMMISSIONER VERNON: Yeah, I just -- I understand what you're saying.

COMMISSIONER KLUCIK: I had my button pressed.

COMMISSIONER VERNON: I won't take very long, Robb.

CHAIRMAN FRYER: It was canceled.

COMMISSIONER KLUCIK: I'll go after you.

COMMISSIONER VERNON: I won't take very long.

So, Paul, I understand it. It troubles me that there was effectively a deal in 2017. You know, one of our core principles in my law firm is "Do what you say." And now in 2018 or 2019 or 2020 you come up with affordable housing. Oh, we changed our mind. Times are different, blah, blah, blah, whatever. But your attorney is telling you that is -- and one of your -- and the Vice Chair is telling you that's not the way it works. So I think we're -- we've got to be careful we're not going beyond our jurisdiction or contrary to the statute and advice of counsel. So I understand, but I think that's where we are.

CHAIRMAN FRYER: Thank you.

MS. ASHTON-CICKO: And when you get back to -- at the end when you're, you know, looking at making a motion and voting, they are two different standards for the Growth Management Plan versus the rezoning. The Growth Management Plan requires, you know, like, a reasonable purpose as to, you know, whether you vote yay or nay. So the standards are

different.

COMMISSIONER VERNON: Can you say that one more time?

MS. ASHTON-CICKO: So a Growth Management Plan amendment is a legislative decision, so it's really -- you know, you can either approve it or not approve it based on kind of like a -- just acting reasonable, is what I'm going to --

COMMISSIONER VERNON: Go ahead.

MS. ASHTON-CICKO: You know, so you want to find some kind of public purpose. As to the rezone, there's burdens to meet certain criteria, and once the applicant meets it, then it's more difficult for the county to -- to say no, to vote a project down.

COMMISSIONER VERNON: So Paul would be on more solid ground on the GMP side than the rezone side?

MS. ASHTON-CICKO: Correct.

CHAIRMAN FRYER: Thank you.

Commissioner Klucik.

COMMISSIONER KLUCIK: Yes. I would like to have a copy of your timeline and the document -- I think it was the 2017 document that had the paragraph highlighted in yellow as well as the letter that you just put up. I guess it was the January letter.

And I think in the interest of time -- I might have questions when I take a closer look at those myself. I might ask you off-line and disclose that, or I -- you know, depending on what I -- after looking at them, I might ask questions under -- as testimony, but I don't want to ask the questions now.

CHAIRMAN FRYER: Is that something that can be forthcoming during lunch?

MR. YOVANOVICH: I know you said you wanted the document that I put up on the visualizer.

COMMISSIONER KLUCIK: Right.

MR. YOVANOVICH: I've got that. We can make a copy of --

COMMISSIONER KLUCIK: That letter and then --

MR. YOVANOVICH: I have a copy of the letter and, yes, we can make all that -- if we can get access to a copier.

MR. HALL: The only thing -- the only thing I don't have is a copy of the timeline. That was just on the --

COMMISSIONER KLUCIK: I can just take a photo of it with my camera, then, if you can call it up.

MR. YOVANOVICH: I've got it right here, if you want to just take a copy when you're done.

CHAIRMAN FRYER: We've got two more minutes. I have a quick question. It was my understanding that in 2022 there were three conservation covenants. Am I mistaken?

MR. YOVANOVICH: There's two.

CHAIRMAN FRYER: There's just two. Did one of them, basically, spec in this project?

MR. YOVANOVICH: Spec in? Well, there's the one I put up on the visualizer that says -- we have a covenant that says we want to be -- if we could convince you or persuade you that we got a better -- a better option, we can amend it. That's the one I put on the -- it didn't spec in, but it shows -- it's applicable to -- the legal description -- maybe this is what you're asking. The legal description for that document is consistent with the legal description of what we're asking today. Is that what you're asking?

CHAIRMAN FRYER: I think so, but I'm going to have to think about it. Somehow -- and I have to look back at my notes. I had it in my notes somewhere that there were three conservation covenants.

Mr. Bosi, am I wrong on that?

MR. BOSI: Three sounds -- as far as I can recall, I think it was three, but I'll have to --

CHAIRMAN FRYER: Okay. Your mic's not on. But as far as you can recall, there were three?

MR. YOVANOVICH: I think I know the answer.

CHAIRMAN FRYER: Say again.

MR. YOVANOVICH: I think I know the answer. For the wetlands portions, which is not this area, there is -- there's a covenant, and then there's this area where it's Section 29, there's only two.

CHAIRMAN FRYER: Okay. Thank you. All right. It's 12:59. We will be in recess until 1:30. Thank you.

(A recess was had from 12:59 p.m. to 1:30 p.m.)

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

CHAIRMAN FRYER: Thank you, Mr. Bosi.

Ladies and gentlemen, let's reconvene, please. Please take your seats.

COMMISSIONER KLUCIK: Mr. Chairman.

CHAIRMAN FRYER: Yes. Go ahead, Commissioner Klucik. I've got somebody ahead of you, if you want to speak, though.

COMMISSIONER KLUCIK: Well, I want to disclose.

CHAIRMAN FRYER: Oh, go ahead. Go ahead.

COMMISSIONER KLUCIK: I did look at those three documents that I had mentioned, and I did talk with the petitioner, and I don't have any more questions. I satisfied my curiosity. But I wanted to disclose that ex parte --

CHAIRMAN FRYER: Part of your ex parte. Thank you very much.

I'm going to call on Commissioner Schumacher.

COMMISSIONER SCHUMACHER: Thank you, Chair.

Rich, I guess I'll start with you on this because we're kind of --

MR. YOVANOVICH: Sure.

COMMISSIONER SCHUMACHER: -- I don't want to say we're beating a dead horse, but we're kind of beating a dead horse.

MR. YOVANOVICH: Am I the horse?

COMMISSIONER SCHUMACHER: The declaration of covenants, it's stipulated where you had highlighted that the -- it had to be approved by US FWS. The March 6th letter -- I know Mr. Hall had said that -- he had summarized it saying that because the Army Corps of Engineer permit had expired, there was nothing they could do to weigh in on it.

The letter reads differently than that. If you read it, he kind of outlines, "You've got the first known location of crocodile reproduction on the West Coast of Florida within a mile. Then you've got removing 57 acres from the center of one of the preserve parcels is likely to significantly undermine the conservation value of the whole for the Florida panther. For the above reasons, we're unable to process the modification you requested," which goes back to state in the covenant that if US FWS doesn't approve, then they're not going to approve. Now you're into the Army Corps of Engineers.

My question is, when you look at these roadblocks that you have, when it comes to

development, if this passes the Planning Commission, what in God's name would be the timeline for you to get through that obstacle to even get a shovel in the ground?

MR. YOVANOVICH: Well, you know, two years.

MR. HALL: Two, three.

MR. YOVANOVICH: Yeah, probably two or three years.

COMMISSIONER SCHUMACHER: So it would be two to three years.

MR. YOVANOVICH: But that's probably pretty typical for an Army Corps of Engineer permit, right? We'll start the process, and then we'll get into the nitty-gritty.

COMMISSIONER SCHUMACHER: So my follow-up on that is, is there any possibility of doing something not this large within Fiddler's Creek? I know -- I know we kind of went over it and said there's a not really places to put it, but when we're looking at expediting affordable housing, three years to get a shovel in the ground plus, then, the buildout, I mean, you could be at five years before a unit is available for affordable.

MR. YOVANOVICH: And the short answer to your question is we can look to see if we can do a unit here or a unit there, but that's not going to crack the problem.

COMMISSIONER SCHUMACHER: That's not going to crack the problem.

MR. YOVANOVICH: But every project I've brought to you that we got, you know, through the process and got it approved, they're going through the Corps permit. That's why we always said to you, I wish I were coming out of the ground tomorrow, but I'm probably not coming out of the ground and offering my first, you know, unit probably for two to three years, every project we go through. So we're -- you know, and we're getting further behind.

COMMISSIONER SCHUMACHER: And if you were to use that Live Local Act, which kind of opened up the doors for something that was zoned for commercial within kind of that Fiddler's Creek district that you have --

MR. YOVANOVICH: Can't do it in Fiddler's Creek. It's a PUD.

COMMISSIONER SCHUMACHER: Got it. Thank you, sir.

CHAIRMAN FRYER: Thank you.

Go ahead, Mr. Yovanovich.

MR. YOVANOVICH: I lost my presentation.

CHAIRMAN FRYER: Vice Chairman.

COMMISSIONER SCHMITT: Yeah. Just to -- are we done with Tim Hall? Because I am going to excuse myself from the dais. I wanted to stay long enough so I could be here to clarify issues between the Army Corps of Engineers and the state and federal permitting process, Jamie -- in order to preclude any perception of influencing my colleagues, I think it's best that I no longer participate.

I just want to make sure, if there's any other questions regarding the federal permitting process, that I can provide based on my experience. But other than that, I think it's best that I no longer participate. So I think we're done with Tim, so --

CHAIRMAN FRYER: Planning Commission, any questions for --

COMMISSIONER SCHMITT: Any questions?

MR. YOVANOVICH: I'm not done with Tim, but yeah.

COMMISSIONER SCHMITT: Okay. Well, thanks.

(Commissioner Schmitt left the boardroom for the remainder of the meeting.)

CHAIRMAN FRYER: Thank you.

Go ahead, sir.

MR. YOVANOVICH: Well, I'm trying to figure out how to get my presentation back

up. Do I hit "podium"?

CHAIRMAN FRYER: While you're getting to that point, as a matter of the structure of the rest of the day, my plan is to have a midafternoon break at 3 p.m., and my earnest hope is that we can be concluded by 5. If necessary, we can reconvene on May the 2nd. But that's what my hope for a timeline is.

MR. YOVANOVICH: Well -- and we're at our conclusion slide. I don't -- I don't -- what I don't want to be lost on all of this is we went through -- I think we started this petition in '21. We went through two years of review by county staff by -- we had multiple NIMs, two NIMs. Modifications were made in response to questions and concerns by staff. And at the end of the day, your own experts are recommending approval of the DO amendment, the Growth Management Plan amendment, and the PUD amendment. There are two conditions for the PUD amendment that we have no objections complying with.

I want to make sure -- and I said this earlier, and I'm not sure if I said it clearly enough, the only amendment that we're asking for that is subject to the Growth Management Plan amendment is the Section 9 [sic] materials --

COMMISSIONER VERNON: Say that again.

MR. YOVANOVICH: -- the Section 29 materials. All of the other requests that I don't think -- so far I haven't heard any objections to are not related to the Growth Management Plan amendment so -- because I know Heidi brought up there's a different standard for looking at the GMP amendment versus the PUDA.

So with that, we are requesting that you allow us to continue on in this process, hopefully recommend approval to the Board of County Commissioners of all three petitions, and then we will slug it out with the environmental agencies on Section 29. And hopefully at that point we'll be able to move forward with an actual affordable housing project that's a significant affordable housing project. I've been involved in most of them, and none of them have had 225 income-restricted units associated with them.

The location of the project is adjacent to the urban area. It's the right location. It's an area planned for significant development.

And with that, unless you have any further questions of our team, we'll turn it over to county staff. I think it is -- they go next in the presentation.

CHAIRMAN FRYER: I have a few that I'd like to raise --

MR. YOVANOVICH: Absolutely.

CHAIRMAN FRYER: -- before you leave us. First of all, the Dan Summers issue and the Coastal High Hazard Area and the cots and the generator, I suppose it's within our purview, is it not, to evaluate whether -- whether those affirmative steps -- and I understand they're of value, but whether they are of sufficient value to -- for us to recommend approval in spite of this being in the Coastal High Hazard Area.

MR. YOVANOVICH: I think that you probably should defer to Mr. Summers, who's the expert, as to what is necessary mitigation related to what we're requesting.

I don't think that any of us is qualified to say, "Mr. Summers, you're wrong." He's the one who is responsible for dealing with every emergency issue we've ever had in Collier County, including every hurricane, and he's been here for quite a while. He knows what's best when it comes to this request.

I don't know that -- I'm certainly not qualified to argue with him. I don't know that -- I don't know that it's something that you-all can just say, we don't think -- "it's not enough," unless there's a legitimate basis for that.

CHAIRMAN FRYER: I understand your point of view. My concern is that a lot of this turns on common sense. And with a name like Coastal High Hazard Area, to balance that off with some generators and -- a generator and some cots -- I'm not saying those aren't meaningful, and I understand that they're going to be placed in areas where there would be areas for people to congregate in. So that I see, but I think -- I think it's an element of common sense involved that doesn't require a lot of specialized expertise to -- for us to say -- or for me to conclude, at least, that those are sufficient to allow for what is being proposed to happen in the Coastal High Hazard Area.

MR. YOVANOVICH: Well, I would request -- I don't know if he's available, but if you've got questions about how he came up with what he recommended, maybe Mr. Summers can come and address those. I don't know how many projects I've worked on where Dan has said, "This is the number." I know it's important to him that he has mobile generators.

CHAIRMAN FRYER: It's certainly a thing of value, no doubt about it.

MR. YOVANOVICH: Well, I think it's more than a thing of value, because the code requires -- the statute requires that we have to properly mitigate. That's his job. His job is to look at how many units are we proposing to put in the Coastal High Hazard Area and what is appropriate mitigation. That's what he does. He gave the expert opinion, and I don't think -- I'd hate to give it short shrift.

CHAIRMAN FRYER: Well, I'm not going to give it -- go ahead.

MS. ASHTON-CICKO: What Mr. Yovanovich is --

CHAIRMAN FRYER: Your mic is not on.

MS. ASHTON-CICKO: Sorry. Mr. Yovanovich is referring to the mitigation for the PUD.

MR. YOVANOVICH: Right.

MS. ASHTON-CICKO: You know, you've got the PUD and GMP where you evaluate these things and what changes you deem appropriate.

So, you know, the fact that this is in the Coastal High Hazard Area, it's identified in our Growth Management Plan, that's something you can consider when you go forward with the Growth Management Plan and determine whether you want to make an amendment or not. But as far as in the PUD, if you're addressing the hurricane evacuation and, you know, emergency services, then you can look at Mr. Summers' recommendation on mitigation and weigh that.

CHAIRMAN FRYER: Okay. So I was getting apples and oranges there, I guess?

MS. ASHTON-CICKO: I think so.

CHAIRMAN FRYER: All right. So a better way of saying it, then, would be, when we evaluate the Growth Management Plan --

MR. YOVANOVICH: Sure.

CHAIRMAN FRYER: -- we can consider the overall effects of this development in a Coastal High Hazard Area, and the mitigation that's been offered really is not directly related to our consideration of the GMPA. Did I say that right? Not quite.

MS. ASHTON-CICKO: Yeah. The first part was accurate, and the second part -- yeah, I mean, the mitigation, you can consider it as part of the GMP, but when you're evaluating the criteria for the PUD, you're looking at the mitigation, so it's a different standard. It's a different review.

CHAIRMAN FRYER: Okay. So the Summers mitigation is more of a PUD issue rather than a GMP issue?

MS. ASHTON-CICKO: I think that can be said.



CHAIRMAN FRYER: Okay. Thank you.

All right. Then the other thing that I wanted to put on the record here, at the risk of repetition, we've talked about the biologic opinion of 2017, and there are some specific provisions in it that I want to give you, Mr. Yovanovich, and your client an opportunity to discuss if you wish, and I'll just go through them right now.

These are -- these are some of the items that were contained in this -- in the Department of Interior that I think add up to the essence of the commitment that's been referred to. Did you want to say something before I go ahead?

MR. YOVANOVICH: No. I want to wait -- my guess is this is probably going to be more questions that Tim's going to be more familiar with than me. That's why I asked him to come up.

CHAIRMAN FRYER: Oh, that's fine. All right.

Okay. First of all, the preserve areas will be placed in a conservation easement or other equivalent deed restriction with inspection, enforcement, and approval rights granted to the Corps and the Service.

Next, the applicants have agreed not to begin construction on the project until a conservation easement has been placed on the preserve lands.

Next, the Corps shall ensure the preservation sites will be managed in perpetuity.

Next, the applicants will fund the perpetual maintenance and monitoring of the 606.8-acre off-site preserve area.

Next, the conservation easement for these areas will be filed and recorded within 90 days prior to construction authorized by Permit SAJ201500853.

So first of all, just to authenticate what I read -- and I guess it's Mr. Hall -- were these points included in the 2017 finding of the federal government?

MR. HALL: I don't have it in front of me, but those sound correct, yes, sir.

CHAIRMAN FRYER: Okay. They sound correct. All right.

Any other comments you want to make about these commitments?

MR. YOVANOVICH: Other than we -- other than we fulfilled them.

CHAIRMAN FRYER: That you fulfilled them?

MR. YOVANOVICH: Yeah.

CHAIRMAN FRYER: Well, then let's go through them, and please tell me how you've fulfilled them.

The conservation easement or equivalent deed restriction, how have you -- on the preserve areas, how have you fulfilled that?

MR. YOVANOVICH: The covenant's there.

MR. HALL: The covenants are in place.

CHAIRMAN FRYER: And the covenants, though, would permit this development?

MR. YOVANOVICH: No, they do not. I put -- I put up for you again -- and I'll do it again. What the covenant says is we could go talk to the U.S. Fish and Wildlife and the Army Corps of Engineers, and if they choose to approve development, we can modify this covenant. It does not approve our going forward with what we're asking for today.

CHAIRMAN FRYER: But you haven't complied with these covenants?

MR. YOVANOVICH: Do you have evidence that we haven't? What have we not complied with?

CHAIRMAN FRYER: Your testimony.

MR. YOVANOVICH: Tell me what my testimony was that I said we didn't comply

with these covenants.

CHAIRMAN FRYER: Tell me how you have.

MR. YOVANOVICH: I required -- everything you just said, we've done. What have I -- no, I'm not going to -- if you're going to say we haven't done it, tell me what we haven't done.

CHAIRMAN FRYER: Let's start with the preserve areas.

MR. YOVANOVICH: They're part of the covenant.

CHAIRMAN FRYER: Okay. And those preserve areas in question are what?

MR. YOVANOVICH: I'm sorry?

CHAIRMAN FRYER: The preserve areas that are in question are what?

MR. YOVANOVICH: They are in Section 29, and they are part of this covenant.

CHAIRMAN FRYER: Okay. And so how does -- how does building this development comply with what I read?

MR. YOVANOVICH: I have to -- I have to modify the covenant as the covenant says. If I don't get a modification, I don't get to move forward.

CHAIRMAN FRYER: Well --

MR. YOVANOVICH: I don't understand -- where does it say I can't come and ask them for an amendment?

CHAIRMAN FRYER: Well, interestingly, the January 31st letter seems to say the matter's closed from --

MR. YOVANOVICH: It says it was premature, the wrong process in front of us; you need to bring a different permit.

CHAIRMAN FRYER: The word "premature" isn't in there, is it?

MR. YOVANOVICH: I'm telling you what it means. It says it was the wrong time to ask for the request.

CHAIRMAN FRYER: Yeah. Well, English is my mother tongue.

MR. YOVANOVICH: Mine, too.

CHAIRMAN FRYER: And I did not see that word in there. And, in fact, also it was paraphrased to say, "at this time." The words "at this time" are not in there either.

MR. YOVANOVICH: You know, I'm going to go through the process, and I'm either going to get an amendment or I'm going to get a new permit or I'm not going to be able to move forward with the project. There's nothing in this covenant that says it can't be amended.

CHAIRMAN FRYER: Well, I'll continue with this but first, Commissioner Klucik.

COMMISSIONER KLUCIK: Thank you, Mr. Chairman.

I think on point, I think we had testimony -- and if we didn't, that was the conversation, and maybe it can become testimony -- from the petitioner that subsequent to receiving this letter, they have talked -- did you talk to Mr. Carey or to his office, or who did you speak with about the alternate resolution for mitigation?

MR. YOVANOVICH: In fact, I've got an e-mail, and I'm happy to put it on the record that says, if you're willing to go -- paraphrase -- if you're willing to go buy this 120-acre farm that was on the market for a million six, I'll recommend you modify the --

COMMISSIONER KLUCIK: Which -- and the only reason I bring that up is that indicates to me that it -- this isn't as -- I read it as -- no, that was what I wanted to clarify when I went off-line, that I read this as a -- well, this seems like there's no way they're going to get what they want. And I think I've -- I'm very confident, based on what I've heard, that this isn't an absolute "no." This is exactly what he said it is. It's not clear from this letter, but his

testimony, I would -- you know, and I think the testimony of the -- the expert -- I can't remember your name, sir -- is that this conversation has ensued subsequently where they would get that biological opinion modified based on that change of mitigation.

CHAIRMAN FRYER: Okay.

MR. YOVANOVICH: And I just want -- for the record, I put the provision in the covenant that specifically says it could be modified.

COMMISSIONER KLUCIK: It specifically says what?

MR. YOVANOVICH: I can modify it. I can get it released if the parties agree. So if they said, "Thou shalt never come speak to me again," it would not have a paragraph like that in it.

CHAIRMAN FRYER: Commissioner Vernon.

COMMISSIONER VERNON: Yeah. I just -- your bullet points, are you reading from this document?

CHAIRMAN FRYER: I was reading from the 2017 biologic opinion.

COMMISSIONER VERNON: Oh, okay. What was the second bullet point? Did you cover -- you ran through them.

CHAIRMAN FRYER: The applicants have agreed not to begin construction on the project until a conservation easement has been placed on the preserve lands. That was the second point.

MR. YOVANOVICH: And we went through the discussion that we had where we were communicating with U.S. Fish and Wildlife Service about the potential to modify the mitigation related to the Estancia project that ultimately they said, "Record the covenant," and we did.

COMMISSIONER VERNON: When did you begin construction on the Estancia project?

MR. YOVANOVICH: I have to check with -- I'll have to check with Taylor Morrison. It wasn't us.

MR. PARISI: We did not do any construction.

COMMISSIONER VERNON: I gotcha.

MR. YOVANOVICH: It wasn't us. We sold the land to Taylor Morrison.

COMMISSIONER VERNON: What year -- what year did they start construction?

MR. YOVANOVICH: Let me check. There's going to be time for a -- I don't know the exact date. I don't want to misspeak. It was before we recorded the covenant.

COMMISSIONER VERNON: Well, that says you can't do that.

MR. YOVANOVICH: I understand, and I told you we were talking to U.S. Fish and Wildlife.

COMMISSIONER VERNON: I understand, but --  
(Simultaneous crosstalk.)

MR. YOVANOVICH: We never -- just let's be clear, we never got a noncompliance warning from anybody.

COMMISSIONER VERNON: I got you. But the 2017 document he's referring to under his second bullet point, you did -- or Taylor Morrison began construction prior to the document that's on the screen?

MR. YOVANOVICH: Absolutely, absolutely.

COMMISSIONER VERNON: Okay.

CHAIRMAN FRYER: And the next point was, "The Corps shall ensure the

preservation sites" -- and I assume that includes 29, correct?

MR. YOVANOVICH: Keep reading. You didn't finish.

CHAIRMAN FRYER: Well, that's the second time I'm reading it, but I'll continue. "The Corps shall ensure the preservation sites will be managed in perpetuity."

MR. YOVANOVICH: That's what the document says.

MR. HALL: That's what the covenant says is that, unless it's released, they will be --

CHAIRMAN FRYER: No, it doesn't say "unless it's released." You're adding language.

MR. YOVANOVICH: It says we will maintain in perpetuity.

CHAIRMAN FRYER: That's what it says.

MR. YOVANOVICH: It says -- we will do that. If it gets released, it will no longer be maintained in perpetuity.

CHAIRMAN FRYER: Yeah. Okay.

"Then the applicants will fund the perpetual maintenance and monitoring of six oh -- 6.8 [sic] acres off-site preserve area."

Again, you're banking on the fact that you'll be released from that?

MR. HALL: No. There's actually a bond. There's a \$1.2 million bond that was submitted to the Corps and the Fish and Wildlife Service to show that they had the financial -- to give them the financial assurance that they would be under -- that work would be done, and that work has been ongoing for the last year or so.

CHAIRMAN FRYER: Finally it says, "The conservation easement for these areas will be filed and recorded within 90 days prior to construction."

MR. YOVANOVICH: I already told you we started construction while we were negotiating with U.S. Fish and Wildlife.

CHAIRMAN FRYER: All right. I want to ask you now about some provisions in Section 10.08.2.

MR. YOVANOVICH: Are you referring to the LDC?

CHAIRMAN FRYER: Yes, I am. Subsection F.3 says, "The possible creation of an isolated district unrelated to adjacent and nearby districts." Tell me why you don't think that's of concern.

MR. ARNOLD: Again, Wayne Arnold, for the record.

First and foremost, we're already part of the Planned Unit Development, and so we're not creating a new zoning district. We are subsequently amending the PUD zoning district.

CHAIRMAN FRYER: But it says, "Adjacent and nearby districts." It doesn't say the planning unit -- Planned Unit Development.

MR. ARNOLD: Well, to the north adjacent to Fiddler's Creek is also a Planned Unit Development. So this project is adjacent to another Planned Unit Development.

CHAIRMAN FRYER: Yeah. It's adjacent, and it's a near by -- it's near by to another district. And so I'm asking you if you believe that this -- this does not create an isolated district unrelated to what's happening in the north.

MR. ARNOLD: Absolutely, I do not believe this creates an isolated district.

CHAIRMAN FRYER: Okay. F.5, "Whether changed or changing the conditions make the passage of the proposed amendment necessary." Now, in staff's finding, one of the staff's reports having to do with this section of the LDC -- and keep in mind I read the word "necessary" -- staff found that this amendment is not necessary. Do you disagree with staff? Do you disagree -- do you doubt that staff found that?

MR. ARNOLD: I certainly can read what they identified in the staff report. My finding was that it is a necessity to amend the PUD in order to facilitate the construction of the proposed units.

CHAIRMAN FRYER: Okay. But when it says, "Whether changed or changing the conditions makes the passage of the proposed amendment necessary," I take it, then, that you disagree with staff which has concluded that it is not necessary.

MR. ARNOLD: I agree that it is necessary, an amendment. I think staff's looking at it from a little bit different perspective. But it is a necessary amendment for us to fulfill our desired amendment.

MR. YOVANOVICH: I will bet you, percentage-wise, staff always takes the position you could probably find another piece of property to do this. That's why it's not necessary. I bet you that is in almost every one of the staff reports you've ever seen. It is absolutely necessary, in our opinion, to address affordable housing in Collier County.

CHAIRMAN FRYER: Then Section F.8 says, "Whether the proposed change will create a drainage problem."

MR. ARNOLD: Yes. And our testimony on the record has been that we actually are going to improve the drainage conditions in the area by making the Auto Ranch Road improvements.

CHAIRMAN FRYER: Okay. That's all I have for now. Thank you.

Anyone else? Commissioner Schumacher.

COMMISSIONER SCHUMACHER: I'm sorry. Real quick. There wasn't any renderings of what the apartments would look like or sizes or what count you're going to do, one-bedroom, two-bedroom, three-bedroom.

MR. YOVANOVICH: And the answer is we don't know what the mix is going to be at this time. I can assure you that the developer of this project is also the developer of Fiddler's Creek as well as other projects throughout Pelican Bay and other parts of the county. It will be of that quality.

COMMISSIONER SCHUMACHER: Okay.

CHAIRMAN FRYER: Thank you. Anything else?

(No response.)

CHAIRMAN FRYER: All right. If not, then we'll hear from staff.

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

We have James Sabo, who did the Comp Plan review, and Nancy Gundlach, who did the zoning review, to provide a brief overview of staff's review, and then I'll have a couple comments as well.

CHAIRMAN FRYER: Thank you.

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

Before you are three proposals: The DOA, the GMPA, and the PUD for Fiddler's. This is the Growth Management Plan amendment. I'll cut to the chase.

The staff recommendation is approval. And we had a condition -- obviously, there was a ton of discussion about this condition. It is moot at this point. But to note, our approval is based on identified public benefits, the 30 percent affordable housing, the road and utility improvements, and the bus stop and bike rack.

I'll entertain any questions.

CHAIRMAN FRYER: Thank you. I've got a few, starting with the Coastal High

Hazard Area. Has staff looked carefully at the possible outcomes that would result from this development as it relates to the Coastal High Hazard Area? And if so, what observations or opinions do you have?

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

We have in the GMP. I always like to talk about the evaluations that this body does, the Board of County Commissioners does, and staff does in terms of evaluating proposals and evaluating the various components of your Growth Management Plan. Your Growth Management Plan has a number of different elements. Those elements have goals, objectives, and policies. They do not always complement each other. There's always a balancing act. There's an evaluation in terms of benefits and effect of any one decision in evaluation against all of those policies, objectives, and goals.

The GMP has contemplated the Coastal High Hazard Area and the protection of property and the need for evacuation within the Coastal High Hazard Area. The GMP also contemplates as a principle, as an underlying concept, the provision for adequate and affordable housing. So there is weights that go to each one of those decisions and each one of those provisions for protection.

The Board has made a policy decision in the sense that the affordable housing density bonus program is eligible in your Coastal High Hazard Area. If the Board felt that the need to protect property and provide for the evacuation was paramount that -- was paramount to the need for the provision of affordable housing, they would have had a policy, because there are policies where the affordable housing density bonus program is not applicable. The Urban Residential Fringe subdistrict is a good example of where -- the affordable housing density bonus can't be applied there. It can be applied within the Coastal High Hazard Area. So that evaluation has already been decided by the Board of County Commissioners.

So when we have a proposal such as this of affordable housing, a needed commodity, a needed commodity that we have done an inadequate job of providing over the years, when we have this type of a project against the need for the protections for property and evacuation, we rely upon the mitigation strategies that are developed within our Emergency Management Services to provide for attending to the evacuation, attending to the safety of the populations within the Coastal High Hazard Area, but we say that in that evaluation, it is more important -- of more paramount importance to be able to apply affordable housing density bonus because it's such a needed commodity.

CHAIRMAN FRYER: Is it a fair statement -- and you can recharacterize my words if you need to, but that -- staff's understanding of the directive from the Board of County Commissioners that basically workforce housing -- it's workforce housing uber alles.

MR. SABO: Above all else?

CHAIRMAN FRYER: Above all else. In other words, you've acknowledged, and I agree with you, that there can be competing and conflicting objectives to be served. We've got the FLUE, we've got the Land Development Code, and we've got other policies such as affordable housing, and I -- which I prefer to call workforce housing.

But it seems to me -- and correct me if I'm wrong -- that if a developer wishes to insert some level of affordable housing into their project, that most any project located almost anywhere is going to meet with staff's approval.

MR. BOSI: That -- on a concept, I would agree with that, but we also look at the transportation avenues. One of the longest things of why this program -- this application took three years to get to the Planning Commission, Transportation's been -- has been wrestling with

this program or this proposal based upon the condition of Auto Ranch Road, and the thought of putting an additional 300, or whatever the total p.m. trip counts were for this project on that road, that lack -- that there wasn't a secondary emergency access point, those were things that had to be -- had to be worked out, and it resulted in the applicant coming forward to provide for a substantial public benefit that the county has not programmed within -- within our five- or our 10-year CIE for these type of -- these type of improvements on Auto Ranch Road.

The other is compatibility. One of the things that I think has gotten I don't want to say "lost," but the recognition of not only staff's recommendation for an additional buffering along the northern boundary of where this apartment complex is going to go but the space, the distance. You're talking over 500 feet from the closest residence -- over 500 feet from the closest residence. Our Land Development Code within our RMF-16, which is our highest zoning district that allows for the type of density associated in RMF-16, says you only have to have half the height of your building. In this case, this building's 69 feet. Our Land Development Code would demand that this is 34 and a half feet to setback. They're 500 and some feet. So compatibility, I think, has been checked off as well.

So we recognize the need for affordable housing, but what we do, and we spend our time, is trying to promote and shape and address the compatibility measures that help bring a better fit from adjacent properties in what's being proposed.

CHAIRMAN FRYER: Compatibility is an important consideration, to be sure, but the word you use, "fit," strikes me as I'd like to pursue it a little bit. Because in my view, my personal view, affordable housing or workforce housing located anywhere in the county doesn't necessarily take precedence over all the other considerations, that it's -- it is an exercise of evaluating and exercising discretion to be sure that it is fully meaningful so as to justify trumping some of these other considerations.

And in this case, we've got a development that has been acknowledged to be 1.75 miles from the CAT stop. It's also -- we heard evidence that there's one bus route right now. There could always be more. There could be less.

And we've heard -- we've heard evidence that if a CAT stop is put in, that that bus will stop there. That's all good. But, of course, that route just goes to -- you know, if you're thinking about getting to points north where a lot of jobs like Arthrex are, you're going to have to go through the county government center and change buses which, again, that's not asking too much of people.

But is it asking too much of people to walk or bike -- and not everybody can or will bike -- 1.75 miles to get to the only bus route near by in order to get to the jobs in question and when there is no interconnection available to get to the goods and services that are available on Collier, which would have reduced the automobile traffic on county roads?

To me, this just does not add up to an appropriate site. Maybe 10 years from now it will, but, you know, maybe 10 years from now anything could happen. But right now, today, and that's what we have to look at, I don't see this particular workforce housing site as being of sufficient justification to vote in favor of it.

I'm going to keep an open mind, and I want to hear what the public has to say, but I'm having difficulty coming to a conclusion that this is a good place for affordable housing, and I'm having difficulty coming to the conclusion that any time affordable housing is offered, it should be allowed for construction anywhere in the county.

So those are -- those are my questions. You want to comment?

MR. BOSI: No. What I would say is I think there has to be attention to the income

levels that are serving 100 percent of AMI and 80 percent of AMI. That's \$104,000 and \$82,000 for a family of four. The majority of those folks aren't taking public transit. The majority of those folks will have a car and will drive to their workplaces.

I think we do recognize that there is further advantages if you're -- if you're in closer proximity to the transit system to have participation within it. I would agree with that, that it is -- it is much farther, but there can be a circumstance where folks along Auto Ranch Road could utilize that bus -- that bus stop as well, and you add in another -- another physical asset to our infrastructure, to our public transit infrastructure. It has value as a communal good as a whole as well.

So I think we look at it, and we understand the distance from the -- or the project to the bus stop is deterring in terms of -- from being able to walk or even bike, but we do recognize that just the fact of having the infrastructure of a public shelter in close proximity to access the urban area is of value. We think there are other public benefits that are provided for within this project.

I think that the -- the contributions and improvements to Auto Ranch Road are significant in terms of elevating the road, having an additional sidewalk, and providing for a better drainage which -- within that area will provide a solution to a county problem that we haven't been able to find the money to be able to address.

So those are -- those are the things that we've looked at in how we've evaluated the project in terms of all the different facets that have to be considered.

CHAIRMAN FRYER: And for people who are not necessarily going to work but need to leave home in order to go shopping for groceries, let's say, these folks either would have to drive or they would have -- or really there's no other practical way they could do it because you can't walk 1.75 miles with bags of groceries, and you can't bike 1.75 miles with bags of groceries, and you can't get through Fiddler's Creek proper.

So, you know -- okay. Well, I've talked too long, and we've got three commissioners who want to be heard, starting with Commissioner Shea.

COMMISSIONER SHEA: So about -- Mike, about when were these homes built on Auto Ranch Road, approximate year?

MR. BOSI: I did not do any analysis, but these -- the homes, 20.

COMMISSIONER SHEA: Fifteen years is fine with me.

MR. BOSI: Twenty, 30 years ago.

COMMISSIONER SHEA: Yeah. What was it the GMP called for at that time for the -- what did they say was going to happen to this plot, 29, I guess it is? What did they say it was going to be?

MR. BOSI: This was prior to the adoption of the Rural Fringe Mixed-Use District.

COMMISSIONER SHEA: Yes, yes.

MR. BOSI: It was probably dedicated rural agriculture.

CHAIRMAN FRYER: I'm sure that's right.

COMMISSIONER SHEA: And then when was the Rural Fringe?

MR. BOSI: 2003 was the official adoption here.

COMMISSIONER SHEA: And what did that change the --

MR. BOSI: It changed the designation from -- well, it's still zoned agricultural but --

COMMISSIONER SHEA: Well, no, no. I'm asking what it was planned, which is the Growth Management Plan.

MR. BOSI: Yes. It changed its designation from rural agriculture to Rural Fringe



Mixed-Use District neutral. Meaning neutral is not sending or receiving; it's neutral. It basically has most of the provisions that are allowed within your ag zoning district. So from a practical standpoint, it didn't -- it didn't take any rights away, and it didn't promote any rights to them; it was just a status quo, so to speak.

COMMISSIONER SHEA: But it sounds like you're saying most of the homes that were built on Auto Ranch were built after the Rural Fringe where it was classified neutral or --

MR. BOSI: No, prior.

COMMISSIONER SHEA: Prior.

MR. BOSI: I think these are 20-, 25-, 30-year-old homes.

COMMISSIONER SHEA: So I don't -- what was it shown on the Growth Management Plan? And I realize it was probably zoned agricultural. What was it -- what did it say? They said it was planned to be for the long-range rural agricultural?

MR. BOSI: Yes. Yep.

CHAIRMAN FRYER: Thank you.

Commissioner Vernon.

COMMISSIONER VERNON: Yeah, I -- I do think -- just to follow up on the Chairman's comments, I do think that we should not be -- if they've got affordable housing, auto stamp.

COMMISSIONER SHEA: Absolutely.

COMMISSIONER VERNON: But -- but I'll tell you, I just -- you know, you never hear me tell war stories, but I'll tell a brief war story. Ten years ago I moderated a high-end panel with a bunch of people there about affordable housing, people from every area who cared about affordable housing. We asked for questions. First question was, "Hey, I moderated one of these 10 years before, and nothing ever happened."

And then last week, I was in a fairly high-powered meeting where we're trying to improve the community, and one of the comments is, "We can't deal with affordable housing. That is a mountain we cannot climb, so let's don't waste any time with it."

I mean, affordable housing is such a huge issue for so many constituents here in Collier County, so I think it's super-duper important, although it's not an auto stamp.

So a couple of questions, my --

COMMISSIONER SHEA: Can I clarify something?

COMMISSIONER VERNON: Yeah.

COMMISSIONER SHEA: I think we are dealing with it a lot better than you characterized it.

COMMISSIONER VERNON: Well, wait a minute. Let me finish -- yeah. Okay. You're right, and one thing I should have added is that -- oh, you're talking about the community?

COMMISSIONER SHEA: I think community-wise we are dealing with affordable housing a lot better than we were 10 years ago.

COMMISSIONER VERNON: We're way behind the curve. It's 50,000 units. So I'm not trying to -- I know you're doing a lot of good work in that area. That's not what I'm saying. I'm saying how important it is. It is super important to this community. It's not that we automatically approve every affordable housing, but in my mind it's heavily weighted.

So that being said, we have seen a lot of affordable housing projects come before us lately. And is this -- the slide shows 30 percent. For some reason I thought it was 22 percent.

MR. YOVANOVICH: No, it's 30.

COMMISSIONER VERNON: It's 30 percent, okay.

CHAIRMAN FRYER: It was 22,6- and then it went up to 30.

COMMISSIONER VERNON: Okay. So it's 30 percent.

And as far as raw number of units, 225?

MR. YOVANOVICH: (Nods head.)

COMMISSIONER VERNON: And 30 percent, Mike. I just don't remember. Given the recent ones, is that kind of on the high end, about average of what we've seen lately in terms of percentages and numbers?

MR. BOSI: The 30 percent, and 15 to 80 percent and 15 to 100 percent is consistent with what we've been approving. And what I will say, thanks to the Planning Commission and the Board of County Commissioners, it was -- 1,750-some units we approved last year is 3,000-plus in the past three years. We have done great strides in advancing new opportunities for income-restricted housing.

But just to give the Planning Commission a reminder in terms of -- and I think we've talked a little bit about it. But what -- and this is a fact sheet that Cormac helped put together, and basically it's saying close to 50,000 households in the county --

CHAIRMAN FRYER: You're off mic, Mike.

MR. BOSI: Close to -- close to 50,000 households within the county are basically considered cost burdened.

And if you look at that even further, about half of those spend more than 50 percent of their income on housing. And that speaks to that number where they were referring to it's somewhat of a 50,000-unit deficit. That's an enormous number. We import 53,000 people every day to provide for the job needs of this county.

One of the underlying principles of our Growth Management Plan is providing for an adequate supply of affordable housing. We've been very deficient upon that. And it's no blame for one individual. It's just we have not kept pace with the amount of demand.

And here's one of the other things that is, to me, I think startling. The monthly -- and I'm sorry. I don't have this memorized. But median homes -- it has to do with the amount of jobs in the county that -- the average pay scale.

COMMISSIONER VERNON: Yes, that bottom yellow highlighted, 35 percent.

MR. BOSI: Thirty-five percent of the jobs pay less than \$35,000 a year. Fifty-eight percent of the jobs pay less than \$45,000 a year. Those incomes do not align with housing within this county.

I mean, if you read the bullet above it, the average -- the average home sale price is 517,000. That doesn't align with 58 percent of your jobs paying \$45,000 or less.

We have to -- we have to make every effort to identify the appropriate locations and opportunities to advance more income-restricted housing in this county for the overall health of this community.

I've -- there are Arthrex, NCH, many large employers are in the housing acquisition game because they have to protect the ability to retain and attract talent here. That's a unique step. And it's not just unique to Naples. It's -- so most of the areas that are in coastal areas in high demand have these type of issues.

So -- but the fact of -- when I said we evaluate all the different proposals, we recognize that the need for affordable housing is paramount. And when they can check off -- it's staff's purview to check off on the compatibility, check off the infrastructure needs, check off the other things that bring about the sound decision for approval or not approval on these projects, we're

going to -- we are going to side with the version that we want to -- we want to secure ourself additional income-restricted units for our workforce to be able to reduce.

Because if 53,000 people come into our county every day, they have to drive from the edge of our county to wherever they work and back again. If we're able to take 250 of those people, put them in locations in close proximity, we've reduced the distress on our transportation system tremendously; we reduced our vehicle miles.

Everything that we try to do, what we're trying to do in terms of our land-use allocation, is reduce vehicle miles traveled. So if you do have to spend time in congestion, you're spending five miles in congestion. But if you're 15 or 20 miles in congestion, it seems a lot more and it seems a lot overbearing.

So what we're trying to do is make sure there's a better spatial relationship and there's better housing opportunities for our workforce, and we think that this project has met those thresholds, and that's how we came to the recommendation of approval.

COMMISSIONER SHEA: So if there was no affordable housing with this and the -- would you approve the project?

MR. BOSI: No, we would not support it. And, I mean, if the Board has set a policy, if you're asking for -- and I know they've said that they're not asking for additional density than what they could, but you need to provide for -- it's such a critical need that affordable housing is of that paramount of nature.

CHAIRMAN FRYER: Okay?

COMMISSIONER SHEA: Yes. Thank you.

CHAIRMAN FRYER: And the areas of -- the AMIs that you cite are not being addressed in this, workforce housing, are they?

MR. BOSI: The 80 and 100 percent?

CHAIRMAN FRYER: No, the --

MR. BOSI: Those are being addressed.

CHAIRMAN FRYER: No, no, no. The 3,500 -- 35,000 a year, 35 percent, and 58 percent or 45,000, those are neither 80 nor 100 percent AMI?

MR. BOSI: If you had two working -- and most people work. If you have a family of four, you're going to have -- normally the mother and father will work; 45,000, that's 90,000. That's about 90 percent of AMI. So, yes, some of -- some of those areas are being targeted with this proposal.

CHAIRMAN FRYER: All right. Commissioner Schumacher.

COMMISSIONER SCHUMACHER: There's so much going on.

Mike, I think your whole staff does a phenomenal job. With the exception of Mr. French back there, I think the whole department's awesome. And I think the Collier County Affordable Housing Committee does a phenomenal job. I think Cormac does a great job. I think everybody's doing everything that they can.

The question -- I have a few questions, but I want to start with traffic. How do you figure out a level of service for a residential street? Because I know our artillery [sic] roads and, like, the main roads you have X trips, so on and so forth, but how would you figure that out on what is kind of considered, like, just a dead-end street with X amount of lots? So we'll call up everybody's favorite department, Traffic.

MR. SAWYER: Good afternoon. Mike Sawyer, Transportation Planning. After hearing my name mentioned several times this morning, it's good to get up here and talk.

I can tell you that our AUIR, the lowest amount of traffic that we recognize from a

capacity standpoint is basically 600 vehicles per hour. That pretty much is the lowest number that we go to. That would be a two-lane roadway. It could be -- in some cases, it is a rural cross-section. Sometimes it's more of an urban cross-section. But, generally speaking, 600 is about the lowest that we will go from a capacity standpoint, and we've got roads that go up well past 6,000 -- or 3,000.

So, again, keep in mind that is one-directional. It's not both directions. What we keep -- what we look at is peak direction, p.m. peak. So hopefully that gets you an idea on capacity.

COMMISSIONER SCHUMACHER: So, basically, like, a residential street, like, out in the Estates you'd say the lowest -- you'd say 600 cars?

MR. SAWYER: It would be below that in most cases, because they are more residential. So you will generally have more conflict points because you've got more driveways. So from that aspect, on those roadways, we would probably reduce that down below 600. I'm just talking about the roadways that we monitor.

COMMISSIONER SCHUMACHER: Got it.

MR. SAWYER: So the ones that are in the AUIR.

COMMISSIONER SCHUMACHER: My concern is is if we take X property across the county where you have -- another project like this could pop up, you have 15 acres at the end of a street out in the Estates, and they want to put in apartments, and there's a way to hook it up to water and sewer, there's no set definition for that street to not have an opportunity where, if there is an emergency event or if people are trying to evacuate, that you have traffic backed up, you know, 10, 12 houses down with no way to get out because -- or bus stops or -- is -- that kind of leads to the other side. Is there any bus stops that far south on 41?

MR. SAWYER: This particular road, I believe, is Route 24. I believe it basically goes through this area approximately five times a day, and it goes all the way out to, I believe, 6L Farms and basically turns and then goes back again on 41.

COMMISSIONER SCHUMACHER: Okay. And then -- yeah, that's all I had for --

MR. SAWYER: Okay. As far as answering your question, if somebody were to come in on a roadway that was one of the estate roads that we've got, we'd want them and expect them to do improvements on that road in order to accommodate both the existing traffic and the traffic that they're putting on to it. Again, it would depend on the size of it and the amount of traffic that we would be putting onto it.

COMMISSIONER SCHUMACHER: And the investment that this developer would be putting into this street, is that -- does that require those lot owners' approval, or is that just automatic because it's a right-of-way?

MR. SAWYER: It's our right-of-way, and when it's deemed necessary to make improvements like that, that is our right to do that. The county has the right to be able to make those improvements.

COMMISSIONER SCHUMACHER: Thank you, sir.

CHAIRMAN FRYER: Thank you.

And no one else is signaling at this point, and so without objection, I would like to get right to our registered speakers and ask -- as soon as Mr. Sabo gets back in position to tell me who we have.

MR. SABO: Mr. Chairman, we have several registered speakers. The first is Christine Koren, and she was ceded time by Jennifer Fraser. Is Jennifer Fraser here?

(Raises hand.)

MR. SABO: Perfect.

All right. The first speaker, Christine Koren, and then next up is Gary Oldehoff.

CHAIRMAN FRYER: All right. Good. And the second name, is that you, sir?

MR. OLDEHOFF: Yes.

CHAIRMAN FRYER: Okay. Thank you.

Ms. Koren.

Tell me again how many time cedes there were.

MR. SABO: Just one.

CHAIRMAN FRYER: One, okay.

Ten minutes, ma'am.

MS. KOREN: Thank you. Commissioners, my name is Christine Koren, and I am the co-chairman of the Protect the Preserve committee for Royal Palm Golf Estates and also a director on the HOA. Our committee strongly opposes these applications by Fiddler's Creek and has raised thousands of dollars from residents who are angry and want this application defeated, and they are relying heavily on our committee to do this. Why? Because they know this is the biggest threat to our way of life and safety in Royal.

Many feel -- many felt that opposing the application of Fiddler's was a waste of time and money, and they felt that we do not have a voice because Fiddler's is too big and has too much money to push this through.

In 2017, U.S. Fish and Wildlife biological agreement concluded that Fiddler's Creek Oyster Harbor Estancia projects would displace over 700 acres of panther and bonneted bat territory. Fiddler's agreed to set aside the entirety of Section 29 as remedial land. This acreage would be placed in a conservation easement, not a conservation covenant, which is in perpetuity, filed and recorded 90 days prior to construction by Fiddler's; however, when we started the research into this background of this project, we discovered that Fiddler's never filed the required conservation easement as they agreed.

We brought this to the attention of U.S. Fish and Wildlife and have been working with them for quite some time, and they have -- they have issued a letter to Fiddler's Creek stating that they are not allowed to build within Section 29 and will commence enforcement actions to prohibit any construction activities and asked us as residents to keep an eye on that.

The project is not contiguous with other Fiddler's Creek projects because it is planned that way. They do not want affordable housing apartments next to their existing projects. And high-rise apartments do not fit into the landscape of this area.

The project will disturb the privacy and quiet -- quiet enjoyment of the homeowners living across from these buildings by creating noise, light pollution, and will negatively impact the property values, as it will invade upon the privacy of the homeowners being able to enjoy their backyards and lanais because they will now have a highway in their backyards.

At a public hearing of the Board of County Commissioners in '98, it was unanimously approved that Section 29 would never be used for residential or commercial development. Collier County Ordinance 18-27, Section 5.5, describes the zoning for Section 29.

But do we get to ignore all this because of affordable housing? Section 29 preserve borders the McIlvane Marsh, the marsh which was purchased by Collier County to protect residents of Royal Palm Golf Estates from storm surge because our community lies extremely low. The developer was never required to raise elevations.

Section 29 soils have been identified as a short hydro period wetland, which is extremely scarce in Southwest Florida, as well as statewide, and opportunities to preserve these

wetlands through mitigation makes Section 29 especially valuable. These soils absorb stormwater like a sponge and hold it in the preserve.

In Hurricane Ian in 2023 [sic], which was not, by the way, a direct hit for Naples -- that we all watched Section 29 fill up with the floodwaters and held it in the preserve that made it look like an ocean of water until the storm surge at 8:30 p.m. that night caused the flood waters to surge across the canal, the east/west spreader canal that borders us at Royal Palm Golf Estates. The floodwater came within two inches of breaching my home.

Residents of -- residents of Auto Ranch Road had to resort to canoes and boats to get around the neighborhood. I telephoned Fiddler's and asked to speak with their planner on this project to make them aware of the dangerous situation that occurred here from Ian and that our property will be at risk if these valuable wetlands are disturbed by construction. I never got a call back, of course.

How is -- how is the county going to -- going to safeguard Royal Palm residents from flooding if this preserve's delicate balance of these wetlands are destroyed? No engineered system could possibly hold back stormwaters if the sheet flow of this area and soils are disturbed by construction.

I am frightened because the water levels of the canals and lakes are the highest that we have ever seen it in 20 years here, and many of the neighbors noticed as well and are concerned.

In conclusion, Fiddler's bargained Section 29 away as remedial land. Now they want to use the affordable housing trump card to push this through even though these applications are in violation of numerous sections of the county Land Development Code's federal and state agreements. The wetlands of Section 29 must remain undisturbed as they are essential to safeguarding the lives and property of residents of Royal Palm Golf Estates.

Let me emphasize that no affordable housing project is worth the risk of lives and property of people that are living here now. Please keep in mind this when voting, Commissioners: No bargaining chip offered by Fiddler's is worth the risk.

Fiddler's is only using affordable housing as a tool because they know without it this would never be approved by the county, and I think we just heard that a little while ago.

This proposal is not a benefit to this community when taxpayers need to fund the improvements for these projects and the lives and property are placed in jeopardies. It's also not a benefit. Affordable housing in this area makes no common sense, and residents could become trapped during storm surge and hurricanes, and response times from emergency services cannot accommodate all of the people in those high-rises -- are in need.

Because of the precarious location of this project, Commissioners, I strongly urge you to deny this application, as some things are just not appropriate, ethical, and suitable for this location.

Thank you, Commissioners.

CHAIRMAN FRYER: Commissioner Schumacher.

COMMISSIONER SCHUMACHER: Ms. Christine, I've got a question for you.

Thank you for your time.

MS. KOREN: Thank you.

COMMISSIONER SCHUMACHER: And being someone that manages communities for a living, thank you for your time volunteering on your HOA board. I know it's a thankless position.

MS. KOREN: Yes, it is.

COMMISSIONER SCHUMACHER: How long during Ian, for that storm surge, were

your neighbors and yourself inundated with that water? Like, how long do you think it took before it started to recede?

MS. KOREN: You know, that's a great question, thank you. We all stood out there watching the preserve fill up with water, too. At one point -- and we have photos -- I don't know if they're in your packets, but we sent it to the county -- of the preserve just before it served [sic]. It looked -- it looked like an ocean. I was, like, shocked. And I say, "Thank God I have flood insurance."

Well, it got dark by that point, and a lot of us were out of power. So we were going there at night, you know, out after dark with our flashlights, you know, trying to view the area, and we were getting the cow tail [sic]. How many more inches before it hits -- you know, it's going to breach inside my lanai? How many more inches?

And I couldn't even sleep that night. And I swear I have acquired PTSD since then. But it was very scary. But then the next day we said, "You know, the preserve did exactly what it was supposed to do." It held that water like a sponge until it could hold no more, and then it surged across.

It took me two weeks to clean up the debris that came from that storm surge out of my yard, and -- just to see what was in there. And I had neighbors calling me that night saying, "We have fish flopping around in our driveways. We're -- there's -- the water is totally across Royal Hammock on the other side of the street." And there -- it's the truth it was.

And this, like I said, was not a direct hit. If it was and that preserve didn't hold us, that preserve in the McIlvaine Marsh was supposed to protect us from storm surge, and it did. But you start messing up in there, we're no longer protected.

COMMISSIONER SCHUMACHER: I appreciate it. And now that we know there's an active crocodile nest within a mile, don't --

(Simultaneous crosstalk.)

MS. KOREN: Oh, yes. The crocodiles have visited us on --

COMMISSIONER SCHUMACHER: Okay.

MS. KOREN: Yeah, yes. There definitely is.

COMMISSIONER SCHUMACHER: Thank you for your time and --

MS. KOREN: You're welcome. Thank you.

CHAIRMAN FRYER: Commissioner Shea.

COMMISSIONER SHEA: Another quick question while we have a resident expert. What were the conditions like during Irma? Different type of a scenario, but --

MS. KOREN: Well, Irma was a windstorm. Ian was a water storm.

COMMISSIONER SHEA: A lot of rain, too, though.

MS. KOREN: Yeah. I had -- actually, I was in Connecticut at the time and, since we lost power, I figured I'd have my neighbors videotape the damage for me, which they did. It was a windstorm --

(Simultaneous crosstalk.)

COMMISSIONER SHEA: You didn't have that water backup?

MS. KOREN: No, no. It was all wind. It ruined my roof and took off my solar panels and everything, but it was not like Ian. Ian was a nasty storm, and we should never forget what Ian did, especially to Fort Myers. I've never seen anything so horrible in my life.

COMMISSIONER SHEA: Thank you.

CHAIRMAN FRYER: Thank you, Ms. Koren.

Who's our next speaker?

MR. SABO: Mr. Chairman, it's Gary Oldehoff. He was ceded time by seven people. If I can get a hand for Mara Robinson.

(Raises hand.)

MR. SABO: John F. Robinson?

(Raises hand.)

MR. SABO: Robert Weissenbeir?

MR. WEISSBEIN: Weissbein.

MR. SABO: All right.

Jane Fornoff?

(Raises hand.)

MR. SABO: Karen Clough?

(Raises hand.)

MR. SABO: And Barry Fornoff?

(Raises hand.)

MR. SABO: That's everybody.

CHAIRMAN FRYER: Thank you. Thank you.

Sir, what's your -- would you spell your last name for me?

MR. OLDEHOFF: Yeah, sure. It's O-l-d-e-h-o-f-f.

CHAIRMAN FRYER: H-o-f-f?

MR. OLDEHOFF: French fry.

CHAIRMAN FRYER: Thank you. Go ahead, sir.

MR. OLDEHOFF: My first name's Gary.

Mr. Chairman, members of the Commission, my name is Gary Oldehoff. I'm an attorney. I'm a land-use attorney. I've been a land-use attorney for 34 years. I've been a lawyer for 40 years. Thirty-four years with counties, with County Attorney's Offices. Martin County Attorney's Office, Dade County Attorney's Office, Sarasota County Attorney's Office. I ran the land-use program for Sarasota County.

My name is on most of the most significant cases and the case law that developed under the Growth Management Act, including a case called *Yusem versus Martin County*. And in that case, the Court, the Supreme Court, the Florida Supreme Court determined that Comprehensive Plan amendments, all Comprehensive Plan amendments, are legislative matters, and they're subject to the fairly debatable standard. In other words, a Comprehensive Plan amendment request appeals to your discretion. It is not something that you're constrained by.

And, Mr. Chairman, you hit the nail right on the head. You said, "Common sense." Common sense really governs. It goes a long way with this. That's what it's about. The fairly debatable standard, it's a legislative matter. Does it make sense to you?

There's a second point that I wanted to also connect with, and that is something that was raised by one of your members of staff. And, frankly, I was a little surprised because I can tell you that I've been on board for the whole development of this growth management law the whole time it's been the law. I've taught this area of law, and I can assure you that when it comes to comprehensive plans and comprehensive planning and decisions under comprehensive plans, there is no place for balancing or disregarding comprehensive plans and comprehensive plan policies. That was something that was absolutely central to the *Yusem* decision, because in the *Yusem* decision, the Court was looking at why is this a legislative matter.

And the reason why it's a legislative matter is because the statute says that all of the elements of a comprehensive plan must be internally consistent. That is a major -- a major



factor in comprehensive planning.

So you can't just balance and weigh this and weigh that and do this and do that. Likewise, under *Machado versus Musgrove*, going back into the 1980s -- and it's always been the law -- and frankly, the principle of balancing has been disregarded. It's been rejected by the courts, always rejected by the courts.

But in the *Machado versus Musgrove* case, the Court said that a development decision, a rezoning decision in specific, has got to be strictly construed for strict consistency with each and every element and provision of the Comprehensive Plan.

The Comprehensive Plan, by definition, is a constitution for future growth in a community. You have to follow that constitution strictly.

So you are asked to make a decision, recommendation based upon your discretion on the Comprehensive Plan amendment. You also have got to follow the principles associated with rezoning petitions. But, importantly, you can reject an application to rezone a property as long as you leave it with something that is consistent with the plan. If that property has a use consistent with the Comprehensive Plan, that meets the standard for a rezoning decision in Florida under Comprehensive Plans. I didn't mean to digress, but I wanted to make that very, very clear.

I want to just try to cover four or five bullet points, and you can write them down. Bullet Point No. 1 is broken promises and no accountability.

Bullet Point 2 is people have reasonably and justifiably relied on these promises.

Number 3 is workforce housing, affordable housing with a big question mark. Put a question mark after that.

No. 4 is the price. What's the price?

And No. 5 is -- and I'm looking at what the staff is trying to say justifies all of this in allowing this development. At the end of the day, staff says, "This is good because you're going to get a promise for some affordable housing, and you're going to get them to build a road and perhaps get a bus stop here." So we're looking at those five points.

With regard to the broken promises, you've gone through a lot of this so far. And I've passed out materials to all of you to identify some of the things here. But we'll start with that 1998 promise, okay. And this is from Mr. Arnold. This is at Page 4. And I've passed around the transcript of the meeting. This is Mr. Arnold. And he says, I point out -- "I would point out, too, that in reviewing this, one of the issues raised was a concern for environmental issues, and I would point out that the portion of Section 29 -- if I could step over to the map -- this portion is located on the -- below the Boyne South project. We also have -- will be no dwelling units contemplated for that portion of the development. There will be preserved open space."

We move over to Mr. Varnadoe, who was representing and presenting this. And he's talking about this promise of preserves. He said --

COMMISSIONER VERNON: What page?

MR. OLDEHOFF: This is at Page 11. It's toward the bottom of the page, right.

And he looks down, and in the middle of the paragraph he says, "That's 450 acres," and he's pointing to Section 29 and the land that is adjacent to it, I believe, in Section 19 on the north half, because that one I'm going to get to. That one's supposed to be preserved under conservation easement as well. But he says that. He says, "That 450 acres, over 70 acres of which are uplands down in this area," and he's pointing to this -- this cleared area -- in 1998. He says, "Down in that, here, you've got some really pretty scrub habitat down there. That -- that will also be preserved, and there will also be a conservation easement on that."

Moving down to Page No. 20. I mean, this is the promise. This is Chris Nelson. This is an AICP. He's an economist. And I might talk a little bit about economics because I've dealt with and I've worked with Chris Nelson, Jim Nicholas, Hank Fishkind, all of those people before.

But this is Dr. Nelson. He's talking about this at the bottom of Page 20. And he says, "Now, in the future, because of the amendment, the northern tier of the subject site will be filled in, so you'll basically have development from the currently approved DRI PUD moving eastward abutting practically the easternmost large-scale development that's already been approved that's now being built out. So that northern tier area's also being filled in. However, at the southern end of that, you'll have a system of what I would call open space anchors."

He says, "Roughly, the bottom third of Section 19 and all of Section 29 will be preserved, thereby providing a buffer between the urban development," which he's calling what's up in Oyster Harbor -- what's in -- what's being developed up there, because this is the Fiddler's Creek addition that facilitated this very same development in 2016. He says, "Roughly the bottom third of Section 19 and all of Section 29 will be preserved, thereby providing a buffer between urban development, that development, and the state-owned wetlands beyond."

CHAIRMAN FRYER: Who is Dr. Nelson advocating for?

MR. OLDEHOFF: He was advocating for the applicant. He was the applicant's planner.

CHAIRMAN FRYER: Thank you.

MR. OLDEHOFF: Finally, at Page 26, Mr. Varnadoe, he says --

CHAIRMAN FRYER: Commissioner Klucik.

COMMISSIONER KLUCIK: Sir, if you could help me understand. So you're reading from the 1998 Board of County Commissioners when they approved the original PUD; is that right?

MR. OLDEHOFF: Right. When they made the amendment to the PUD to add these acres --

COMMISSIONER KLUCIK: Right.

MR. OLDEHOFF: -- for Fiddler's Creek.

COMMISSIONER KLUCIK: And so then subsequently -- why do you think this -- you know, things change. So why do you think this is -- they're still obligated to these? Because wasn't there -- wasn't there subsequent --

MR. OLDEHOFF: No.

COMMISSIONER KLUCIK: There's nothing subsequent since 1998?

MR. OLDEHOFF: No.

COMMISSIONER KLUCIK: Okay.

MR. OLDEHOFF: And that's the next thing that I'll go to.

COMMISSIONER KLUCIK: Okay.

MR. OLDEHOFF: If you look at Ordinance No. 98-13, which is the ordinance that approved this PUD, okay, with the promise and the commitment to preserve these acres under conservation easement, it says right in that ordinance that for lands that are identified as reserve -- preserve on that map -- let me put the map down here.

This and this, here and here.

For those lands, at Page 5-3, 5.5, preserve district, conservation easement. A nonexclusive conservation easement will be established pursuant to the Fiddler's Creek Wildlife

Habitat Enhancement Management Plan, but it specifically says, "For the Fiddler's Creek addition, the nonexclusive easement shall comply with Collier County Land Development Code Section 3.2.8.4.7.3 without qualification." This is the ordinance, and this has been in effect since 1998.

COMMISSIONER KLUCIK: Where were you just reading from?

MR. OLDEHOFF: This is from Page 5-3, the last page.

COMMISSIONER KLUCIK: Of?

MR. OLDEHOFF: Of Ordinance 98 --

COMMISSIONER KLUCIK: Oh, I see. Of the ordinance, okay.

MR. OLDEHOFF: Yeah, okay. It's an excerpt. But that excerpt says this has got to be given to the county before you can even commence any construction under this PUD from this date forward. And it's always been there. It's never been changed. It's always been there.

So we go now to May 8th of 2023. I have a letter I wrote to the County Manager, and that's because when I first got involved with this, it was in 2022 --

COMMISSIONER KLUCIK: Mr. Chairman -- okay. Sir, sir? Okay. So help me out. Go back to that -- I think you read the last -- the last paragraph on that -- it's Section 5.5 on Page 5-3, is that --

MR. OLDEHOFF: Yes.

COMMISSIONER KLUCIK: Okay. If we go to that -- so help me out. It doesn't -- it says it will be established.

MR. OLDEHOFF: Right.

COMMISSIONER KLUCIK: But I don't see, like, a time constraint. So help me out with that. Because I thought I heard you say -- mention that there was something that happened -- had to happen in a certain order, you know, before. So help me understand why you think that -- what language is in there, or anywhere else, that suggests there's a time constraint.

MR. OLDEHOFF: It is found elsewhere in the PUD. I've only given you excerpts for that purpose, but it's also -- it's in that section of the PUD -- it's in the PUD ordinance, but it is also in that LDR, that Land Development Code Section 3.2.8.4.7.3. It's been renumbered in your current code, but it's the same.

COMMISSIONER VERNON: Are you looking at the same document? Which page?

MR. OLDEHOFF: I'm looking at the last page of that document.

COMMISSIONER VERNON: Yeah.

MR. OLDEHOFF: The last page, 5-3.

COMMISSIONER VERNON: Oh, I see. I see. I got it.

MR. OLDEHOFF: Okay. That last reference to a code section.

COMMISSIONER VERNON: Yep.

MR. OLDEHOFF: That code section was in the 1998 code, and it was amended and renumbered subsequently, but it's the same.

COMMISSIONER KLUCIK: And so this document that you're reading from is a 1998 document?

MR. OLDEHOFF: Right. This is a 1998 document.

COMMISSIONER KLUCIK: Okay. And so this -- when did that -- so there had to be a conservation easement on this -- the exact land we're talking about?

MR. OLDEHOFF: Exactly.

COMMISSIONER KLUCIK: And that was in 1998?

MR. OLDEHOFF: 1998, and it's always been there.

MS. ASHTON-CICKO: I think the section -- I think the section they're referring to refers to the Fiddler's Creek Wildlife Habitat Enhancement and Management Plan that is an attachment to the staff report, and staff can advise what was required under that plan and whether compliance has been achieved.

MR. OLDEHOFF: Now, when I'm --

COMMISSIONER KLUCIK: Have we heard -- have we heard anything from staff on that to date or, like, up to now?

MR. OLDEHOFF: When I met with staff, they couldn't --

COMMISSIONER KLUCIK: No, no. I'm sorry. I'm sorry. I'm asking the Chairman and Counsel.

MS. ASHTON-CICKO: It is attached as backup, Mr. Olde- --

COMMISSIONER KLUCIK: So regarding the question that Counsel raised, have we heard today any testimony about that particular compliance back in 1998?

MS. ASHTON-CICKO: The management plan is an attachment to the staff report, and I believe Ms. Cook can respond to that.

COMMISSIONER KLUCIK: I don't know if my fellow members, you know, agree, but that seems pretty important whether or not this was ever complied with or not, whether it's out of compliance.

CHAIRMAN FRYER: Well --

COMMISSIONER VERNON: I just want to hear the rest of it before --

MR. OLDEHOFF: Mr. Klucik, I can assure you it has not been complied with, and that's what I was getting to with my next item, which is a letter. It's a letter dated May 8th, 2023.

In 2022, my clients, Mr. Erario and Ms. Caglioto contacted me, and it was because they had been informed of the existence of these applications, and they were surprised because when they went to look for the conservation easements, they couldn't find any. And, likewise, when they looked to see if there were conservation easements through the Army Corps permit and the Fish and Wildlife Service, there were no such easements there either, and that led me to spend hours in researching down -- and I concluded that -- and this was after calls to staff people in the environmental division. But they had never ever, ever required these easements to be properly given to the county and recorded, because the easements were supposed to be given to the county, and they were never given, and they were never recorded.

There was one, I believe, that came up during the comments today, it appears, that there was one time where there was an easement that was associated with a wetland. But I can assure you over 25 years of development applications coming before the county and the county departments, they've never -- they've never complied with that provision of the -- of the PUD, of the ordinance.

I wanted to just mention something, because it -- I put this in here because I wanted to get somebody at the county to take a look at this and take this seriously because the ball had been dropped. It was supposed to be given to the county all these years ago. And I said in here on Page 3 -- and I'll read. I said, "Having failed to comply with its obligations to account for the impacts of this development, the developer wants to add 750 units on this land that is supposed to be preserved and under a conservation easement. In essence, at the developer's request, the Board prepared and served the feast for the developer in Ordinance 98-13." I said,

"And not only has the developer dined and dashed without paying the check, but he's now boldly asking to be given another feast."

I can tell you I never got a response to this letter. Nobody at the county ever responded to me about this letter, and I can assure you, if you ask your staff, I believe that the county has never got these -- these required easements.

So now the next thing I wanted to talk about was --

CHAIRMAN FRYER: Before we move on -- and I'd like to have an answer to Commissioner Klucik's question as well, so I'm going to ask Mr. Bosi to comment on what he just heard.

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

I am -- the question is, were the '98 easements that were directed by -- in that procedure ever recorded? I have -- I am not aware of whether they've been satisfied or have not been satisfied.

CHAIRMAN FRYER: Thank you.

MR. OLDEHOFF: There's nothing in the records. If you go to the records, the title records of the county, there's nothing recorded.

So the next thing I wanted to talk about was the biological opinion, and I wanted to clear some things up.

COMMISSIONER KLUCIK: Mr. Chairman.

CHAIRMAN FRYER: Go ahead.

COMMISSIONER KLUCIK: Is there a reason -- well, first of all, Mr. Oldehoff?

MR. OLDEHOFF: Oldehoff.

COMMISSIONER KLUCIK: Mr. Oldehoff, we have this letter. Did the county receive this letter, and did you ever respond to it?

MR. OLDEHOFF: Yes. The county --

MS. ASHTON-CICKO: I'll answer that question. Ms. Cook is the person who can answer as to whether the management plan has been complied with or not. And, no, it doesn't require a response to his letter.

COMMISSIONER KLUCIK: No. No, no, no. You must have misunderstood me. I asked if the county received the letter, and all I asked was if the county responded. I didn't ask if they were required to. I asked if they did. This is -- these are petitioners --

MS. ASHTON-CICKO: I don't know that there's been --

COMMISSIONER KLUCIK: No, I'm not done. I'm not done.

MS. ASHTON-CICKO: Oh, sorry.

COMMISSIONER KLUCIK: I'm making a point, and it's a really important point. You serve the people, and the people made a request. They pointed something out that was really important to actually a lot of people, not just the attorney. And all I'm asking is -- and I don't know -- I don't know if you just answered. I'm sorry if you said yes or no. Did you respond? I heard you say that you didn't have to respond, but did the county respond?

MS. ASHTON-CICKO: I personally have not responded. If someone else has responded, I'm not aware of it. I specifically insisted that staff include a copy of the management plan as backup, as Mr. Oldehoff had raised it as an issue. It is attached. I can see it on the agenda.

And Ms. Cook, I asked her to be prepared to respond to whether there has been compliance with that plan, and she is here and, I think, available to respond when the time is appropriate.

CHAIRMAN FRYER: Ms. Cook?

COMMISSIONER KLUCIK: So if I could, just to finish. So my question, I guess, ultimately, is, it appears as though he brought up something really specific and important as to the petition that we're hearing today, and this was well in advance of today. Obviously, it was a year ago; roughly eleven months ago. And, I guess, did you ever find out the answer to your queries, like, whether it was in written form, or did the county ever help you understand what had been done?

MR. OLDEHOFF: Well, let me just --

COMMISSIONER KLUCIK: No. I'm going to do the same thing to you.

(Simultaneous crosstalk.)

COMMISSIONER KLUCIK: Did the county ever help you understand whether or not there's any record of the compliance or an explanation as to why there's noncompliance?

MR. OLDEHOFF: No. The county staff told me there's never been any --

(Simultaneous crosstalk.)

COMMISSIONER KLUCIK: So that concerns me that we have someone --

COMMISSIONER VERNON: I didn't hear his answer.

MR. OLDEHOFF: The county staff told me there's never been compliance. Only after I heard that from the county staff did I write this letter, and in the letter I said, "We urge you to take immediate action and get the required conservation easements recorded." That was in May of last year. And I -- they're not recorded. But I know I'm under time constraints, and I'm trying to move --

CHAIRMAN FRYER: We're not going to charge you with the time answering questions.

MR. OLDEHOFF: Thank you.

COMMISSIONER KLUCIK: Thank you very much.

MR. OLDEHOFF: The next item that comes up is now -- it's April of 2017, and they're seeking to do another project in Fiddler's Creek. They have to get approval from the Army Corps of Engineers which triggers the biological assessment for the Endangered Species Act. That's a required assessment. And you have, I believe, a copy of the biological opinion; is that right?

CHAIRMAN FRYER: We do.

MR. OLDEHOFF: You do, okay.

But the biological opinion refutes some of the things that you've heard so far, because in the biological opinion on the second page -- it gives the consultation history. And on the second page it says, on July -- on July --

COMMISSIONER KLUCIK: I'm having trouble concentrating with the background discussion. I apologize. Counsel.

MR. OLDEHOFF: Thank you.

CHAIRMAN FRYER: Go ahead, sir.

COMMISSIONER VERNON: Give me a section number.

MR. OLDEHOFF: It's on Page 2.

COMMISSIONER VERNON: Yeah, there's Page -- just give me the section number.

MR. OLDEHOFF: The biological opinion?

COMMISSIONER VERNON: Yeah.

MR. OLDEHOFF: No. It's on the second page of the biological opinion.

CHAIRMAN FRYER: We're going to -- Mr. Oldehoff -- and this -- you're not going to

be charged for the loss of time here, but we're going to ask Ms. Cook to respond at this point.

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

So first, for the record, I've never seen this letter. I don't know what letter he is talking about, but the habitat management -- Habitat Enhancement and Management Plan, which states, "The conservation easements will be recorded in the public records of Collier County," has been done.

MR. OLDEHOFF: Which ones?

MS. COOK: They are recorded.

MR. OLDEHOFF: Which ones?

MS. COOK: Along the property boundaries. Southern fringes of the marsh buffer and spreader system. They are recorded.

MR. OLDEHOFF: Those are conservation easements that are not Section 29 and Section 19.

MS. COOK: This doesn't talk about Section 29 or 19.

MR. OLDEHOFF: That's what I'm trying to tell you. It's the wrong document. It's the completely wrong document. They're looking at things that were associated with -- (Simultaneous crosstalk.)

MS. ASHTON-CICKO: That's the document that cites as having a requirement for conservation easements that was not recorded. He specifically referred to -- well, I can read it here with my glasses. He specifically referred to the Fiddler's Creek Wildlife Habitat Enhancement and Management Plan required by Section 5.5 of the ordinance.

MR. OLDEHOFF: Let me explain. Staff is trying to kind of -- if you look at -- go back to Page 5-3. Page 5-3, it says specifically -- there's a sentence added for the Fiddler's Creek addition, which is this property. "For the Fiddler's Creek addition, the nonexclusive easement shall comply with Collier County Land Development Code Section 3.2.8.7.3 without qualification."

What appears above that is the -- is the previous approvals. This language was added to the PUD specifically for these preserve areas in the Fiddler's Creek addition that's the subject of this ordinance. So no, this is apples and oranges. No, that's wrong. That's wrong.

COMMISSIONER KLUCIK: Mr. Chairman?

CHAIRMAN FRYER: Go ahead, Commissioner.

COMMISSIONER KLUCIK: For clarification, if we go back to Page 2, it's 1.7, community development district of the same ordinance, 98.13 -- or 98-13. It has addition highlighted.

MR. OLDEHOFF: Right.

COMMISSIONER KLUCIK: Fiddler's Creek addition, and then down below it has what seems to be a legal description.

MR. OLDEHOFF: Correct.

COMMISSIONER KLUCIK: Is that the addition that we're talking about?

MR. OLDEHOFF: Yes. That's the addition, and you can see it --

COMMISSIONER KLUCIK: And so that addition that's at the very bottom of Page 2 in Paragraph 1.7 of Ordinance 98-13, that's the legal description. That does appear to be the legal description of Fiddler's Creek addition which does, then, appear in Paragraph 5.5 in the last highlighted sentence which seems to apply to this land; is that correct, Counsel?

MS. ASHTON-CICKO: He did not give me a copy of his handout, so I really don't know what you're looking at. I know that --

COMMISSIONER KLUCIK: It's an ordinance of the county that's at issue, so --

MS. ASHTON-CICKO: Yes. And the current ordinances before you, Section 5.5 --

COMMISSIONER KLUCIK: You just referred to it and were awful darn sure that you were in compliance or that you had answered the question. I don't appreciate that. You're making me seem like I'm being unreasonable in asking you to opine on a document that you just opined about. Now, don't do that. That's not right.

MS. ASHTON-CICKO: I'm really not following what you're saying at this point.

COMMISSIONER KLUCIK: You just opined --

MS. ASHTON-CICKO: I didn't opine on anything.

COMMISSIONER KLUCIK: Yes, you did. You know, I'm not going to argue with you. Obviously, I'm a little frustrated with you, and that's not fair for me to be -- to talk in anger.

It appears to me that you opined on this document, and now you won't opine on it now that I've kind of undercut your argument.

MS. ASHTON-CICKO: I'd be happy to look at what you're looking at -- what you're looking at and --

COMMISSIONER KLUCIK: Can we make sure that Counsel has this, Mr. Chairman?

CHAIRMAN FRYER: Yes. In fact, I think this would be a good time for us to take our midafternoon break.

So we stand in recess until 13 minutes after 3.

(A brief recess was had from 3:03 p.m. to 3:13 p.m.)

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

CHAIRMAN FRYER: Let's reconvene, please. Everyone, take your seats.

I have some announcements and a question. First of all, I earnestly, earnestly implore each and every one of you on both sides of this dais, please do not talk over one another. It makes it absolutely impossible for the court reporter to do her job, and that's not fair to her, it's not fair to the making of the record, and the Board of County Commissioners. So if we can't adhere to that, you're going to hear my gavel more because I'm not going to tolerate it.

Secondly, a question for my friends in the back of the room: How many speakers and how many minutes, approximately, do we have remaining for public speaking at this point?

MR. SABO: There's about 50 speakers, and three or four of them have been ceded time. There's about three speakers with 30-plus minutes.

CHAIRMAN FRYER: Okay. Thank you.

My decision, then, is that we're going to go until 5 p.m. today. That's assuming we can all maintain decorum; otherwise, we'll stop earlier. And then we're going to reconvene on May the 2nd, and one hopes we will conclude the matter at that point and the material, Counselor, that you were needing to get to us, we can wait until May 2nd.

MR. OLDEHOFF: I would just ask that because there are portions of this that are quasi-judicial, that the Court, that the judges, not engage in any communications ex parte between now and then.

CHAIRMAN FRYER: We can't. We can't by statute.

MR. OLDEHOFF: Right. That's what I'm saying.

(Simultaneous crosstalk.)

CHAIRMAN FRYER: Well, and I will repeat that admonition, but we are keenly aware of the fact that we cannot talk to one another.

COMMISSIONER VERNON: No, I think he's not talking about that.



(Simultaneous crosstalk.)

MS. ASHTON-CICKO: I'm prepared to give you the information now.

MR. OLDEHOFF: Thank you.

CHAIRMAN FRYER: Oh, okay. What were you talking about, sir?

MR. OLDEHOFF: What I was talking about is that -- like, for instance, at the lunch break Mr. Klucik came back and said that he had texted or spoken to somebody, and then he -- something and cleared up a question, and he was satisfied, and I didn't know what had transpired there. That's an ex parte contact that I need to be able to understand.

CHAIRMAN FRYER: All right. Your point is --

MR. OLDEHOFF: So nobody for anybody, please, communicate with the commissioners.

CHAIRMAN FRYER: Thank you. I understand now what you're saying.

COMMISSIONER VERNON: I'm not sure that's the rule -- I'm not saying it's not. I just want to hear from our attorneys whether that's the rule.

CHAIRMAN FRYER: Go ahead, Ms. Ashton, if you want to comment on that.

COMMISSIONER VERNON: I know you're trying to be --

(Simultaneous crosstalk.)

MS. ASHTON-CICKO: I was gathering my papers to present.

COMMISSIONER VERNON: If I am -- if I may, what he's saying is because we've started the process of sitting as judges, if you will, if we take a break for two weeks, he's suggesting we're not allowed to have communications with one side or the other during the break, during the two-week break.

And I said, "I don't know that that's the rule or not. I've never heard that." It would be, to me, the closest analogy would be once you're under oath, you're not supposed to communicate about your testimony, but that's very -- that's the same concept, but we're in very different roles. So I don't know that that's the rule or not.

CHAIRMAN FRYER: Mr. Oldehoff, was that your --

MS. ASHTON-CICKO: There are rules and statutes on the ex parte communications. There's not anything that specially deals with if there's a continuance that you're barred from. You're required to, you know, disclose your ex parte communications.

MR. OLDEHOFF: Well, it's -- you're now sitting with your judges' hats on. You have the hats on now.

COMMISSIONER KLUCIK: But we're also sitting legislatively for the GMP.

MR. OLDEHOFF: I understand that, and that's entirely correct. I mean, I would just suggest that you try to avoid that if at all possible.

CHAIRMAN FRYER: Let me -- let me rule on this, if I may. I understand the arguments now, and I suggest that we make every effort -- I'm certainly not going to contact either staff or the applicant or the neighbors between now and May the 2nd, and I would appreciate not being contacted by any of those groups. And I recommend strongly that other members of the Planning Commission do the same; however, if you find yourself in a position where a contact has happened, it will need to be disclosed in full, more fully than we usually disclose our ex parte communications.

And did you have anything further to say, Commissioner Vernon?

COMMISSIONER VERNON: Yeah. I mean, you know, I think you guys have, again -- from sitting with me for two years, I probably have less ex parte communication than anybody up here. That's not my tradition and not my norm. I particularly don't like it;

however, I don't -- I mean, I'll -- I don't -- I would -- I don't like putting the burden on people sitting up here that they're somehow getting in trouble for something that I don't think there's any prohibition about. He hasn't cited a rule. You don't seem to agree with him. So I don't know why you put -- I mean, I don't -- I'm not interested in having a ton of conversations.

CHAIRMAN FRYER: Let me -- let me, if I may. All right. That wasn't -- that wasn't my ruling. My ruling was that if you find yourself having a communication, it's -- it should be disclosed in detail. That's all I'm saying. I personally am not going to have any communications with anyone. My recommendation is is that other Planning Commissioners also refrain from having communications, but we're not telling you not to do it, but you will be obligated to make a very detailed disclosure if you find yourself having one.

COMMISSIONER SCHUMACHER: Chair, Chair? Does that also include crocodile hunting? You're not looking for crocodiles?

CHAIRMAN FRYER: Thank you for your momentary levity. We needed that.

All right. I've got some other things I need to say here. So we're going to recess at 5 p.m., if not earlier. I hope we can get to that point, but we need to maintain decorum.

And I -- after I made my announcement about refraining from speaking over one another, on both sides of the dais, it was -- people proceeded to do exactly that, and I'm simply not going to tolerate it. It's just not fair to the court reporter, it's not fair to the county Board of Commissioners, and it's not fair to the public. So please refrain from doing that.

And then, finally, Mr. Klucik wants to make a statement.

COMMISSIONER KLUCIK: No, I'm good. I'm good.

CHAIRMAN FRYER: You're good?

COMMISSIONER KLUCIK: Thank you, Chairman.

CHAIRMAN FRYER: All right. Thank you, Mr. Oldehoff. Go ahead, sir.

MR. OLDEHOFF: Thank you. Thank you. I appreciate that. If we can go to the -- I call it the Elmo -- I wanted to identify --

COMMISSIONER KLUCIK: Mr. Chairman.

CHAIRMAN FRYER: Go ahead, Commissioner Klucik.

COMMISSIONER KLUCIK: All right. I thought we were going to hear from our counsel on the question that I had asked, because I had been asking her a question, and she didn't have the document, and she said she was ready to.

CHAIRMAN FRYER: All right.

MS. ASHTON-CICKO: Yeah. I'm ready to respond, but I was unclear on the question you were asking me.

COMMISSIONER KLUCIK: Sure. So the question was, is -- okay. So we go to Paragraph 1.7 of the ordinance. The very last highlighted portion is a legal description of the acreage, which is apparently the Fiddler's Creek addition.

MS. ASHTON-CICKO: Correct.

COMMISSIONER KLUCIK: And that Fiddler's Creek --

MS. ASHTON-CICKO: One of them.

COMMISSIONER KLUCIK: -- addition is -- includes the area in question for this petition?

MS. ASHTON-CICKO: That -- I don't know the answer to that. Let me see.

COMMISSIONER KLUCIK: Okay. Well, that's what petitioner -- that's what's being offered by the witness currently. And that --

MS. ASHTON-CICKO: Okay.

COMMISSIONER KLUCIK: Because of that, if you look at 5.5, which is the question that you were addressing previously, you were saying that that -- that this ordinance doesn't address an easement -- I think that's what I heard you say -- that this ordinance does not impose a requirement for an easement --

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

COMMISSIONER KLUCIK: -- on the land that's in question, whereas it does appear that the last paragraph or the last sentence of Section 5.5 refers to the land that's described in Paragraph 1.7 highlighted at the bottom of Page 2 of this ordinance. And if that is the case, then it seems as though you misspoke and maybe you want to confirm whether or not -- what the actual answer is in your opinion.

MS. ASHTON-CICKO: I'm going to give you a long answer. Because --

COMMISSIONER KLUCIK: I'm sorry. You're going to give what?

MS. ASHTON-CICKO: I'm giving you a long answer because Section 5.5 was first added in 1996 when Fiddler's Creek was added to this PUD, okay.

This PUD is pretty confusing because it includes other areas other than Fiddler's Creek, and this PUD amendment attempts to clarify what is Fiddler's Creek, what is Fiddler's Creek addition, what is Section 30, what is Section 27. So we took a fairly complicated PUD and tried to make it simple. And there is a visual map in your -- attached as part of the PUD.

So when the 1996 requirement was created, this addition was not part of it. And I can show you the reiterations of that Section 5.5. And I'd be happy to put it on the visualizer if that helps.

COMMISSIONER KLUCIK: So you're saying that's why it's called an addition?

MS. ASHTON-CICKO: Well, there was -- yes, there was a Fiddler's Creek. There's various additions. If you want to give me the map, at the back --

COMMISSIONER KLUCIK: Well, I guess I'm confused because I thought the document that we're looking at is from 1998. That's right.

MS. ASHTON-CICKO: That is an earlier version, okay. It's showing an amendment to the PUD, but Fiddler's Creek was added in 1996, and then there was a Fiddler's Creek addition, and there's various -- you know, teach a class on it.

COMMISSIONER KLUCIK: Right. But the only thing I need to know -- the only thing I need to know is the land description at the bottom of Page 2, which is called Fiddler's Creek addition, in this document that we're looking at, is it the same land, that the same document in Paragraph 5.5, the last sentence, also calls the Fiddler's Creek addition. It's really simple. It either is or it isn't. I mean, they're -- I've never asked a more simple question.

MS. ASHTON-CICKO: I think I can show you better with the visual. I'm trying to pull one of the maps that's attached.

MR. OLDEHOFF: Can I please speak?

CHAIRMAN FRYER: No, not right now, sir.

MS. ASHTON-CICKO: Rich, you know which map I'm talking about, the one that shows the addition. It's attached as an exhibit. I just found it.

COMMISSIONER KLUCIK: Is it in our material?

Counselor Ashton, do you know if it's in our material?

MS. ASHTON-CICKO: It is in your material, towards the end.

MR. YOVANOVICH: Heidi, what page number of the materials? Or do you not have their page numbers?

MS. ASHTON-CICKO: It's in the PUD. I don't have the printout. Can somebody

help put this on the visualizer.

CHAIRMAN FRYER: Ms. Padron, will you mind coming up here a minute, please.

MS. ASHTON-CICKO: And, Rich, if you can help me, the orange -- or the pink outlines the Fiddler's Creek PUD, and then there's various additions that were made over time. The exhibit provided refers to the DRI in '98 and the addition in '96, which would have been to the DRI, but that would have related to the '96 ordinance.

COMMISSIONER KLUCIK: Okay. So down in the lower right-hand corner, there's the blue section.

MS. ASHTON-CICKO: Yes.

COMMISSIONER KLUCIK: How many acres are in that section? Is that 690 acres?

MS. ASHTON-CICKO: No, it's 1,385. The 690 was added in the '96 resolution.

MR. OLDEHOFF: The numbers are the same in both of those blue boxes. It represents that they both came in together. That's not part of the ordinance.

MS. ASHTON-CICKO: Yes, it is.

MR. OLDEHOFF: No, it's not part of the ordinance. I've given you the ordinance.

MS. ASHTON-CICKO: Not that ordinance.

MR. OLDEHOFF: Let me explain. If you look at the first page of this ordinance, it's got the stamp on it. That's the ordinance.

COMMISSIONER KLUCIK: 98-13.

MR. OLDEHOFF: 98-13. And, frankly, to be perfectly candid, 98-13 in the recorded ordinance does not have a map. It does not have any maps. But I agree, and we shouldn't be debating this.

The Fiddler's Creek addition that is the subject of the 1998 ordinance that you have -- this is the Clerk's ordinance -- is this land -- it covers this land on Section 29, and it covers the land that's the north half of Section 19. There's just -- I don't think we can debate that.

CHAIRMAN FRYER: Rich, come here.

COMMISSIONER KLUCIK: And I think -- I think I need to know if that's accurate or not before I can be expected to vote on it.

MS. ASHTON-CICKO: So what's on the visualizer is an excerpt of what was in the 96-42 ordinance which contains Section 5.5 and includes the requirement for the conservation easement.

COMMISSIONER KLUCIK: Okay.

MS. ASHTON-CICKO: Okay. And it refers to the management plan, which is attached to your staff report.

COMMISSIONER KLUCIK: But, subsequently, more land was added, including the land in question. And the land -- so I don't want to hear about ordinance 96. I want to -- I want to have the four corners of Ordinance 98-13. We can talk about whether or not that's relevant, but I need to know first -- it's really simply -- is the land description on the bottom of Page 2, the land that's being referenced at the very last sentence of the ordinance, yes or no? That should not be a difficult question. I think the answer is definitely yes, but I want to hear someone who knows for sure. And I don't know if, you know, you need more time or what. I get it. It's a land description, and I don't like to make a spot judgment on that. But I don't know what else it would refer to. It talks about it, Fiddler's Creek addition as a legal definition because it's a -- it's described in the Paragraph 1-7, and it's capitalized, so it seems to be something very specific. It's 690 acres.

And then we go down, and we're -- the last sentence talks about the Fiddler's Creek addition. And I think that's very relevant because if that includes the land that the petitioner is now talking about, it does -- and at least in Ordinance 98-13, it does appear to require an easement.

MR. OLDEHOFF: Can't we agree -- can't we agree that it includes this land? We've spent 10 minutes on this.

CHAIRMAN FRYER: This is -- excuse me now, sir. I'm going to ask the County Attorney a question, and then we're going to decide whether we recess now or wait until 5 o'clock.

Can we -- can we determine this definitively once and for all right now? It doesn't make any sense what we agree to. I want to know what the facts are.

MR. OLDEHOFF: I have the ordinance.

CHAIRMAN FRYER: Just a moment.

MS. ASHTON-CICKO: Okay. My opinion is Section 5.5 in the management plan that was referenced and is currently referenced --

COMMISSIONER KLUCIK: No, that's not the question. The question is in this ordinance we're -- talking about just this ordinance. In this ordinance, Section 5.5, not in some other revised version or previous version, in this document. And then you can tell me whether or not this document was superseded, doesn't matter, why it no longer binds anybody, why they were okay in never putting the easement on.

The question is: In 1998, when this ordinance was passed, was there compliance or not? And what happened afterwards? And so in order to start that dialogue, we need to make sure we're talking about land that's at issue under this petition.

I think it is, but I don't know. I'm asking for a very black-and-white. Is the land at the bottom of Paragraph 1.7 the land that's being referenced as the Fiddler's Creek addition at the very last sentence of this Ordinance 98-13?

And I understand if you would like to take it under advisement. I don't want you to have to make a call without, you know, having adequate time to consider it. I would never want to do that to you.

CHAIRMAN FRYER: Ms. Ashton.

MS. ASHTON-CICKO: I'm going to answer it in two parts. The first part is that the management plan that was attached, staff has opined that they are in compliance with it. As to the new language that is mentioned, it says, "It shall comply with Land Development Code Section 3.2.8.4.7.3" --

(Simultaneous crosstalk.)

MS. ASHTON-CICKO: -- and I will put that on the visualizer as to what it says.

COMMISSIONER KLUCIK: No. Wait a second. No. No, no, no, no, no, no, no. If you can't answer something that basic, I just don't understand it.

MS. ASHTON-CICKO: No, I can't answer that question, but I will put the section on the visualizer for the record.

COMMISSIONER KLUCIK: So is it that you don't -- you don't know or you don't have enough information to give me an answer and you need to take it under advisement?

CHAIRMAN FRYER: Commissioner, let her put it on the record, and then -- I don't think we have a definitive answer yet, and we're not going to try to reach one by agreement. We're going to take this part of it up on May the 2nd.

So do you want to make a comment on what you just put up there, Ms. Ashton?

MS. ASHTON-CICKO: The addition that was referenced in the '98 ordinance that -- I believe that language was taken out in some subsequent amendment, because it's not currently shown as existing text under your 5.5, I would not have the information as to what was done with the plats.

CHAIRMAN FRYER: All right. Mr. Yovanovich, briefly.

MR. YOVANOVICH: I'm asking -- because you didn't give me a copy of anything you provided to them, I just want to know do you have -- my version of Ordinance 98-13 is this thick (indicating). I know you're not holding the entirety of Ordinance No. 98-13 in your hand.

MR. OLDEHOFF: Oh, and I agree. I only gave you excerpts.

MR. YOVANOVICH: I just wanted to make sure.

CHAIRMAN FRYER: All right. Now -- okay. So now we're done with this. Here's what we're going to do. We're done talking about this for today, about this particular part of the application, and when we come back on May the 2nd, I want there to be a comprehensive answer that is beyond dispute as to -- to answer the questions that Commissioner Klucik answered -- asked. And if it's a large, voluminous document, we want to see that. If it can be done in a smaller document, we want to see that.

Now, in the remaining time we have available to us -- so that part of is going to be recessed.

What I want to know now, and I want people to be honest with me, please, is there anyone here who absolutely cannot return on May the 2nd? Yes, ma'am.

UNIDENTIFIED SPEAKER: I can't come. I'm having surgery.

CHAIRMAN FRYER: All right. So I saw two hands.

UNIDENTIFIED SPEAKER: I'm leaving the 2nd to go back to Pennsylvania.

CHAIRMAN FRYER: All right. So we're going to spend the remaining time -- well, do you have time ceded to you, or are you going to speak for five minutes? Please come up so that you're on the mic.

UNIDENTIFIED SPEAKER: I'm not speaking.

CHAIRMAN FRYER: Well, who is?

UNIDENTIFIED SPEAKER: I ceded time.

CHAIRMAN FRYER: Okay. Well, aside from people who ceded time -- we'll figure out how to deal with that in a moment, but is there anyone who is planning on speaking with or without ceded time today who cannot be here on May the 2nd?

All right, sir. I see one hand. Am I overlooking anybody?

(No response.)

CHAIRMAN FRYER: All right, sir. Come on up.

MR. SABO: Mr. Chairman, I think this is Mr. Russo, and he has been ceded time by three or four other people.

CHAIRMAN FRYER: How much time do you need, Mr. Russo?

MR. RUSSO: Ten minutes -- I think 10 minutes or less.

CHAIRMAN FRYER: All right. Let's make a record of who ceded the time to him.

MR. SABO: Marty Giovanatso (phonetic)? Is there a Marty Giovanatso here?

(No response.)

MR. SABO: So no on that one.

Is Joan DeLuca here?

(Raises hand.)

MR. SABO: There's 10 minutes.

David Sparks?

(Raises hand.)

MR. SABO: Fifteen minutes. Fifteen minutes, sir.

CHAIRMAN FRYER: All right. And we have those names in the record, so those individuals will not be speaking at the reconvened session.

Go ahead, sir. You have 15 minutes.

MR. RUSSO: My name is Glenn Russo, and I reviewed this application, and I had a question after reviewing the entire file. The applicant appears to request that the Fiddler's Creek master plan, which is the controlling document, the one that everyone is operating under, is 2018. That's in their application, and I confirmed that with staff, that the Fiddler's Creek master plan dated 2018 is the controlling document as we sit -- as we stand here today.

The applicant is proposing a master plan dated March 6th, 2024. And so when you take those two plans and you put them side by side, there's a substantial amount of changes that are not part of the applicant's narrative, nor is it part of the summary on the part of the county.

So -- and they're very substantial. There's clubhouses that appear on one and not the other. There is major roadway changes that dramatically change the internal and external traffic patterns. There is land-use changes.

And if the staff can put up the 2018 master plan, I can show you how it compares to the 2024.

And so, when I reviewed this -- and I've been doing this for 30 years, land development --

CHAIRMAN FRYER: In what capacity, if I may ask, sir?

MR. RUSSO: I'm a real estate developer, retired.

CHAIRMAN FRYER: Okay. Thank you.

MR. RUSSO: And so I've been doing this for 30 years. And it was a big file, but you kind of get to know what to look for pretty quick.

And I'm looking at the two maps, and I'm looking at the notice of -- public notice, and I'm looking at the descriptions, and I'm saying, something is not right here. There must be another master plan approved after 2018 because to go from '18 to '24, there's massive changes.

And so I came down to the -- I talked to Nancy, and Nancy said, "I don't think so. I think that is the right one."

She says, "Well, let me talk to Ray."

And I talked to Ray, and he started going through the different approved master plans. And he said, "No, that's the master plan, 2018."

And I said, "Well, why is what they're requesting to replace it with so much different?"

And he said, "Geez, I really don't know." He says, "Let me work on it."

So he was very good. He actually stayed till 5:30, a half hour past quitting time. And the following day he had his team work on it. And I still -- and even -- I went and spoke -- I spoke to him. I said, "Is there an answer to my question?"

He goes, "No, not yet. We're still working on it," and they're researching PUDs or plat developments.

And so what you have -- so we're going back and forth, and he says, "You know what, why don't you come to the meeting, and the developer will be there, and you can ask him whether or not he intends to make all these massive changes to Fiddler's Creek by replacing the master plan of 2018 with the master plan of 2024," which is in their application. That's what they're saying, visually.

The narrative is extremely vague. There is only one line that I can point to that says, "Reconfiguring the residential tracts in the eastern portion of the PUD." So there's no reference point.

So my question is, is the developer actually applying to revise the master plan from 2018 to 2024 as he submitted? Because if he did or does intend to do that, I don't think this is properly noticed. It's not in the narrative. No one really understands how you can go from one master plan to the other with these massive changes.

So that's -- that's my question, and maybe the developer can shed some light on that.

CHAIRMAN FRYER: Well, you're addressing the Commission.

MR. RUSSO: Well, okay. Well, I only say that because that was the recommendation from the staff, because no one seems to be able to get to the bottom of that question.

CHAIRMAN FRYER: Any other comments, sir?

MR. RUSSO: No. No, thank you.

COMMISSIONER VERNON: I had a question.

CHAIRMAN FRYER: Go ahead, Commissioner Vernon.

COMMISSIONER VERNON: You're saying that there's changes beyond what we've been talking -- you've been here the whole time, right?

MR. RUSSO: Yes.

COMMISSIONER VERNON: Changes beyond Section 29?

MR. RUSSO: Yes, and the entryway. There's two changes that are highlighted. When you come in the entryway of Fiddler's off of Collier --

COMMISSIONER VERNON: That they're talking about.

MR. RUSSO: They're talking about --

COMMISSIONER VERNON: Two changes.

MR. RUSSO: When you look at the application, they have the two maps that are saying we're going from here to here, and let us blow it up and give you details of what we're talking about, and they show a little section in the beginning of the entryway where it's a business area.

COMMISSIONER VERNON: And then Section 29?

MR. RUSSO: And then Section 29.

COMMISSIONER VERNON: And you're saying there's a lot more stuff in there?

MR. RUSSO: Well, if you look at the map up above on the top that's 2018, there's no clubhouse. There's at least three or four land change uses. There's no connection between Marsh Cove and Estero, I think you call -- is it Estra? Estancia. Estancie? I can't point --

COMMISSIONER VERNON: I know where you're talking about.

MR. RUSSO: You can see there's no connection. There's actually a fairway between us and them.

And so it's my understanding you have the master plan. Everybody agrees to the road and density and whatnot, and then your plot plans follow the master plan and fill in the details, okay.

And so then you have -- if you see this one here, then you go to -- then you go to -- the proposed one. If you can pull up the proposed one. If you can pull up the proposed one, 2024, that's a dramatically different plan. There's a connection -- the amount of traffic going -- that is being directed from the gate at Publix is now -- all of Estancia is all being directed through Marsh Cove, which would go out through the main entry, because that's what we do. You're not going to backtrack, go in the opposite direction. And so you've put hundreds and hundreds



of people at an -- you've redirected the internal traffic pattern.

And I was looking for a traffic -- I said, "Where is the traffic study regarding that impact?"

"Well, they don't have one."

Well, they have one, but it doesn't include that.

So -- then I started looking at -- well, that one shows a club -- that shows three clubhouses, and the old plan shows two clubhouses. So a clubhouse -- is a clubhouse part of their application because they filed the map that said there's a clubhouse?

So if you -- if the map is approved, then all of these changes around the map are approved. And I'm not quite sure that everybody is aware that all these changes are actually being proposed. It says, "Reconfigure residential tracts on the eastern tracts," plural. Because I thought originally they meant the eastern side of 29, but it says "tracts" plural. Of course, it's very, very vague.

And so, again, I came to the staff, and I said, "There's got to be something missing. There's a missing map or some information."

They said, "No, that's what's proposed."

So as you can see this one, one development that was going one way is now connected to Marsh Cove. That's literally bigger than Marsh Cove so -- and, again, you have a clubhouse that wasn't there but now is there. You have golf fairways that are now turned into residential housing. It's like a land-use change.

So my question is, is the applicant actually doing that between '18 and '24, or is there a misunderstanding?

CHAIRMAN FRYER: Okay.

COMMISSIONER VERNON: Thank you.

CHAIRMAN FRYER: Before I call on Commissioner Klucik, give me your name again, sir, and you may be getting a question. What's your last name?

MR. RUSSO: Russo, R-u-s-s-o.

CHAIRMAN FRYER: Thank you.

Commissioner Klucik.

COMMISSIONER KLUCIK: Thank you, Mr. Chairman.

Okay. So I'm sorry. I should have cleared this up earlier, because I had these questions previously when we were talking about Mr. Oldehoff's letter. And I just wanted to know -- I guess, Jamie French is here? Are you still here? So did you get that letter in May 2023? Is it likely that you did?

MR. FRENCH: (Shakes head.)

CHAIRMAN FRYER: Do you want him to come up or --

COMMISSIONER KLUCIK: Yes, I would.

So we have Amy Patterson as an addressee, James French, and Sarah Harrington-Riccio as county personnel who were addressees, and we have no one acknowledging that they received it for the county, and the Counselor has said she hasn't seen it, I think.

MR. FRENCH: Commissioner, for the record, my name's Jamie French.

That's the first time I've seen the letter. I would tell you it may have gone to Sarah Harrington who was in that group at that time. She's no longer. As Mr. Shea knows, she's transferred to a different group, and she's not on the regulatory side of the house. But we'll certainly track it down.

I would only urge you -- is that clearly if there was a -- if there was a transaction of a

record that came in by e-mail or if it was -- perhaps it said it was cc'ed, we typically bring those in through a process and file those with our records room, or we scan those, and those go into a database. So --

COMMISSIONER KLUCIK: So the county is dubious that this -- that Mr. Oldehoff ever actually sent this to the county?

MR. FRENCH: I've never spoken with this gentleman before, nor have I witnessed -- or have I put my eyes on this letter. And I can only tell you is that with regards to Growth Management, we adhere to Chapter 119 of the Florida Statute.

COMMISSIONER KLUCIK: Okay. So your contention is perhaps the witness is -- who's under oath is stating something that's not true?

MR. FRENCH: Those would be your words, sir, not mine. Let's be very clear.

COMMISSIONER KLUCIK: Well, no. Well, I understand that.

MR. FRENCH: Yes, sir. And, respectfully, let's be clear. I have not indicated that. You asked me a question, and I answered it.

COMMISSIONER KLUCIK: So you don't -- you have no way to know whether or not the county ever received this?

MR. FRENCH: I have no way to determine as to whether or not the county received it. I will be happy to ask that employee who is no longer in the role --

COMMISSIONER KLUCIK: I find that it -- it's very bothersome -- it bothers me quite a bit that we have an attorney representing some -- you know, a group of people, and we have -- the county can't acknowledge whether -- doesn't know whether they've received the letter, and it's right on point, and it's from a year ago. And, you know, according to the witness, you know, he never received a response.

So that bothers me. I hope it bothers the county that if they -- if the letter was sent, that he never got a response. Would that bother you if the letter had been received and he never received any kind of response?

MR. FRENCH: Are you asking me personally or professionally?

COMMISSIONER KLUCIK: I said -- professionally and personally, would it bother you if you knew that the letter had been received by the county and he never got a response of any kind?

MR. FRENCH: Commissioner Klucik, we process better than 22,000 inspections per day, and that is not an excuse, and thousands of applications, whether they're land use or building petitions. I will tell you, any communication that we drop the ball on -- we are clearly a self-correcting agency, and it would bother me if one person didn't get their phone call answered or they weren't greeted professionally when you walk in our doors. So absolutely. Thank you.

COMMISSIONER KLUCIK: Great.

CHAIRMAN FRYER: Thank you very much.  
Commissioner Vernon.

COMMISSIONER VERNON: Yeah, I just -- in defense of the county, you know, I don't know how many pieces of mail you get a day, and to -- in a conceptual way, I certainly agree with Mr. French, but as a practical matter, to expect them to respond to everything, and then, secondarily, to expect them to parse out, well, what needs a response and doesn't is a huge burden. I mean, there -- conceptually, I agree with Commissioner Klucik, but as a practical matter, I wouldn't expect the staff to be responding to every piece of correspondence they get, even if it's from an attorney.

CHAIRMAN FRYER: Commissioner Shea.

COMMISSIONER SHEA: Well, I would ask you, you submitted the letter --

MR. OLDEHOFF: Yeah.

COMMISSIONER SHEA: -- and you didn't get a response for a year, and you never went to somebody and said, "Is nobody listening?"

MR. OLDEHOFF: I did. I did.

COMMISSIONER SHEA: What -- is there a record of that?

MR. OLDEHOFF: I sent this letter. I personally -- I put them in the mail, the envelopes. I sent this letter to Amy Patterson, James French, and Sarah Harrington, three of them. I also sent this letter, a copy, under the cc to every member of the County Commission, and I e-mailed a copy of the letter to Counsel, and I would add, I spoke to Ms. Ashton about this afterwards, and her only comment to me was, "Do you have a copy of the management plan?" That was the only thing. I specifically asked her about this matter and about this letter.

COMMISSIONER SHEA: So for a year you didn't raise hell, so to speak?

MR. OLDEHOFF: I did, I did. I did every chance that I could to get somebody at the county to take a look at this and get back to me because we were saying, "My God. You've got 25 years' worth of non following up. You've -- who's accountable for this?" This thing says in 1998 that you're supposed to get this before they can even turn dirt, and yet for 25 years you've never got them. I mean, we were like a dog on a bone on that.

MS. ASHTON-CICKO: I met Mr. Oldehoff, via Zoom, with about five or six county employees were also in the meeting so that we could get answers to his questions. We did not have the management plan at the meeting. We did locate the management plan. And I did ask staff to be prepared to answer the questions today related to the management plan.

This is a pending zoning application. I did a courtesy meeting with him. And I don't typically send e-mails when there's pending zoning applications. I represent the Board and also the Planning Commission.

MR. OLDEHOFF: But I wasn't talking about an application. I was talking about conservation easements. I was not talking about an application. And that's why I contacted her to say, "My God." If this was my county -- if this was my county administrator, my county manager, I'd be -- I'd be blowing whistles. I'd be waving flags saying, "Look out, look out. Your staff is -- they're -- they're messing up. They've got to do something about this." I would have taken this and made it the top priority.

CHAIRMAN FRYER: All right. I'm going to jump in here. I want to make effective use of the time remaining until 5 p.m. as long as we can keep our --

MR. OLDEHOFF: Thank you.

CHAIRMAN FRYER: -- keep ourselves under control. And so I have a -- I have a proposal to make.

And first of all, I want to say, Mr. Oldehoff, we're going to give you a reasonable amount of time to complete your presentation, and then, on advice of our County Attorney, Mr. Klatzkow, you're going to have the right of cross-examination of expert witnesses. And we will -- we will allow for time for that to occur on May the 2nd.

So it seems to me as though -- you tell me if you disagree, and I'd like to get this worked out. I think we owe you about 15 minutes of presentation time, and then cross-examination will go as long as it goes.

MR. OLDEHOFF: Well, I mean, I thought I could go through this fairly quickly, but the questions have come, and then we got snagged. There's a couple things I want to go

through, and I really thought I could cover this in 15 minutes, and I think I still can if you just --

CHAIRMAN FRYER: Well, wait a minute. I don't think we're going to do that today. My determination is that we're not going to do that today. I think -- I think we've got -- we're all pretty high strung at this point. We're going to give you a fair opportunity. I propose 15 minutes. Do you have a counterproposal?

MR. OLDEHOFF: Well, can I see what -- I mean, I have just one thing I want to go through. Remember, I said there were five bullet points. I'll finish the first, just the first, and it will just take a couple --

CHAIRMAN FRYER: How many minutes do you need to finish your presentation?

MR. OLDEHOFF: Hopefully I can do that in 10 minutes to finish Bullet Point 1.

CHAIRMAN FRYER: Yeah, you're not going to be doing it this afternoon. So is it 10 minutes or -- I'm offering you 15 minutes to complete your presentation on May 2nd.

MR. OLDEHOFF: Well, I don't want to be under the gun time-wise. And you've been extremely fair with me. I want to be able to help you with the information that you need to have to be able to make a principled decision here, and I know how -- I can go through it, but I don't want to constrain myself and have you say, "Whoops, nope, sorry. The clock's off."

CHAIRMAN FRYER: I mean, we're going to try to figure out what's reasonable here. And you're not going to have a roving commission to go on and on and on, and I don't think -- and you're not asking for that --

MR. OLDEHOFF: Oh, no. I don't want that, no.

CHAIRMAN FRYER: -- and I understand that. But I want to be fair to all parties, including the applicant. And I'm trying to get a handle on how much time you're going to need to complete your points. And if you don't want to be constrained, I'll simply propose a number and constrain you.

MR. OLDEHOFF: All right.

COMMISSIONER SHEA: Can I ask a question?

MR. OLDEHOFF: Fifteen.

CHAIRMAN FRYER: Go ahead. Well, we've got --

COMMISSIONER SHEA: You might not like it.

MR. OLDEHOFF: Fifteen minutes.

COMMISSIONER SHEA: I'd rather hear his -- because we're going to end up with another bottleneck, and then we're going to, at that meeting, have to cancel and go to the next meeting. I'd rather find all of the things that -- issues that he has, and we can be prepared to discuss at the next meeting.

CHAIRMAN FRYER: What's the -- what is the feeling of the Planning Commission?

COMMISSIONER KLUCIK: That sounds good, because it seems like he's going to be done in 15, 20 minutes.

MR. OLDEHOFF: Yeah, yeah.

CHAIRMAN FRYER: Okay. We'll give you 15 minutes then right now --

MR. OLDEHOFF: Perfect.

CHAIRMAN FRYER: -- but I'm telling you that if you get into these --

MR. OLDEHOFF: I don't want to get --

CHAIRMAN FRYER: -- testables -- now, let me finish. Please don't interrupt me. As I mentioned, we're having real difficulty talking over one another.

And so it's the wish of the Planning Commission to let you finish. But if you start getting into things that are controverted or that raise the room temperature in here, I'm going to

cut it off, and we'll just go to recess.

MR. OLDEHOFF: Okay.

CHAIRMAN FRYER: All right. Now, I've got Commissioner Shea. Do you still want to be heard?

COMMISSIONER SHEA: No, that's what -- I wanted to push to hear what he has to say so we can be better prepared at the next meeting.

CHAIRMAN FRYER: All right. Now, before you -- before you finish up then --

MR. OLDEHOFF: Yes.

CHAIRMAN FRYER: -- I want to make some more proposed rulings unless I get overruled by the Planning Commission.

The people who have ceded time -- and I understand that there are approximately -- not 50, but 17 people at this point who wish to be heard, and some of them have received ceded time, so they would be going on longer than five minutes.

It's my proposal that we not require the ceders to be physically present in order to let them have the time that they would have had if we were continuing on to hear them this afternoon, but we're going to need to get some names clarified, and then we can excuse the ceders who don't want to be here.

Then, finally, with respect to cross-examination, this is -- it's unusual, but following the advice of County Attorney Klatzkow, we're going to have cross-examination, and we're going to allow a full and fair opportunity both to Mr. Oldehoff and also petitioner's counsel to cross-examine expert witnesses.

We're going to be very reluctant, very constrained to allow cross-examination of lay fact witnesses. It would have to be an extraordinary circumstance, but we'll consider that if it comes up. But I've just got to tell you in advance that my inclination is to confine the cross-examination of the experts, and it's my understanding that both sides have experts to offer.

So -- and that -- the cross-examination is a point of uncertainty, and when you add that to 17 speakers, some of which -- some of whom have additional time, I can see us spending a full day on this.

Now, I'm going to ask the Planning Commission, does anybody have any objections to what I've proposed so far?

COMMISSIONER SHEA: No.

CHAIRMAN FRYER: Okay.

MR. YOVANOVICH: Mr. Chairman, one question.

CHAIRMAN FRYER: Go ahead. Come to the podium.

MR. YOVANOVICH: I'm a little unclear on his 15 minutes. Is it 15 minutes to do all your points, or is it 15 minutes just to finish your first point?

CHAIRMAN FRYER: Good question.

MR. OLDEHOFF: I hope I can finish all of them.

MR. YOVANOVICH: That's all I wanted to ask.

CHAIRMAN FRYER: Okay. All right. Well, I mean, we're not going to hold you to exactly 15, but we're not going to be beyond that very much.

MR. OLDEHOFF: Thank you.

CHAIRMAN FRYER: All right?

MR. OLDEHOFF: Thank you.

CHAIRMAN FRYER: Go ahead, sir. You have the floor.

MR. OLDEHOFF: Okay. So getting back to where I was, I said, okay, so if we look

at the biological opinion, this is -- this is the truth. This is what's contemporaneous. 2017, this is what they write, and they write in there that, "On May 27th, 2016, the Service met with the consultant and the applicant's representative." The consultant being Mr. Hall, okay -- "to discuss the proposed preserve areas and management by the Community Development District."

It goes on. It says, "On July 20th, 2016, the Service met with the consultant and the applicant's representative," Mr. Hall, and -- "to discuss the proposed off-site preserves. The Service agreed these were acceptable."

Now, you heard somebody say that the Service demanded this. No, this is what -- this is what Fiddler's Creek offered. This is what Fiddler's Creek proposed, okay. This is -- this is what they said. This, okay. The Service agreed these were acceptable.

"On August 11th, 2016, the applicant's representative indicated in an e-mail to the Service that the applicants agree to set up the preserves and purchase the remaining Panther Habitat Units from a Service-approved conservation or mitigation bank."

So we have here that was a promise that was made to the Fish and Wildlife Service and the Army Corps that was -- that was central to the permit being issued to develop the lands that were to the north. And we've talked about already how that requirement required them to place all this land in preserve and to put it all under conservation easements. And you have that in your materials, and it shows where they said they were going to put it. And that also said that they had to do it before they could turn dirt.

All right. I made -- I made a FOIA request for the entire Fish and Wildlife Service file. There's nothing there. There's nothing between 2019 and the middle of 2022. If somebody picked up the phone maybe, but there's nothing in there between those two periods of time. The application fell into it.

What happened was, the Army Corps said, "Oh, that's supposed to be the Fish and Wildlife Service's job to get the easements."

The Fish and Wildlife Service said, "No, that's a condition of the Army Corps permit. The Army Corps was the one supposed to be getting the easements."

But the whole time, however, was that the promise had been made, and they were not giving the easements. They didn't do it. They didn't do it until it was demanded by the Fish and Wildlife Service.

So here is the -- here is the plan -- and that's the next document that I have there for you. This is the -- this is the management plan that it said that they were going to comply with, and the date on that is 2016, okay. So that's the management plan that's referenced in that -- in the biological opinion, date and everything, all right?

If you look at Page -- it doesn't say. It's Section 5.0. Section 5.0 is in that management plan which is in the conservation covenant; 5.0, conservation easement. "The conservation easement will be placed over the preserve within 60 days of the state's notification to not accept the property."

Now, you remember Mr. Hall was talking about the federal government, the federal park and Congress. No, he was supposed to go to the state, according to this. He was only supposed to give the easements to the county to the county. This one said, "Okay, you can try to give it to the state." He never went --

So it says, "The conservation easement will be to Collier County with third-party enforcement rights granted to the U.S. Fish and Wildlife Service." So now we shift gears because the Fish and Wildlife Service has said, "By God, we want those things right now."

And, reluctantly, they record the conservation covenant. Now, mind you -- and the

conservation covenant was recorded in November of 2022, and it has that name "management plan" attached to it but, significantly, it has this language that was added in for this one where it was supposed to give everything, and it never did the conservation easement on the section -- the Section 19 property, but it's now giving this stuff on Section 29. But in this, it has this "subject to approval by."

But I want you to look at the signature page for that conservation easement, that conservation covenant, which was supposed to go to the county, right? There's no "approved by" anyone at the Fish and Wildlife Service. There's nothing there. No, what they did was they just recorded that down here in Collier County, and it had that in it. Fish and Wildlife Service never agreed to that language in there. They just recorded it that way.

So now we go on, and we move to the Fish and Wildlife Service's letter of January the 31st. That letter of January the 31st is for purpose of Section 125.111. That is the final agency action.

When your counsel told you that you can't consider in connection with a development order request -- and that's a rezoning. That's not a Comp Plan amendment. Comp Plan amendments are not development orders. That's only --

CHAIRMAN FRYER: Could you repeat that point for me, please.

MR. OLDEHOFF: Yes. By definition and by law, a Comprehensive Plan amendment is not a development order. So where that statute refers to development orders and development permits, it is not referring to any kind of a restriction with respect to a Comprehensive Plan amendment. That's fairly debatable. It's legislative.

CHAIRMAN FRYER: I want to hear again what you said about final decision.

MR. OLDEHOFF: Yes. In that statute, it says that you can't condition an approval upon the applicant getting a permit from another agency. So in other words, you can't make somebody go to the Water Management District and get their permits and then come and ask for a rezoning for the property. However, it says right there, if you went to the -- if you went to the Water Management District, and the Water Management District gave you a final decision and said no, then they can -- you can condition, and you can say, "No, we're going to deny this because you don't have permission from the agency."

CHAIRMAN FRYER: Let me just be sure I understand. So are we talking about the January 31, 2024, letter?

MR. OLDEHOFF: Exactly.

CHAIRMAN FRYER: Are you saying that that's a final decision?

MR. OLDEHOFF: This is final agency action, and it's --

CHAIRMAN FRYER: I just want to be sure --

MR. OLDEHOFF: -- says right on it.

CHAIRMAN FRYER: I want to be sure I understand your point. Thank you. Go ahead.

MR. OLDEHOFF: It says this permit is closed. This matter is closed. You ate the steak. You built the project. You made the deal. You have to pay the bill.

COMMISSIONER KLUCIK: Where is this?

MR. OLDEHOFF: This is on the -- this is on the first and the second pages.

COMMISSIONER KLUCIK: Of? Of what?

MR. OLDEHOFF: Of the January 31st letter. That is what this letter means. This letter says there is no basis for us to take in this application or to do anything with it. That file, that permit's closed. You did the work. You ate the steak. You've got to pay the bill.

We are not doing anything with this. We are not accepting what you've got in this. This is final. This says no. That's -- that permit's finished. You're done. You're done.

So it's a final decision. By law, that's a final decision. And that is what your section of the statute is intended to do. If you've got a final decision, of course, Commissioner, you can say, what are we doing here? Why -- why are we going to throw away our whole Comprehensive Plan? Why are we going to throw our entire conservation and coastal management element right out the window? Why are we even going to entertain something like this when the Fish and Wildlife Service has said, "You made the deal"? You're supposed to do this. This is supposed to be done. This is supposed to be under a conservation easement in perpetuity.

This doesn't say, "Go back and fight a battle with another part of the government." This doesn't make the federal government have to fight with the state or the state have to fight with the federal government. This says, "No, this is done."

CHAIRMAN FRYER: Commissioner Vernon.

MR. OLDEHOFF: Case closed.

COMMISSIONER VERNON: Yeah. You're -- I hate to interrupt you, but you're throwing a lot at us, or a lot at me, all at once. But the declaration -- you actually gave me two versions.

MR. OLDEHOFF: Right.

COMMISSIONER VERNON: -- of the declaration of conservation covenant, and you just said in passing, this isn't signed by any of the --

MR. OLDEHOFF: Right.

COMMISSIONER VERNON: -- what I call the regulators.

MR. OLDEHOFF: Right.

COMMISSIONER VERNON: And so I started reading it, and it appears to be a contract between one entity, Fiddler's Creek, and another entity, Fiddler's Creek.

Do you understand what I'm saying? It's an agreement with two entities both owned and controlled by Fiddler's Creek. And it mentions a third-party beneficiary is these regulatory agencies.

So I guess my question is probably not for this gentleman, but whether the regulatory agencies saw this document. And maybe they did. I don't know.

CHAIRMAN FRYER: Can you answer that?

COMMISSIONER VERNON: They didn't sign it.

MR. YOVANOVICH: Can I answer it? Can I answer the question?

MR. OLDEHOFF: It doesn't make sense. It doesn't make sense. And it's not approved by, it's not reviewed by. There's nothing on here.

COMMISSIONER VERNON: Well, I mean, I can hear Rich. I'm not looking at him, but I hear his voice. He wants to answer. And I don't mind if he answers. I don't want to slow down the process, but he may have a good answer to this.

CHAIRMAN FRYER: Do you want to hear from him?

COMMISSIONER VERNON: I'd love to, yeah.

CHAIRMAN FRYER: Mr. Yovanovich.

You won't be charged for the time, Mr. Oldehoff.

MR. YOVANOVICH: The answer to your question is, yes, the Corps has seen this covenant. Yes, the Corps sent us an easement on -- saying we're in compliance. We will provide that to you for your May 2nd hearing.



Keep in mind that the Corps is the permitting agency. U.S. Fish and Wildlife, as Mr. Schmitt, who's now gone, told you, is not a permitting agency. So you can't take a final agency action when you don't issue the permit.

COMMISSIONER VERNON: No, I'm just -- I'm just --

MR. YOVANOVICH: But I'm just saying to you, yes --

COMMISSIONER VERNON: Did they see it before it was signed?

MR. YOVANOVICH: I don't know if they saw it before it was signed, but they were provided --

COMMISSIONER VERNON: Did they --

MR. YOVANOVICH: They were provided it, and they didn't say, "We don't want it."

COMMISSIONER VERNON: I understand. But did they see it -- to your knowledge, did they see it before it was signed?

MR. YOVANOVICH: Let me -- if I -- yes. According to my client, yes.

COMMISSIONER VERNON: Did they approve it?

MR. YOVANOVICH: I'm going to let the expert tell you.

MR. HALL: The easements were signed and submitted to both the agencies prior to them being recorded, and both Fish and Wildlife Service and the Corps -- the Corps wrote us an e-mail saying, "These are sufficient." These satisfy the contracts -- the conditions of the opinion in their mind, and then they were recorded.

COMMISSIONER VERNON: Okay. So they did respond to it?

MR. HALL: Yes, sir.

COMMISSIONER VERNON: Both of the agencies?

MR. HALL: Not -- both agencies didn't respond to me. The Corps -- at the time, the Corps was the permitting agency. They forwarded it to Fish and Wildlife, got feedback from Fish and Wildlife, I'm assuming. I didn't see this feedback. But then the Corps responded back to us, that, yes, they are sufficient, and then we recorded them.

COMMISSIONER VERNON: Okay.

CHAIRMAN FRYER: Thank you.

MR. OLDEHOFF: So Fish and Wildlife Service --

CHAIRMAN FRYER: Mr. Klucik, did you want to be heard now? I've got you signaling.

COMMISSIONER KLUCIK: Well, I started thinking about something else.

CHAIRMAN FRYER: Okay.

COMMISSIONER KLUCIK: I can't remember. I apologize.

CHAIRMAN FRYER: Go ahead, Mr. Oldehoff.

MR. OLDEHOFF: Just my last point here for this is that, you know, in the neighborhood meeting -- and you point to that, too, or Mr. Hall said, "We always intended to develop this property." They never gave any of these easements, because they never wanted to give any of these easements because they always wanted to develop this property, and if they gave the easements, everything would be different here. Everything would be different here.

So that's the first thing is broken promises, and at the same time, there's no accountability. It's like, who's supposed to be watching for these things? Who's supposed to be sure?

The public certainly believed that this was going to happen, and this was good. The County Commissioners that approved this certainly believed that this was -- this was what they told their constituents. "Well, I'm getting this," but it never got done. It still hasn't been done.

The next point I wanted to get was, you know, you have people that reasonably relied upon this ordinance, these commitments, these things. Their property rights -- their property rights are being affected by this. They reasonably relied upon the fact that the County Commission had got this ordinance that required these conservation lands to stay in conservation or be preserved to remain the way that they were and that everybody would do what they agreed to do.

Their property rights are going to be affected by this. Not only the folks that live over in Royal Palm Estates and Royal Palm Golf Club, but also, my God, the people on Auto Ranch Road. I don't know if there's people here from Auto Ranch Road. But, my God, the people on Auto Ranch Road, this is going to destroy that hamlet.

CHAIRMAN FRYER: Commissioner Klucik.

COMMISSIONER KLUCIK: Yes. I don't know -- you know, this is for -- probably for Mr. Yovanovich, but I would also ask you the question. I would like from you what document -- and I think we have it. I think you're saying that it's Ordinance 98-13. Is that your basis for saying the genesis of the requirement is Ordinance 98-13 for the easement?

MR. OLDEHOFF: Correct. It's carried over into the 2018 most recent iteration.

COMMISSIONER KLUCIK: And I would like Mr. -- the petitioner at some point -- and I'll leave that to the Chairman's discretion. I would like to ask the petitioner why he thinks there was a requirement, and then we can talk about the difference between a conservation covenant and an easement.

CHAIRMAN FRYER: Which would you like to do first? Do you want to hear from --

COMMISSIONER KLUCIK: Well, I don't want to interrupt the witness, but I just wanted to, you know, give you a chance to know that's where I'm going to go so you can try to address it now. And I think I'm taking from your 15 minutes, which I apologize.

CHAIRMAN FRYER: Is this something that you'll be satisfied hearing on May 2nd, or do you want to hear --

COMMISSIONER KLUCIK: I think it's good to hear it now, because I think so much depends on the answers that both sides give.

CHAIRMAN FRYER: All right. Well, let's have an answer to that question. It won't be charged against your time. And we may end up having to give you more time on your presentation in fairness, but if we do --

MR. OLDEHOFF: Can I just finish and -- can I just finish? I mean, I keep getting --

COMMISSIONER KLUCIK: Yeah, I don't mind, as long as we do it right after.

MR. OLDEHOFF: All right. I'll try to make sure we've got that.

The second thing -- the second point is workforce housing/affordable housing, with a question mark. This is an absolutely terrible place to put affordable housing and workforce housing. You're talking about young people, young people that are working with little families, young children. This is a terrible place to put workforce housing. Nobody's going to want to live there.

If you're raising a family, you're a teacher, you're a firefighter, you work at a hospital or something like that, and you've got a family, this isn't going to be the place. There's nothing here that even says anything that there's -- this is going to be available for anybody but single people that might, you know, fit the mold.

But the fact of the matter is, you're putting them two miles away from the nearest main road. They've got to go two miles. Their kids have to ride their bikes two miles, two-and-a-half, maybe three miles just to get to the McDonald's.

This is not a good place to put people in workforce, young families. I'm telling you that as someone that grew up in Levittown, which was, like, the place for affordable housing. This is not -- this is not the kind of place for workforce people. You want to put that housing in a better place, and you want to commit to putting it in a better place.

This is a terrible place for it. If it wasn't for the fact that there's a commitment and -- I'll use the word again -- "promise" to do something, this wouldn't have legs at all. But this is a really terrible place to even think about making people have to -- have to live with their young families.

The third point that I wanted to raise is the price -- the price for this, because we get to the price -- because I guarantee -- I've been around this long enough, and I presented the fiscal neutrality portion of the Sarasota County 2050 plan and all of the economics behind that. I've dealt with impact fees and all of those things that go into developments, capital improvement plans, capital improvement elements, all of the financing ways. The price of this, they're committing to put in a road, but did you get an idea of what the price is going to be to build that two-mile-long road with all the improvements that are coming with it, the intersectional improvements? And do you think for a second that the developer is going to completely foot that bill? And it's not going to be borne on either the taxpayers, the Capital Improvement Plan, the revenue that goes into the capital improvement plan, the funding options, or impact fees, running force mains and water lines for a 750-unit development back there?

They're going to have to oversize those things. You're going to get applications on top of this to develop the rest of Section 29.

But the fact of the matter is there is no way -- there is absolutely no way that this promise or commitment to build a road and to run water and sewer to there and maybe a bus stop is not going to have to be borne by taxpayers and the utility ratepayers. It absolutely categorically will. And that goes into the price.

Is it worth committing all of this money from the budget for other projects in other better places to facilitate affordable/workforce housing, or are you going to spend and put all your money over here for the benefit of this developer that wants to build 550 luxury units and maybe 225 of these workforce housing units? The price is incredibly out of whack with what's being proposed here.

The fourth thing that I wanted to get to is the road and affordable housing. The road is really a huge problem. And, Mr. Chair, you hit the nail on the head when you were talking about its impact on the surrounding areas, the way that this island -- it's an island. It's an isolated island -- is going to be within its surroundings, the land suitability for this, putting 15 dwelling units -- 15 units an acre at the very end of development of the world? You're right on state and federal lands.

So you're dealing now with putting this road down Auto Ranch Road through a community that is built low, houses that are low, and you're going to run what first, what I heard, sounded like a levy, but when I heard even more about how high this was going to have to be elevated and all the improvements and in the deep swales, it sounds more like it's a dike that's being built down there.

What about these properties that are on either side in this little rural hamlet that is there right now? Where is that water going to go? This stuff is going to flood that neighborhood. It's going to ruin that neighborhood.

The trips on that road -- you have to look at what the background trips are. And there's been no evidence, and there's been no reference at all to what the background trip -- what is the

existing traffic on Auto Ranch Road? It's a rural road.

It is rural, and it is designed and it is built that way because it is a rural road. It is not high on the list of improvements with the county because it is a rural road.

But as a rural road, it functions just fine for this community. The level of traffic that goes on this road is just fine for the wear and tear on that road, but in order to facilitate and accommodate 750 units back here and all the delivery trucks from Amazon and Whole Foods and everybody else -- which you don't count. That's not in the ITE manual. Those trips, that's not even noted in the manual. The manual peak-hour trips -- there's Amazon trucks, but they're not counted in there.

But you look at what the background traffic is, and then you look at the 460-or-so trips on the peak hour and the 4,000 trips on that road a day, that little rural hamlet is going to be destroyed. It's just going to be destroyed.

And so for all of this just for the chance at 225 workforce housing units way, way, way back here -- you know, you have the discretion to say, "No. No. No, not under these circumstances."

You've got to play right, you know. You've got to make good on your promises.

You know, this application really puts something into highlight for me. When I was looking at this, I said to myself, "You know, this really puts you at kind of a crossroads," because I don't know if you've had an application like this that's come up in the past. This may be your first one, but this one really puts two things into light. Are you going to take the fork of the road that says that we're going to make people make good on their promises, we commit to the people of this county, when someone makes a promise to us, that you're going to make good on that promise? Are you going to do that, or are you going to say, "The heck with it. All you folks out there, from now on, you can't count on promises."

The second thing that I see in here is, in order to think about approving this -- because it is so compellingly -- it's incredibly inconsistent with your Comprehensive Plan -- you would have to throw the whole Comprehensive -- the whole Comprehensive Plan away.

And that's what your staff is saying. Take and balance. No. You don't take the Comprehensive Plan and throw it out the window. Your community put that plan together. That's the community's plan.

So are you going to follow the Comprehensive Plan? Are you going to plan with the community? Are you going to make people make good on their promises and hold them to their promises? And are you going to respect people's property rights?

Let me tell you something, there are no property rights on Section 29. There are none. You heard that. And they gave them away. There are zero residential units on that property. (Simultaneous crosstalk.)

CHAIRMAN FRYER: Commissioner Klucik would like to be heard.

COMMISSIONER KLUCIK: When he's done.

CHAIRMAN FRYER: Oh, I'm sorry. Go ahead, sir.

MR. OLDEHOFF: On the other hand, you're being asked to basically say, "Developers won't be held to their promises. The statute and the Comprehensive Plan will be thrown out to trash, and the taxpayers and the utility ratepayers will not be able to rely on the government to protect them and their pocketbooks." And I think that this is -- this is a really, really compelling case for denying -- you know, recommending denial of these applications because they're so far out of whack.

That concludes my comments. I have three other speakers -- two other speakers?

Two. Two other speakers.

CHAIRMAN FRYER: Are these going to be experts?

MR. OLDEHOFF: They're experts, you know, a few minutes each.

CHAIRMAN FRYER: Well, we're pretty much finished for today.

MR. OLDEHOFF: Okay.

CHAIRMAN FRYER: So I just want to be sure that they can be coming back on May the 2nd; is that correct?

MR. OLDEHOFF: Yes.

CHAIRMAN FRYER: Would they be able to come back?

MR. OLDEHOFF: Yes, we'll be able to come back.

CHAIRMAN FRYER: All right. Before you go, I've got a question, Commissioner Klucik has a question or comment, and Commissioner Vernon as well, so --

COMMISSIONER SCHUMACHER: Mr. Chair, I don't have a question. I just have to excuse myself. I do have to get out of here and get back to my office before 5.

CHAIRMAN FRYER: Understood. Well, we're going to --

COMMISSIONER SCHUMACHER: I apologize to you and the attendees, but I look forward to two weeks from now.

MR. OLDEHOFF: Thank you for listening.

(Commissioner Schumacher left the boardroom for the remainder of the meeting.)

CHAIRMAN FRYER: Thank you.

My question is this: We've talked about a balance test, and we've talked about conflicting provisions in the Growth Management Plan or provisions in the Growth Management Plan that may conflict with a policy that has recently been announced by the Board of County Commissioners having to do with workforce housing seeming to be -- seeming to take some level of precedence over some of the other concerns.

What do we as a Planning Commission -- how do we deal with the potential conflicts of a -- of a policy at the county that appears to take precedence over other FLUE provisions and those FLUE provisions themselves?

MR. OLDEHOFF: Your FLUE provisions are in an ordinance, and that ordinance has been adopted in accordance with a statute. That -- and the courts have said for 30 years, that is the constitution of growth and development in this county.

I couldn't be more clear on that. And the case law is very, very clear on that. The case law is also very, very clear that when it comes to consistency with the Comprehensive Plan balancing, no, they rejected that back in the early '90s. It hasn't been even -- even argued since the early '90s. You have to comply with your plan.

If you don't like it, you've got to change the plan. You have to -- if they want to have a policy and work within the plan, you still have to work within the plan. If they want to change the policies in the plan, they have to go back to amend the plan, and then they have to amend all of those other elements that may be implicated by that so that you have internal consistency within the entire plan.

CHAIRMAN FRYER: I think this is a very important question, and I'm still going to need more clarity on it, and I may even ask for some kind of a brief. But what I think I hear you saying is that -- and we all, I believe, concede and I share the point of view that workforce housing is extremely important -- something that's extremely important to achieve.

Now, having said that -- and there are also provisions in the current Growth Management Plan having to do with workforce and affordable housing. They're already there.

Some -- I'm not personally aware of any obvious conflicts between those provisions and other provisions in the GMP.

But when you introduce the concept of taking precedence of -- an official policy of the county taking precedence over existing FLUE provisions --

MR. OLDEHOFF: Now, that has to be adopted. That has to go through the adoption process. It has to have public input, public hearings, all the things that are connected with that.

A policy is not an ordinance. A policy is not an ordinance. A resolution is not an ordinance. An ordinance is an ordinance.

CHAIRMAN FRYER: Thank you. I'm going to want to -- I'm going to want to see a brief on that, and I mean brief. I don't mean a long, you know -- but this is an essential question.

MR. OLDEHOFF: One side of a sheet of paper.

CHAIRMAN FRYER: Because we are all very clear on the policy of Collier County's Board of County Commissioners, and we share that policy of recognizing the importance of affordable and workforce housing. But an argument being made here is that if you allow that to take precedence over certain FLUE policies, then you are at war with the ordinance that created the Growth Management Plan itself.

MR. OLDEHOFF: That's right.

CHAIRMAN FRYER: And I need to see more about that, and that's something that I'm going to want to know more about when May 2 comes around. So that's -- so you're -- okay.

Now, I've got two commissioners who want to be heard, and then I need to leave sufficient time for Mr. Sabo to keep books on who the ceders are and who they're ceding time to and how much they're ceding time.

So I'm going to do a hard break at about 20 minutes of 5 to assure that we have sufficient time.

Now, Mr. Yovanovich, what --

MR. YOVANOVICH: I thought Mr. Klucik wanted me to answer --

COMMISSIONER KLUCIK: Well, I have questions for the witness, and then I also have that question for you.

MR. YOVANOVICH: I wanted to make sure.

CHAIRMAN FRYER: All right. Well, there's going to have -- I mean, we can ask the question. You may have two weeks' time in which to think of the answer. But I can't -- I can't allow the ceders of time to leave the room until we've kept proper books on this.

MR. YOVANOVICH: I understand. Go ahead.

COMMISSIONER KLUCIK: Would you agree that a conservation easement -- a conservation covenant is a type of conservation easement?

MR. OLDEHOFF: Yes. It's --

COMMISSIONER KLUCIK: Okay. Because I think that's statutorily defined as such.

MR. OLDEHOFF: Yeah. It's strange because it's supposed to be a conservation easement.

COMMISSIONER KLUCIK: Okay. Now, I just wanted to know if you agree. I understand it's unusual to me why it was done that way, but that's fine.

Then my question is, as I mentioned before, what is -- are you saying that the genesis of the requirement to have this land in question -- the petitioner's land that he's trying to develop, the petition before us, the genesis of the requirement is this ordinance for the easement?

MR. OLDEHOFF: Yeah. That application in 1998, those promises that were made on

the record in the transcript and that ordinance.

COMMISSIONER KLUCIK: And is this land -- you're saying this definition --

MR. OLDEHOFF: Yes.

COMMISSIONER KLUCIK: -- of land is the same land on Page 5.3 at the last sentence?

MR. OLDEHOFF: Exactly.

COMMISSIONER KLUCIK: Okay.

MR. OLDEHOFF: That is the exact same land.

CHAIRMAN FRYER: Anything else, sir?

COMMISSIONER KLUCIK: No. I guess just Mr. Yovanovich, I want to ask him the same questions.

CHAIRMAN FRYER: Okay. Commissioner Vernon.

COMMISSIONER VERNON: Oh, same topic?

MR. YOVANOVICH: It was the same topic. Can I jump in and answer that question?

MR. OLDEHOFF: No, no, no, wait.

CHAIRMAN FRYER: Do you want to hear from him?

COMMISSIONER KLUCIK: I have several questions for him, but I know we're time constrained. But, yeah, we can get your answer.

MR. YOVANOVICH: If I can, real quickly.

If you remember, I showed you what was the master plan that was adopted as part of the 1998 ordinance very early in my presentation. If you'll give me a second, I can either put it back up or --

COMMISSIONER KLUCIK: But when you look at --

MR. YOVANOVICH: So let me -- I know. Let me --

COMMISSIONER KLUCIK: When you look at 98-13 -- and I'm focusing on that one paragraph at the bottom of Page 2.

MR. YOVANOVICH: And I appreciate that. What I'm going to show you -- I'm sorry. I did it.

Terri, I apologize. It was my fault. First time today.

CHAIRMAN FRYER: I wouldn't say so.

MR. YOVANOVICH: Yeah, it is. I've been keeping score.

You're absolutely right. But what you haven't been -- remember I showed you that was listed as a park. Remember? It was shown as a park, not as a preserve.

What he didn't share with you was Page 8-2 of the ordinance which, preceded by that -- if I can go to the visualizer -- you will see that it says these are the provisions that apply "and Section 29 of the Fiddler's Creek addition." You don't have that.

Now, those are the allowed uses on Section 29, first addition.

COMMISSIONER VERNON: They're hard to read.

MR. YOVANOVICH: They're hard to read, but I'm telling you -- and that's what's in your backup. It doesn't say, "I have to give you a conservation easement." It says I can actually do active recreational uses.

The portion of Section 29 -- I don't agree with his conclusion that required it immediately go into a conservation easement -- was the portion of Section 29 that I showed you that was labeled "preserve," not the portion that was labeled "park."

COMMISSIONER KLUCIK: Okay. Well, I would like this page. And this one doesn't seem very legible. Maybe --

MR. YOVANOVICH: I will get you -- I will send you the Clerk's -- unfortunately, I printed this from the Clerk's website, because this was how they used to do the highlights of what was due.

COMMISSIONER KLUCIK: And I will say, Page 6 does seem to contain almost the same language, if not the same language.

MR. YOVANOVICH: But 8-2 is the specific requirements for Section 29. He read for you a general provision regarding preserves.

COMMISSIONER KLUCIK: No, actually -- well, no. I'm going to just explain to you that Page 6 --

MR. YOVANOVICH: What's Page 6?

COMMISSIONER KLUCIK: Page 6 of what he handed out to us.

MR. YOVANOVICH: I don't have that.

COMMISSIONER KLUCIK: Of 98-13. It actually has the exact same --

MR. YOVANOVICH: I don't know what your Page 6 was, Gary.

MR. OLDEHOFF: It's Page 6 of the ordinance.

CHAIRMAN FRYER: All right. We're done with this subject. We're done. We're done.

I'm going to turn it over now to Mr. Sabo.

COMMISSIONER KLUCIK: Mr. Chairman, if I might, I want to clarify for the record that the precise language that Mr. Yovanovich just put on the -- up on the screen and said had not been provided to us --

MR. YOVANOVICH: I don't know what was provided.

COMMISSIONER KLUCIK: Okay. Well, I mean, you knew what we were looking at, and I've been reference -- sir? Yeah. You've known that we were talking about this handout, and you had ample opportunity for the last couple hours to get a copy of it.

And it's the Ordinance 98-13. I grilled our counselor on it, so it's not like you didn't know it was in question, you didn't know it had been handed out to us. And I will say that the exact language that you just cited, which I think was Page 8, on Page 6 of what the counsel gave to us actually has the exact same language with the same exact reference to Section 29. So you're wrong as far as him not providing that to us. It's provided in a different section, but it's the exact same language.

MR. YOVANOVICH: May I see the page?

CHAIRMAN FRYER: No. Okay. Now we're done.

COMMISSIONER KLUCIK: And it's on the record. Thank you.

MR. OLDEHOFF: May I?

CHAIRMAN FRYER: No.

MR. OLDEHOFF: I need to qualify because --

CHAIRMAN FRYER: No, sir, you don't. You don't, because you'll have ample time to continue this discussion on May the 2nd. At some point -- at some point we're going to have to return to decorum and get this matter concluded. Thank you very much.

I'm going to turn it to Mr. Sabo.

COMMISSIONER VERNON: I've been lit up for --

CHAIRMAN FRYER: You have. You have. Go ahead. You have, Commissioner. Go ahead.

COMMISSIONER VERNON: It's very procedural, so I think it's a good segue to where you want to go.



First on the brief issue -- so if you want a brief, what you're suggesting is from both sides?

CHAIRMAN FRYER: Absolutely.

COMMISSIONER VERNON: Okay. Do you have a page number in mind? I'll give you one, I think, because otherwise you're going to get two 75-page briefs.

CHAIRMAN FRYER: I don't want that.

COMMISSIONER VERNON: Ten pages or less.

MR. OLDEHOFF: Less than that.

COMMISSIONER VERNON: Well, Yovanovich may want more. So let's say 10 pages or less. And I have this -- I think they can cover what they want. I think what -- you guys listen to me. Here's what I think. I think the interplay -- the Chairman's issue is interplay between the county mandate on affordable housing and what -- well, let's just call it the Comprehensive Plan, you know, how you square those two, and then 98-13, which is Commissioner Klucik's point. What does it really say?

And then the third point I'd like to hear -- nobody's really talked about what Mr. Russo said. I'd kind of personally like to hear something about that.

So those are the three issues I have, but I wouldn't -- I just said that on the record. If everybody agrees with me, if they're smart, they'll address those three issues, unless somebody's got another issue.

I'd leave it to them what they want to say in their 10 pages, and also set a deadline for them to get it to us so that we have adequate time to review it.

CHAIRMAN FRYER: Good point.

COMMISSIONER VERNON: And so that's all on that.

And then I had a couple more very procedural points that, I think, again, flows into what you're trying to do.

CHAIRMAN FRYER: Yeah. Go ahead.

COMMISSIONER VERNON: So do you want to go ahead -- I mean, is everybody okay with that?

CHAIRMAN FRYER: I thought 10 pages was going to be too long, but I do agree that those three issues need to be dealt with, and 10 pages is reasonable in total for those three.

COMMISSIONER VERNON: And it can be less. You're not required to have 10 pages.

Okay. So everybody's comfortable with that? When do we need it?

CHAIRMAN FRYER: We need it --

COMMISSIONER VERNON: Ten days before the hearing?

CHAIRMAN FRYER: That's four days from now.

COMMISSIONER VERNON: Oh, okay.

CHAIRMAN FRYER: Let's say five days before.

COMMISSIONER VERNON: Five days before.

CHAIRMAN FRYER: Five days before.

MR. OLDEHOFF: I have one question. I've got county policy versus the Comp. Plan.

COMMISSIONER VERNON: Yep, that's No. 1. Number 2 is Mr. Klucik -- or Commissioner Klucik's issue on that 98-13; what does it really mean? That's No. 2.

And my No. 3 -- or the No. 3, the one I'm interested in, is Mr. Russo, the speaker's comment on "there's a whole bunch of stuff in there unrelated to what we've been talking about," changes to the master plan.

So those are the three issues, although I wouldn't limit you to that. But I think, collectively, that's the three issues. And 10 pages, five days before the hearing. Does it go to the county, and they distribute it to us?

CHAIRMAN FRYER: It comes -- it should come to the commissioners so as to save time, and also to the county and opposing counsel.

All right. Anything else, sir?

COMMISSIONER VERNON: Yeah, briefly. I may -- just to put everybody on notice, I may reach out to staff or even counsel if I want to talk to them before the hearing, because I think it may help me make a better decision. And if I do, I'll certainly disclose it.

CHAIRMAN FRYER: All right.

COMMISSIONER VERNON: And then the last point I'd like to make is that -- I'm going to say it to everybody out there, and I think this leads into what you're going to talk about. I think the attorneys on both sides are very good. I'm getting a lot out of it. And I know -- it's beautiful that we've narrowed it from 50 speakers to 17, but if I don't -- if I have to hear 17 speakers say the same thing in a green shirt, it's not going to help your case.

So you might want to narrow it a little further, maybe cede a little more time. I'm not trying to prevent you from speaking, but I got the point. I think everybody got the point that you guys are -- I mean, you've color coordinated, you're here, you've been here all day. So we get the point that there's a whole bunch of you out there. So, again, I'm not -- there's no requirement that you narrow it beyond -- or lower than 17, but I don't know that we need 17 speakers, from my perspective, just to let you know.

CHAIRMAN FRYER: Well, I personally agree.

Now, Mr. Sabo, let's get the books.

MR. SABO: All right. Mr. Chairman, Max Forgey.

(Raises hand.)

MR. SABO: All right. There's Mr. Forgey. So that's five minutes.

Nowell Conte?

(Raises hand.)

MR. YOVANOVICH: He's one of their experts.

MR. SABO: Ten minutes.

Helen Conte?

(Raises hand.)

MR. SABO: Fifteen minutes.

David Christ?

(No response.)

MR. SABO: Christ is not here.

Jane Christ?

(No response?)

MR. SABO: Christ, as well, but...

Lisa Adamczyk?

(No response.)

MR. SABO: No.

Michael Rozsar? Michael Rozsar?

(No response.)

MR. SABO: So Mr. Forgey has 15 minutes.

CHAIRMAN FRYER: All right. So that's one of the 17 speakers?

MR. SABO: Correct.  
All right. Dan Trescott?  
(Raises hand.)

MR. SABO: All right. That's five. You don't get two, Mr. Trescott. I got to take that out.

Amy Ernst?  
(Raises hand.)  
MR. SABO: There's 10.  
Steven Hummel?  
(Raises hand.)

MR. SABO: Fifteen.  
Thomas May?  
(Raises hand.)

MR. SABO: Twenty.  
Terri May.  
(Raises hand.)

MR. SABO: Twenty-five. Okay.  
CHAIRMAN FRYER: Who was that for?

MR. SABO: That's for Dan -- Mr. Dan Trescott.

CHAIRMAN FRYER: Thank you.

MR. TRESMOTT: I don't need 25.

MR. SABO: Okay. We got you, Mr. Trescott.

All right. John Erario?  
(Raises hand.)

MR. SABO: Okay. Patricia Longmore?  
(Raises hand.)

MR. SABO: That's 10.  
Steven John?  
(Raises hand.)

MR. SABO: Fifteen.  
Barbara Kantorcik? Barbara Kantorcik?  
(Raises hand.)

MR. SABO: No? All right. All right. I'm sorry. Where are we at? Twenty.  
William Mallas?

(Raises hand.)  
MR. SABO: Twenty-five.

Janice Mallas?  
(Raises hand.)

MR. SABO: Thirty.  
Nancy Hippert?  
(Raises hand.)

MR. SABO: Thirty-five for Mr. Erario.

CHAIRMAN FRYER: Thank you.

MR. SABO: All right. Richard Solimine?  
(Raises hand.)

MR. SABO: That's five.

And Adele Solimine?

(No response.)

MR. SABO: Mr. Solimine gets five.

Andy Wells-Bean?

(Raises hand.)

MR. SABO: That's five.

And Lynn Coppel?

(No response.)

MR. SABO: Andy gets five.

All right. Lawrence Hanba?

(Raises hand.)

MR. SABO: All right. That's five.

George Parkhurst?

(Raises hand.)

MR. MILLER: Ten.

John Polmon?

(Raises hand.)

MR. SABO: Fifteen.

Marion Polmon?

(Raises hand.)

MR. SABO: Twenty; 20 minutes.

CHAIRMAN FRYER: For who?

MR. SABO: For Lawrence Hanba.

CHAIRMAN FRYER: Thank you.

MR. SABO: Twenty minutes.

Here we go. Edward Pinardi? Edward Pinardi?

(Raises hand.)

MR. SABO: Rosette -- Josette Riopelle?

(Raises hand.)

MR. SABO: All right. So is Mr. Pinardi not here?

(Raises hand.)

MR. SABO: All right. So 10 minutes for Mr. Pinardi.

MS. RIOPELLE: No, the other way around. Ten minutes for me, Josette.

MR. SABO: All right. Ceding time to Josette. Oh, I got it, got it. My bad.

Ms. Rosette Riopelle has 10 minutes.

MS. RIOPELLE: Josette, with a J.

MR. SABO: All right. These are -- the rest, Mr. Chairman, are all single.

CHAIRMAN FRYER: Perfect. Okay.

And you will have the time that has been ceded to you, but I concur with Commissioner Vernon, sometimes less is more, and I just leave that to your discretion.

All right. Commissioner Klucik.

COMMISSIONER KLUCIK: Yes, thank you. I guess I wanted to ask, the briefing is being done by the two counselors?

CHAIRMAN FRYER: Yes.

COMMISSIONER KLUCIK: Are we going to ask our counsel, county attorney, to brief the one issue as to the meaning of that 98-13 as to the -- because I think that's really such a

key issue. I'd like to hear what our counsel says on that.

CHAIRMAN FRYER: County Attorney?

MS. ASHTON-CICKO: You're asking the section that deals with the 690 acres that was added, or are you asking about Section 5.5 related to the conservation easement?

COMMISSIONER KLUCIK: I'm asking if Ordinance 98-13, if the legal description at the bottom of Page 2 is the Fiddler's Creek addition that's referenced in the amendment which was, you know, attached to the ordinance, the Page 5-3, Paragraph 5.5, the last sentence. Is that last sentence referring to that land -- or that legal description at the bottom of Page 2, Section 1.7, and what is the implication -- what does that sentence mean as to the requirement for easements?

MS. ASHTON-CICKO: I can answer that right now. It probably is referring to that 690 acres, but that section of the LDC, which I put on the visualizer, relates to preliminary plat and subdivision plats.

(Commissioner Vernon left the boardroom for the remainder of the meeting.)

COMMISSIONER KLUCIK: Then I think -- I think I'd like that in writing because it seems -- I'm not understanding it.

(Simultaneous crosstalk.)

MS. ASHTON-CICKO: Okay. So I can give you a copy. And that area's not been platted, so therefore that section, which is no longer in the PUD --

COMMISSIONER KLUCIK: I don't want a copy. I'd like to actually have a legal memo on exactly what that means.

MS. ASHTON-CICKO: What this sentence right here means? Okay.

COMMISSIONER KLUCIK: I think I -- I don't know. Do you not understand what my question is?

MS. ASHTON-CICKO: I understand what your question is.

COMMISSIONER KLUCIK: Okay. And I'd like a memo that answers that question in some specificity.

MS. ASHTON-CICKO: Okay.

CHAIRMAN FRYER: Okay. Thank you.

MR. OLDEHOFF: Can I have the opportunity to provide you that memo, too? Because I have all the information --

COMMISSIONER KLUCIK: I think you already have been asked to.

CHAIRMAN FRYER: Yeah.

COMMISSIONER KLUCIK: It's the same --

CHAIRMAN FRYER: Same stuff --

COMMISSIONER KLUCIK: -- thing that you've been asked to do.

CHAIRMAN FRYER: All right. What a day.

Ladies and gentlemen, we -- I'm going to dispense with asking for old business and new business and other things, because we're basically going to go into recess on this hearing, and I would simply -- when we come back on May 2nd, I'm going to attempt to strictly enforce not talking over one another. And I understand that the applicant's experts will be returning, correct, Mr. Yovanovich? You can just nod.

MR. YOVANOVICH: God willing.

CHAIRMAN FRYER: Well, thank you.

And also we haven't heard yet from the experts for the opposition, but they'll be here as well.

So anything -- sorry, yes, Mr. Bosi.

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

I just wanted to provide a clarification in terms of that balancing act that I was speaking about. That wasn't for policies that are outside of the GMP. I'm talking about individual policies and directions that are in the elements within your GMP.

So to say that you -- because I have never heard that the court system rules that you can't evaluate competing interests that are within your own individual GMP.

It sounds like if you're looking at things outside -- a policy outside of your GMP against your GMP, your GMP prevails, because it's the highest regulatory document.

So in those briefings that they're going to provide, in that balancing act, that should be focused upon when you're evaluating -- like, environmental protection and economic development. Those policies don't always complement each other, so that's what I'm speaking about when we have to weigh conflicting or sometimes opposing policies within a GMP. That's the focus that I would believe the brief should be, if they're saying that the court system says you can't do that.

CHAIRMAN FRYER: Well, I think we understand each other.

MR. BOSI: Okay.

CHAIRMAN FRYER: And let me just give it back to you. What I think I'm asking for -- I know what I'm asking for. We've got existing provisions about affordable or workforce housing in the GMP. They may or may not conflict with other provisions. That's a challenge. But we also have an articulated statement that the affordable housing preferences take precedence over conflicting GMP provisions. And I mean by that they took -- the ones that are outside the GMP right now -- not the ones that are in it -- but the ones that are outside the GMP that have been articulated by the Board of County Commissioners, do -- must we -- must we ascribe greater importance? Do they take precedence over existing GMP provisions? I think that's the issue.

MR. YOVANOVICH: May I --

CHAIRMAN FRYER: Did I -- did I say -- are we saying the same thing?

MR. BOSI: I think you are, but what I would say is that a provision of affordable housing is a policy that exists within the GMP.

CHAIRMAN FRYER: I understand. But I believe you testified that it is a -- it has a special level. It has a special status. And I want to know if it trumps any conflicting provisions of the Growth Management Plan, because I think what Mr. Oldehoff was suggesting, having to do with property rights and other issues, that we must discount those if that -- if they conflict with the current preferred posture of affordable housing that goes beyond what's already in the Growth Management Plan.

MR. YOVANOVICH: Since I've also got to write a memo, can I just ask for clarification -- because what I think -- what my memo's going to say is, Gary just made a whole lot of arguments as to why he thinks our project is inconsistent with the Growth Management Plan.

MR. OLDEHOFF: I didn't. No --  
(Simultaneous crosstalk.)

MR. YOVANOVICH: Just let me just finish. Let me just finish what I'm asking, okay?

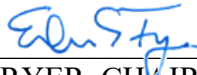
CHAIRMAN FRYER: We're adjourned.

MR. OLDEHOFF: Thank you.

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There being no further business for the good of the County, the meeting was adjourned by order of the Chair at 4:48 p.m.

COLLIER COUNTY PLANNING COMMISSION



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EDWIN FRYER, CHAIRMAN

5/16/24

These minutes approved by the Board on \_\_\_\_\_, 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.