

TRANSCRIPT OF THE MEETING OF THE
COLLIER COUNTY PLANNING COMMISSION
Naples, Florida
May 2, 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
Robert L. Klucik, Jr. (attending remotely)
Paul Shea
Randy Sparrazza
Chuck Schumacher
Christopher T. Vernon

ABSENT:

Joe Schmitt, Vice Chair
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

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

CHAIRMAN FRYER: Thank you, Mr. Bosi.

Good morning, everyone.

This is the May 2, 2024, meeting of the Collier County Planning Commission. Everyone please rise for the Pledge of Allegiance.

(The Pledge of Allegiance was recited in unison.)

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

COMMISSIONER SHEA: Chairman Fryer?

CHAIRMAN FRYER: Here.

COMMISSIONER SHEA: Vice Chair Schmitt?

(No response.)

COMMISSIONER SHEA: Not here.

Secretary Shea is here.

Commissioner Vernon?

COMMISSIONER VERNON: Here.

COMMISSIONER SHEA: Commissioner Klucik?

COMMISSIONER KLUCIK: Present.

CHAIRMAN FRYER: All right. Go ahead. Continue with the roll.

COMMISSIONER SHEA: He did -- that was --

CHAIRMAN FRYER: That was he, yeah.

COMMISSIONER SHEA: Commissioner Sparrazza?

COMMISSIONER SPARRAZZA: Here.

COMMISSIONER SHEA: Commissioner Schumacher?

COMMISSIONER SCHUMACHER: Here.

Ms. Lockhart, no.

We have a quorum, sir.

CHAIRMAN FRYER: Thank you very much.

Before we proceed, we need to authorize Klucik to participate remotely. The standard is extraordinary circumstances, and so I would entertain -- Commissioner Klucik, do you want to give us a reason?

COMMISSIONER KLUCIK: Yeah. I have -- my son is getting married, and I'm meeting his fiancée's parents today because they're in for their graduation together this weekend. And so I have a social engagement that's extraordinary, in my view.

CHAIRMAN FRYER: Okay. May I have a motion?

COMMISSIONER SCHUMACHER: So moved.

CHAIRMAN FRYER: Is there a second?

COMMISSIONER SHEA: Second.

CHAIRMAN FRYER: All those in favor of allowing remote participation for Commissioner Klucik, please say aye.

COMMISSIONER VERNON: Aye.

COMMISSIONER SHEA: Aye.

CHAIRMAN FRYER: Aye.

COMMISSIONER SPARRAZZA: Aye.

COMMISSIONER SCHUMACHER: Aye.

COMMISSIONER KLUCIK: (No verbal response.)

CHAIRMAN FRYER: Opposed?

(No response.)

CHAIRMAN FRYER: It passes unanimously.

Welcome, Commissioner Klucik.

Addenda --

COMMISSIONER KLUCIK: Mr. Chair, I'm going to log off and log back in because my audio is suffering a little bit, so I'll be right back.

CHAIRMAN FRYER: All right, sir, thank you.

Addenda to the agenda, Mr. Bellows?

MR. BELLOWES: Good morning, Mr. Chairman. We've no changes to the agenda.

CHAIRMAN FRYER: Thank you.

Planning Commission absences. Our next meeting is on May 16, 2024. Does anyone know if he or she will not be able to attend that meeting?

(No response.)

CHAIRMAN FRYER: Thank you.

Then after that, we're meeting on June 6th, 2024. Same question.

COMMISSIONER SHEA: I will be not be able to attend that meeting.

CHAIRMAN FRYER: All right.

COMMISSIONER SPARRAZZA: I will not be able to attend that meeting.

CHAIRMAN FRYER: Okay. Anyone else not be able to attend that meeting?

COMMISSIONER VERNON: Did you say the 24th?

CHAIRMAN FRYER: The 6th of June. Okay. So we're going to be down to five at most and possibly fewer. What's our contingency plan, Mr. Bosi?

MR. BOSI: I mean, we will -- that week, you know, of the 6th, we will reach out to see if everyone was going to be available, and if we can't get a quorum, we'll just -- we're going to have to -- we're going to have to push everything forward.

And just to give you an update, if you want to plan your summer activities, but your June 20th meeting is canceled because the Board of County Commissioners has a budget meeting in here, and then the meeting after that is the 4th of July, and obviously, us being closed, that's being -- that will be canceled. So if we have to push everything from the 6th, it will have to all be pushed to July 18th.

CHAIRMAN FRYER: Okay. Thank you.

COMMISSIONER VERNON: Mr. Chairman, I'll just tell you, it looks like -- it doesn't say why, but it says I'm going to be out of the office that day on June 6th, so...

CHAIRMAN FRYER: On June 6th?

COMMISSIONER VERNON: Yeah.

CHAIRMAN FRYER: Well, I think, you know, that puts us down to four, which is the absolute minimum. And so the question is should we plan ahead right now and move those items to our second July meeting?

COMMISSIONER SHEA: Mine's a hard -- I'm going to be in another meeting out of town.

CHAIRMAN FRYER: Well, I don't ask --

COMMISSIONER SHEA: Yeah.

CHAIRMAN FRYER: I'm glad when people are able to attend, and I understand completely when they're not, and we just have to work around that.

MR. BOSI: If I was to suggest, I would say, I mean, we tentatively -- hopefully, we could get the four. If it looks like -- we can reach out a little bit earlier to see if there's going to be -- if there will be availability, and if it does look like we're not going to be able to get that quorum, we can -- we can cancel it and move everything forward, continue everything till the July 18th meeting.

CHAIRMAN FRYER: Okay. That --

COMMISSIONER SHEA: Is the 20th really dead of --

MR. BOSI: Yes. The Board of County Commissioners is meeting in this room for budget discussions.

CHAIRMAN FRYER: Well, we're down to four already. I'm -- I was scheduled to come

back from Europe to attend that meeting, and under the circumstances I'm going to respectfully ask if we can cancel that meeting and move everything to July. It will save me several thousand dollars first of all, personally, just in the interest of full disclosure.

MR. BOSI: It's the discretion of the -- discretion of the Planning Commission. If that's the route we'd like to go, we most certainly can do that. And we'll just -- it's probably going to be -- we'll probably have a pretty hefty agenda on the 18th, but, you know, we'll take it as -- you know, as it's scheduled.

CHAIRMAN FRYER: Was that the day that we were also going to set aside the 19th or -- the 19th?

MR. BOSI: Yes. We have that meeting -- because we had recognized that there was going to be two absences -- two meetings that got canceled, so we reserved this -- the 19th; that Friday we reserved that room just specifically in case we needed to have an overflow.

CHAIRMAN FRYER: All right. And so I think the -- well, I'm speaking purely for my self-interest at this point and, Planning Commissioners, feel free to disagree if you want. But I recommend that we cancel the June 6th meeting and plan on having a very business July 18 and 19 meetings to try to catch up.

COMMISSIONER SHEA: I'm okay with that.

COMMISSIONER SCHUMACHER: I agree.

COMMISSIONER SPARRAZZA: We can do that.

CHAIRMAN FRYER: Then without objection, Mr. Bosi, that's what we'll do.

MR. BOSI: Yes, sir.

CHAIRMAN FRYER: Okay. Thank you.

All right. So the June 6th meeting will be canceled, and our next meeting will be on July 18, and please also reserve July 19 because we will have a full agenda and may need to go over in order to stay caught up. And my personal thanks to all members of the Planning Commission for helping me out on that.

Let's see. Oh, the absences for today are all excused.

And approval of the minutes. There's nothing in front of us for action today.

So that takes us to BCC report and recaps, Mr. Bellows.

MR. BELLOWS: Yes. Commissioner, the -- at the last Board of County Commissioner meeting, the Emmanuel Lutheran Community Church and companion Growth Management Plan amendment was approved 5-0, and they had a minor change with the food trucks. They were pushed -- the line pushed them back a little bit?

MR. BOSI: Yes.

MR. BELLOWS: And then on the summary agenda, the Livingston Veterans Commercial PUD and companion GMP was approved on the summary agenda.

CHAIRMAN FRYER: Thank you.

Chairman's report, none today, although I'm going to say a word or two about some ground rules before we get into the continuation of the three companion hearing items; I'll say that before we get into the substance of that.

Consent agenda, none today.

***Public hearings, advertised, we have but one. It's combined, three companions. They are PL2021000311, the Fiddler's Creek proposed Small-Growth Management Plan amendment; PL20210003112, the Fiddler's Creek proposed RPUDA; 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.

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

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

CHAIRMAN FRYER: Thank you.

Ex parte disclosures from the Planning Commission, and you may report only new

communications and site visits and the like that you've had since April 18, starting with Commissioner Vernon.

COMMISSIONER VERNON: Staff discussion, took a look at both briefs, I saw Rich -- thank you. Staff discussions, I took a quick review of both briefs, saw Rich Yovanovich at the celebration of life for John Passidomo and gave him a hug because we both lost a friend, and I think I talked in passing on a business matter to somebody that said they happened to live in the neighborhood and knew I was on the Planning Commission, but we didn't really discuss it -- or didn't discuss it at all.

CHAIRMAN FRYER: Thank you. Commissioner Shea.

COMMISSIONER SHEA: Only the two additional briefs submitted in addition to the previous package.

CHAIRMAN FRYER: Okay. In my case, I've had communications with the County Attorney and the managing assistant county attorney and a brief conversation with the agent for the applicant this morning and a brief conversation with a member of the public also this morning.

COMMISSIONER SPARRAZZA: Nothing for me other than reviewing both briefs that were delivered to us.

COMMISSIONER SCHUMACHER: The two briefs that we received, a couple of e-mails from the public, and a site visit to Auto Ranch Road.

CHAIRMAN FRYER: Thank you.

And, Commissioner Klucik.

COMMISSIONER KLUCIK: Yes, let's see. The e-mail slash memo from the County Attorney and the memo from the petitioner, or the letter, and the memo from the -- well, let's see. Who is it here? I have it -- from Mr. Oldehoff, and also a phone call with Mr. Yovanovich, the petitioner's attorney.

CHAIRMAN FRYER: Thank you very much.

Now, I'm going to propose some ground rules, and it's my responsibility, unenviable many times, to maintain order in a meeting, and I take that responsibility seriously. And so I have thought about our meeting of last April 18. And having looked at the *Naples Daily News* article on April 22nd that covered our meeting, it quite accurately characterized our meeting at "heated," possibly an understatement, and they also said, quote, "With motions and tensions running high," closed quote.

Now, there's nothing intrinsically wrong with emotions and tensions running high, but you get up and you start to approach a line where it becomes disorder, and that's where I'm going to need to insert myself and insist upon the maintenance of order from all concerned.

Now, I looked back at the entire video archives for our April 18 meeting, and I concluded that there was really plenty of fault to be assigned on all sides, both counsel, some public speakers, some spectators, generally. And I'm not going to single anyone out by name at this time but will not hesitate to do so if there's further disorder today.

Our goal for today with these rules, obviously, is to assure order, proper decorum, fairness, and due process for all interested parties.

And now here's what I'm going to want to ask everyone to follow for today. And whether these proposed orders continue indefinitely as Planning Commission policy, I'll put that in the hands of the Planning Commission for a later time. So for the time being, what we're looking at is proposed orders for today.

Some of these things are already clearly firm policy of the Planning Commission, but in order to bring them all together with some of the new points, I will -- that's exactly what I've done, I've brought them all together.

First, counsel shall remain seated at all times except when rising to request the floor and to speak, in which case counsel shall at all times remain at the lectern. No one may speak until recognized by the Chair. We will not tolerate people talking over one another. Planning Commissioners are requested to signal me before speaking. When a commissioner is speaking, he

has precedence, and all others must refrain from talking over him.

Second, we will insist upon proper decorum from all present and, additionally, professionalism from all counsel.

Third, the cross-examination that our County Attorney has recommended will be confined to witnesses who are experts and to expert opinions and testimony only.

Fourth, we will not tolerate disrespect. I'll say that again. We will not tolerate disrespect of the Planning Commission or of any commissioner by anyone. Zero tolerance. Interruptions and distractions are considered disrespectful, and they include annoying things like groaning or other noise making or whispering or laughing or clapping. That's all verboten.

Now, I hope it doesn't become necessary, but if there is a repeated failure to follow these rules by anyone, I'm going to call recesses and allow people to cool off, and that's only going to extend the time of this hearing potentially into another day, which I would far prefer that we strive, all of us, to get this hearing concluded today. But if that's needed in order to maintain decorum, that's exactly what I will do.

Now I'm going to ask the managing assistant county attorney if she would like to make any opening statements.

MS. ASHTON-CICKO: Thank you. After the last meeting, I need to set some parameters for my participation here today. I will not be responding to disrespectful, bullying, or harassing questions until the question is restated in a respectful way.

Also, I am your attorney. I'm here to help you, which I often try to do, but I am not a -- I am not an expert witness here today or a fact witness here either.

So feel free to reach out to me if you have any questions, but hopefully today will go more smoothly.

CHAIRMAN FRYER: Thank you. Hope so.

Now, anything else from the Planning Commission before we -- Commissioner Vernon?

COMMISSIONER VERNON: Yeah. I really appreciate the fact you're setting these rules. I have to be honest, I'm not going to be able to remember them all, but thank you for doing that.

The one thing that just came to my mind, super minor point, but I would say that you might want to -- in terms of the counsel for the parties remaining seated, I think it's sometimes helpful if they're behind -- what I call behind the bar for them to move around and talk to their experts. It may help expedite. So are you allowing them to -- I think you just don't want them approaching, which I don't either.

CHAIRMAN FRYER: Yeah.

COMMISSIONER VERNON: You don't want them approaching the lectern in the middle of something.

CHAIRMAN FRYER: Yeah. If a lawyer wants to talk to a client to whisper back in the seats, in the chambers, that's certainly -- that's not what I'm trying to cover here.

COMMISSIONER VERNON: Right. I thought so. Yeah, I'm in agreement. I just want to make that clarification.

CHAIRMAN FRYER: Anything else before we move on?

(No response.)

CHAIRMAN FRYER: Okay. Thank you, Planning Commission.

I believe where we left off on the 18th, we were in the public speaker segment of our hearing, and I think we'd heard from, certainly, one speaker, and also the beginnings of a presentation from counsel for a neighborhood group. Those who didn't get a chance to speak previously may speak today, and we've endeavored to confirm the presence back then of the members of the public who were ceding their time to others, and we will give those speakers their basic five minutes, plus five minutes for each ceder, even though that person may not be present at our last meeting [sic].

And we are also willing to receive additional speaker registration forms from anyone who

has not filed such a form and wishes to be heard today. They'll be heard in the order of their request. And with that, the Chair recognizes counsel for the neighborhood association.

Mr. Yovanovich.

MR. YOVANOVICH: May I ask a procedure question?

CHAIRMAN FRYER: Yes. Proceed to the lectern.

MR. YOVANOVICH: I would like to request that counsel for the group complete their presentation and that I be permitted to ask or cross-examine the witnesses when they get done with their testimony instead of calling them back during my rebuttal, if that would be acceptable to the Planning Commission.

CHAIRMAN FRYER: Yeah. You and I talked about that, and as far as I'm concerned, that makes sense. It probably would have made sense for counsel for the neighbors to cross-examine when your experts were up, but that didn't happen. And they will certainly have an -- or he will certainly have an opportunity to cross-examine them because, Mr. Yovanovich, you've insured me that they're here.

MR. YOVANOVICH: They're here. They are here.

CHAIRMAN FRYER: Okay. So without objection, we'll proceed in that fashion.

Thank you. Where is counsel? Here he comes.

MR. OLDEHOFF: Good morning, Mr. Chair --

CHAIRMAN FRYER: Good morning, sir.

MR. OLDEHOFF: -- Members of the Commission. The next speaker --

CHAIRMAN FRYER: State your name for the record.

MR. OLDEHOFF: My name is Gary Oldehoff.

CHAIRMAN FRYER: Thank you.

MR. OLDEHOFF: I'm counsel for John Erario and Sue Caglioto.

The -- there are two experts that we'd like you to hear from, Max Forgey and Daniel Trescott.

I would like to ask some questions of a few of the applicant's experts. I'd like to be able to do that after my colleagues here have spoken. Would that be acceptable?

CHAIRMAN FRYER: Well, you're certainly going to have that opportunity. Are you asking to do it -- well, I was personally thinking about calling you back up after other public speakers have spoken --

MR. OLDEHOFF: That would be fine.

CHAIRMAN FRYER: -- and let you then do it at that point.

MR. OLDEHOFF: That would be fine.

CHAIRMAN FRYER: Is that all right?

MR. YOVANOVICH: Sure, sure.

CHAIRMAN FRYER: Go ahead.

MR. OLDEHOFF: I also didn't get a copy -- you mentioned something -- you mentioned a memorandum from the County Attorney, and I didn't get a copy of that. I got a copy of Mr. Yovanovich's memorandum, but I don't believe I got a copy of that document. And I just would like to know or would be able to -- would like to be able to read in case it's got some kind of direction that I think I need to follow.

CHAIRMAN FRYER: I understand. And I don't believe I got it either. There may not be such a thing.

COMMISSIONER SHEA: I didn't get one.

CHAIRMAN FRYER: County Attorney?

COMMISSIONER KLUCIK: Mr. Chairman? Mr. Chairman?

CHAIRMAN FRYER: Go ahead, Mr. Klucik -- Commissioner Klucik.

COMMISSIONER KLUCIK: Yes. It actually is a very short e-mail I received from Ms. Ashton, the County Attorney, and it doesn't really give a legal analysis. It just says it's in compliance. And so it's sort of not really what was requested, in my view. And all it says is

they're in compliance because the area hasn't been platted.

CHAIRMAN FRYER: Okay.

MR. OLDEHOFF: Okay.

COMMISSIONER KLUCIK: I think that's what it says. But, yeah, it would seem that that was something that we were all supposed to receive, so that's a little -- I'm kind of nonplussed on that.

Is there a reason, Ms. Ashton, that everybody didn't receive your legal analysis --

CHAIRMAN FRYER: Ms. Ashton?

COMMISSIONER KLUCIK: -- or maybe they did -- maybe they did, and I'm unaware, but obviously the Chairman hasn't received it.

MS. ASHTON-CICKO: It was forwarded to Ms. Gundlach for insertion in the agenda, and as far as I know, it is a backup item to your agenda today. I will look right now to see if -- confirm it's there.

COMMISSIONER KLUCIK: Well, I would think that, in my view, Mr. Chairman, you know, all of the commissioners should see it if we're going to proceed, since that was sort of a -- at least have access to it, whether we have a chance to read it, but obviously that's not my call.

CHAIRMAN FRYER: We'll check and see if it's in the packet, and we will -- we will give a page number so that commissioners and others who want to read it can do so.

Go ahead, County Attorney.

MS. ASHTON-CICKO: Yes. I kept the memo short and simple, and I cited the applicable section of the Land Development Code that was in effect in 1998 which essentially said that the preserves are required when the area's platted. So the area has not been platted; therefore -- according to staff, it's not been platted. I haven't seen any plats -- therefore, the preserve is not yet required.

What I did not include in the analysis was the fact that the 1998 ordinance -- all the attorneys on the Board are going to understand, you have an operative part of the ordinance where it says this section is amended, that section is amended, and any attachments to an ordinance are identified in the body of the ordinance and -- like Exhibit A is attached hereto and incorporated herein.

In this particular case, the amendment that Mr. Oldehoff is hanging his hat on was not in the operative part of the ordinance. There was a recital of the complete ordinance, with the changes, that was attached, but it was never incorporated therein in the ordinance.

I didn't want to get into that because that makes it more complicated. The bottom line is that text is not in the current 2018 ordinance, and staff has opined that the preserve is not yet required.

So that's pretty much what I can tell you: That 1998 ordinance provision is not in your current ordinance, and -- but I understand that Mr. Oldehoff wants to look back and see what was done.

CHAIRMAN FRYER: The conservation covenants have been filed, though.

MS. ASHTON-CICKO: Those are not county covenants. That's separate under the Army Corps of Engineers' permit, is my understanding.

CHAIRMAN FRYER: Okay. Commissioner Vernon.

COMMISSIONER KLUCIK: Mr. Chairman?

CHAIRMAN FRYER: Commissioner Klucik, let Commissioner Vernon go first, and then you're next.

COMMISSIONER VERNON: Yeah. Heidi, you may not know the answer to this, and that's fine. But did you get a sense -- I think what you're saying is something wasn't attached and incorporated into whatever -- the ordinance, right?

MS. ASHTON-CICKO: Correct. So you had the 28 -- you had the 1998 ordinance, and it recited all the amendments, and it incorporated -- Exhibit A is incorporated herein, and then it attached the complete PUD document with strikethrough and underline, okay. That is what the

Clerk has as the ordinance. But the visual aid, which I call it, was not incorporated into the ordinance. So there's really a question of whether that section ever really applied or not.

COMMISSIONER VERNON: Okay. So my question to you, what you're calling the visual aid -- and you may not be able to answer it -- was your sense of reading it that it was inadvertent -- they left it out inadvertently, or they intentionally left it off, or could you tell?

MS. ASHTON-CICKO: We probably have to go through and listen to the videotape. I don't know which is in error, whether the operative part of the ordinance is in error or the visual aid.

COMMISSIONER VERNON: Okay. Thank you. Thank you.

MR. OLDEHOFF: May I ask a question? May I ask a question?

CHAIRMAN FRYER: Yes, of course.

COMMISSIONER KLUCIK: Mr. Chairman?

CHAIRMAN FRYER: Oh, I'm sorry. Commissioner Klucik was going next, and then we'll hear your questions.

Go ahead, Commissioner. Sorry.

COMMISSIONER KLUCIK: Okay. So I guess this is for Ms. Ashton. So Section 3.2.8.4.7.3, which is -- you gave a graphic of that in your -- at the end of your memo. I think -- so you're familiar with the portion I'm looking at? Are you following, Ms. Ashton?

MS. ASHTON-CICKO: Give me a second to pull it up.

COMMISSIONER KLUCIK: Sure. So you highlighted a section -- or you excerpted a section at the end of your memo, and I just -- and I just want to ask you about that section.

MS. ASHTON-CICKO: Okay, as long as you understand that I'm not the interpreter of the LDC. Mr. Bosi is the interpreter of the LDC. But I would be happy to respond --

COMMISSIONER KLUCIK: Yeah, sure.

MS. ASHTON-CICKO: -- respond as to the legal answer of what I believe it is.

COMMISSIONER KLUCIK: Sure. Okay. And, I guess, Mr. Bosi, you can listen, too.

So if you look at that first sentence, "A nonexclusive easement or tract in favor of Collier County shall be provided for all protected preserve areas required to be designated on the preliminary and final subdivision plats."

So the easement is not part of the plat, necessarily. The easement is a separate item. The plat will end up referencing it. I'm just trying to figure out, does this say that -- if I want to develop Parcel A, and I come before the county, and the county says, "Okay, yeah, you can do what you want on -- since you don't have a right to do it, we'll let you do it if you make Parcel B a preserve and you give us a nonexclusive easement," and that's the condition, boom, and everyone votes on it, and it's approved and you go forward. So you're actually saying that that excerpted language stands for the proposition that there's no need to file the easement until that land is going to be subdivided, or which land is it that you're talking about that has to be platted, preliminarily or finally platted?

So it's in that first sentence, "Required to be designated on the preliminary and final subdivision plats." The preliminary and final subdivision plats of which land?

MS. ASHTON-CICKO: Well, it's a mixed-bag question because it depends on whether you have a protected or preserve area, what that is supposed to be. Whether your interpretation that if it's on the master plan, it has to go into preserve, staff -- it's very -- there's a lot of factors that go into it, so staff looks at what the required preserves are and what has been preserved so far to determine whether or not it's a required preserve.

If they've met the required preserve requirement of the PUD, it doesn't require an easement. You know, we have other staff that can answer these questions probably a little bit better than me, but there's a fact question as to even whether Section 29 would be required in the future if we were to -- if they would come in today with a plat, that would be -- staff would have to tell you whether that would be required.

But I think we're -- we're hanging our hats on these --

COMMISSIONER KLUCIK: Well, no. I guess I would say that my concern is that if, in fact, you made an agreement -- like I said, Parcel A can be -- you can have your PUD on Parcel A as long as Parcel B, the county receives a conservation easement, period.

I don't understand how that ends up being, "However, it doesn't happen until some future time. It could be 20 years later."

By operation of what is it just indefinitely postponed? I could see if what you're saying is somehow that means, well, Parcel A is never going to be developed, then, you know, until you actually plat Parcel A and start doing what you were going to do on Parcel A, you don't have to set aside Parcel B, okay, that makes sense. Is that what this is saying, or is it saying that you don't have to do it until Parcel B gets platted? Because, obviously, that would never be platted if it was set aside, you know, for conservation. You would never plat it.

MS. ASHTON-CICKO: That's correct.

COMMISSIONER KLUCIK: So are you saying that -- so you're saying that if -- until Parcel A is platted, you don't have to preserve Parcel B? Is that what you're saying that sentence means?

MS. ASHTON-CICKO: Correct.

COMMISSIONER KLUCIK: Okay. Thank you.

MS. ASHTON-CICKO: And then --

MR. OLDEHOFF: I'm confused.

MS. ASHTON-CICKO: And the other question is whether or not Section 29 ever came in back in the 1998 ordinance. So it's -- you know, there's a lot of -- a lot of issues here.

But the bottom line is, yes, I don't believe that it was required under the code to be conveyed until the plat came in.

COMMISSIONER KLUCIK: And the plat in question is -- which land are we saying had to be platted before it would trigger this easement? Which -- in this particular instance, which precise portion of Fiddler's Creek had to be platted or preliminarily platted in order for the easement to the county be granted and filed?

MS. ASHTON-CICKO: I can't define the area that you're asking me to define, but I can tell you that any unplatted areas would not require a preserve, and I believe the developer decides what areas he's going to plat in the phasing of how he's going to proceed forward, so...

COMMISSIONER KLUCIK: Right. But this -- there was an agreement. The county agreed and said, "If you designate this area that we're" -- that the petitioner now, you know, is before us. "If you designate the area the petitioner now wants to develop" -- excuse me. "If you designate that as preserve in order for us to approve your other development, which development is that?"

So you're hanging -- you know, I understand. It makes a lot of sense. We're hanging our hat on the proposition that you don't have to set it aside and give the county an easement if the land hasn't been developed or hasn't been platted or even preliminarily platted.

So which land -- I mean, I think that's fundamental, and if we don't know, then that's a problem, you know. And I'm not asking really for much of a legal opinion. It's just a fact -- the facts at issue, which I would think would have come up in your -- you know, your legal analysis.

Which precise land and why? Why did that land have to be preliminarily platted, and when was it, or has it not ever been platted?

Because what I think is -- I'm confused. I think that land -- I think the county easement -- that land has been platted, hasn't it, or what? Tell me which land it is, if you would, and then tell me whether it has a preliminary or a final plat.

MS. ASHTON-CICKO: I prefer if staff would answer the questions of what has been platted --

COMMISSIONER KLUCIK: That's fine.

MS. ASHTON-CICKO: -- and what has not been platted, but I can tell you that there seems to be some confusion here between statements that may have been made at prior meetings or

what statements meant as to prior meetings. Staff implements and processes applications based on what the ordinances say and what the Land Development Code says. We don't go back -- staff does not go back and see what was said at the meeting. We look specifically at the language that does get adopted in the ordinances.

COMMISSIONER KLUCIK: Right. But here -- here I'm -- it's black and white. There's land that would need to be -- that this preservation -- this conservation easement wouldn't be triggered unless certain land is platted.

MS. ASHTON-CICKO: Correct.

COMMISSIONER KLUCIK: Preliminary or otherwise. And the question is, the land at the time that this agreement was entered into and the agreement to give the easement to the county was agreed to, what land is it that would have triggered the requirement to record the easement? Which land? Which parcel?

MS. ASHTON-CICKO: Ms. Cook is here.

(Simultaneous crosstalk.)

CHAIRMAN FRYER: We have Jaime Cook here. Ms. Cook, go ahead.

MS. COOK: Jaime Cook, director of Development Review, for the record.

So, Commissioner, I think what your question is is specifically regarding Section 29. That area is not platted. So the preserve has not been required at this point. The rest of the development that has been platted so far that has development on it, they are in compliance with the required preserves thus far.

COMMISSIONER KLUCIK: Okay. So that's the exact opposite of what Ms. Ashton just said. She and I agreed that it wouldn't make sense to say the land that's being preserved doesn't -- you don't put the easement on it until it's platted because it's not going to be platted because it's going to be preserved. Ms. Ashton just is on the record saying --

MS. ASHTON-CICKO: No, I did not say that.

COMMISSIONER KLUCIK: Well, let's -- I guess, if we could, Mr. Commissioner -- Mr. Chairman, could we have that read back to us, the colloquy between the -- the attorney and myself?

Because I know I asked that question on point, and it was a very, very specific and clear answer. And I understand that this -- I guess this is confusing to everybody. It's certainly a little bit confusing to me, but I know my question was straightforward, and it appeared as though Ms. Ashton really understood it, and now we have -- you know, we have Ms. Cook saying something that is the opposite of what our attorney told us, what I understood our attorney told us.

CHAIRMAN FRYER: We are -- let me respond first. We are -- we're simply not geared up to have the court reporter read back questions and answers, with all due respect, Commissioner. That is a -- that's a technique that can be very useful, I understand, is frequently employed in lawsuits and depositions but -- rather in -- yeah, in trials and depositions, but we're just not geared up to do that. Go ahead.

COMMISSIONER KLUCIK: Mr. Chairman, did you hear the same thing I heard, though?

CHAIRMAN FRYER: Well, I'm going to take all of the testimony for what it's worth.

COMMISSIONER KLUCIK: Okay. All right.

CHAIRMAN FRYER: And we'll just -- we'll sort through it.

COMMISSIONER KLUCIK: Okay. So what we're saying is then -- Ms. Cook, you're saying that that language, which is in the -- Section 3.2.8.4.7.3, which was in Ms. Ashton's memo to us, to me, that that says that the land that's going to be preserved and never platted doesn't get the easement until it's platted? And I don't understand how that even makes sense, but if you could, clarify that for me.

MS. COOK: Okay. So I'm -- I agree with what Ms. Ashton is saying. When they come in to develop or plat the area of Section 29 that will be developed, that is when they will put that Section 29 preserve into an easement or as a platted preserve, depending on how they choose to move forward with their development.

COMMISSIONER KLUCIK: But what area was supposed to be preserved? Was it --

MS. COOK: The western --

COMMISSIONER KLUCIK: The area that's supposed to be preserved -- the area that's supposed to be preserved would never be platted, and that's -- so if the area that's supposed to be preserved is never going to get platted, would you agree that an area that's reserved is never platted for LDC purposes? It's just -- it's preserved, and then it just sits there, and the Planning Commission and -- or the planning staff never really has to deal with plat, and it's just --

MS. COOK: No. They -- if they choose to not plat, they will have to record it as a separate conservation easement through a separate instrument.

COMMISSIONER KLUCIK: Right, which is exactly what the agreement required, a nonexclusive easement. But what you're saying is that it has to be platted, and I don't --

MS. COOK: No. Commissioner, it's done either at the time of a plat, a subdivision plat, or it's done at the time of a Site Development Plan, whichever they choose to move forward with as their development method.

CHAIRMAN FRYER: All right. I'm going to ask for Commissioner Vernon to make his comments or questions.

COMMISSIONER VERNON: Yeah, I had a comment -- a couple of comments, actually.

I think that Commissioner Klucik, in my opinion, bringing up what appears to be a really good point, is that we're relying on the fact that nothing's overdue because it hasn't been platted, but I think -- and not to put words in the commissioner's mouth, but I think what he's saying, which, again, I think is a great point, is if the concept was to plat something different than Section 29, they did plat it, then they didn't comply.

And the argument that, well, no, it was platting of Section 29 -- but if you're at a hearing in which you said we're not going to plat Section 29 because it's going to be a preserve or a golf course, so there's not going to be a platting, to me it wouldn't make any sense that you're referring to Section 29.

So I think Commissioner Klucik has hit on something really good, and I note that he's a real estate lawyer, and he kind of does this on a day-to-day basis. So I'm glad he brought it up. But I would say that I don't think the best way to figure this out is to cross-examine the County Attorney or cross-examine the staff, because I think they're here to provide us with information, and we can draw conclusions after we've heard from counsel on both sides, because I may listen to one of the counsel, and it may turn out that this is a red herring and Commissioner Klucik and I are wrong.

So I think it's a great point, but I'd really like to go forward and hear the evidence in a less interrupted way so that we can draw conclusions once we've heard all the evidence.

MR. OLDEHOFF: This is my turn. May I?

CHAIRMAN FRYER: Yes, go ahead.

MR. OLDEHOFF: I had asked if I could ask a question. I said, "I'm very, very confused," and honestly, I'm very confused, and then we kind of went off.

Let me preface this: I was -- I was a county attorney. I was a county attorney in three counties, and for 20 years I sat there. I sat up at the dais with the Planning Commission and with the County Commission, and I advised them on all land-use matters.

And I've written scores of -- I always wrote the ordinances. I've written scores of ordinances that are related to land-use applications and land-use approvals.

And so I'm completely thrown by this -- by what I've heard because -- what I'm confused about with this is that you have a 100-and-some-odd page ordinance that you-all have got. At the previous meeting, I tried to save some trees, and I only brought the relevant pages.

But am I to understand that the only part of this ordinance, No. 98-13, is -- is the few pages of the ordinance itself and that the -- and that the amendment is completely meaningless; that the only operative language here -- so just so I can understand where I have to go. The only thing that is meaningful and has to be complied with in this '98 ordinance is the part that is before the

signature of the Chairman of the County Commission?

CHAIRMAN FRYER: Mr. Oldehoff, I'll tell you where my thinking is, and then other planning commissioners can jump in if they disagree. I think we've heard a considerable amount this morning about the 1998 paperwork and about such things as whether something was a substantive provision or procedural provision or whether something might have been inadvertently left out or intentionally left out.

And I personally feel like I've heard enough on that to make up my own mind. And the Planning Commission is absolutely free, each individual, to make up his own mind as to what might have happened back then and what might have been inadvertent or intentional, what the meaning of those words were.

Obviously, we defer greatly to Mr. Bosi as the official county interpreter of LDCs. And we pay special attention to the opinions of our County Attorney. But at the end of the day, while we're not the Board of County Commissioners, we are the direct and final line of communication to the Board of County Commissioners, and so, you know, we're free to recommend what we want and to supply our own interpretation of what's important and what's not. And I think that's what's going to happen.

MR. OLDEHOFF: Right. I just wanted to mention to you all -- if you could bring up the screen -- there's two things that are in this ordinance -- in the ordinance that I think need to be just noted, all right. The first one is in Section 1 of the ordinance which is before the signature. Section 1 -- and Section 1 says -- I've underlined it. This is the rezone. And it says, "In accordance with the Marco Shores/Fiddler's Creek PUD document as amended."

Now -- and that means that the document -- the document that follows is adopted. It's approved. And if you look at the document that's approved --

MS. ASHTON-CICKO: Sorry for the interruption, but I do agree with him, I did not see that section, okay, that part.

MR. OLDEHOFF: You also have the date approved by the BCC, and it's stamped. And it's the same date, and that is the amendment.

And I would understand that that means that everything that is in that document as well is binding, is required, has to be followed. It's not a matter of picking and choosing or something else like that. It's either all in or it's all out. And I was concerned because it sounded like County Attorney's comment seemed to say that that whole document was completely meaningless unless there was something very specific in the two or three sections above.

So I'm -- I'm going to -- I'm going to say that your whole ordinance is applicable, including that document and what's in that document, and I'm going to also echo another point that commissioners have made that is that if you -- if you try to torture your way into an interpretation and a construction of this that says that it never has to be done unless and until a plat is submitted, that -- that's -- again, that's meaningless. They would never ever, ever, ever -- and the proof is in the pudding. There would never ever, ever be a specific plat for this land. It doesn't mean that.

Please keep in mind that what's going on here is that the -- is that the county and the county staff has proceeded for the past 26 years without ever requiring the conservation easements. And it's become a matter of, you know, common knowledge that they've dropped the ball over all of these years.

And it kind of sounds like, you know, maybe there's an effort to try to kind of explain it as best you can, but it just doesn't seem to comport with the ordinance or what anybody would have been thinking they were adopting and approving back in 1998. That being said, I'm just going to turn it over to Mr. Forgey, if that's okay, if there are any other questions.

MR. YOVANOVICH: May I, Mr. Chair?

CHAIRMAN FRYER: Go ahead, Mr. Yovanovich.

MR. YOVANOVICH: It seems to me we've now started talking about different things that you requested us to brief specifically regarding the timing of the preserve. I would like to be able to assert my argument at this time because I think this is the time to talk about that, not when I

get into rebuttal.

So I request a moment to be able to address that what was said by your staff and said by Gary, if it's okay with the Planning Commission.

CHAIRMAN FRYER: Well, we'll find out in a moment. Personally -- and I'm just one member of the Commission up here, but I believe I've heard everything I need to hear about the 1998 situation. And I -- it was an imperfect process back then. I think I have a pretty good idea of what was actually meant. And I will -- I will draw upon my understanding when it comes time for me to explain the reasons how I'm going to vote once I decide how I'm going to vote.

But if you -- I mean, if you -- both of you want to keep going back and forth on this, I mean, I'll allow -- I'll allow it to a reasonable degree.

MR. YOVANOVICH: It won't be long.

CHAIRMAN FRYER: But we're not -- we're not at final argument here, and we're not at rebuttal. So I'm going to -- I'm going to give you five minutes to say what you want to say, because right now we're into public speaking. But go ahead and take five minutes.

MR. YOVANOVICH: Thank you.

What I want to say is -- and it's in my memo -- the timing requirement for the preserve and what I think -- if I may have the visualizer, please. What I think we're forgetting --

COMMISSIONER KLUCIK: Mr. Chairman.

CHAIRMAN FRYER: Go ahead, Commissioner Klucik.

COMMISSIONER KLUCIK: If you could direct me to a page in your memo, just because it's harder for me to see on the visualizer.

MR. YOVANOVICH: Understood. I will.

COMMISSIONER KLUCIK: That's fine. I mean, it's easy for you to do. Thank you.

MR. YOVANOVICH: I will be happy to do that. My discussion regarding the timing of the preserve starts on Page 3 of my memo, and in doing so, I reference the actual master plan that was adopted as part of the 1998 ordinance. And I've highlighted for you what was Section 29 at the time.

Section 29 at the time, you can see the darker area was labeled "park," the -- I'll call it like the puzzle piece labeled area was a lake, and then the lighter area is what was identified at that time as "preserve."

Not all of Section 29 was designated a preserve. What Section 3.2.8.4.7.3 -- which was referenced in the PUD, which frankly didn't need to be referenced in the PUD because it was an LDC requirement -- does say when we come in -- and we will come in at some time and plat and develop Section 29. When we get to that portion of the project, we have to put the preserve area, as identified in this master plan, either into a separate conservation easement or we do it through the plat. That's what the Land Development Code required in 1998. That's what the Land Development Code requires today.

Every big project like Fiddler's Creek, like Pelican Bay, like Pelican Marsh, these are projects that get built out over many years. A lot of these DRIs have a 40-year lifetime and sometimes longer. We don't, on Day 1, take the PUD or the DRI master plan and say, "That's it forever. We are now going to record all of these conservation easements or preserve areas at that time." We do it as the project goes along and is developed.

CHAIRMAN FRYER: Commissioner --

MR. YOVANOVICH: So, if I may, if you took --

CHAIRMAN FRYER: Commissioner Vernon.

COMMISSIONER VERNON: I don't mind if he finishes, because I just -- I have a quick question for him once he finishes.

CHAIRMAN FRYER: Go ahead, Mr. Yovanovich.

MR. YOVANOVICH: Even if you took that we were legally obligated in October -- I'm sorry -- in 1998 to put the Section 9 [sic] preserve in a preserve, it would not have been the area we're here to talk about today. It would have been the area that's in the lighter color.

So I just want to make sure we're talking about the facts and the timing. And your staff has opined we have put the areas that have to go into preserve into an easement when those areas or the portion of the project have been developed. That's the way it's been done for as long as I've been here.

And, you know, I was an assistant county attorney. I wasn't "the county attorney," but I was an assistant county attorney, and I have been the City of Marco attorney. I know how to read an ordinance. I know how to write an ordinance. And the ordinance says what it says, and your staff has interpreted it correctly. And even if you want to take his argument as correct, which I don't agree with, it was not the entirety of Section 29, and it's not the portion of the project we're here to talk to you about today.

CHAIRMAN FRYER: Commissioner Vernon.

COMMISSIONER VERNON: If you were to develop -- or not develop. If you were to move forward with Section 29 as presented on the exhibit you have on the screen, would part of that, in other words, making a park and a preserve, would that involve platting?

MR. YOvanovich: It could be a plat, or it could be a Site Development Plan. More likely, it would be the plat because we have -- you'll see this -- this area, which is difficult to see, that's a little bit darker. I'll try to point to it. That's a road which would have been -- required platting, so we would have platted Section 29 for the park. The lake would have been part of the plat, and the preserve would have been part of the plat.

You'll see that throughout the development of Fiddler's Creek. That's how it's done.

COMMISSIONER VERNON: I think your answer's really clear, but I want to make sure I understand that.

If I came in to the staff and said, "I want to develop Section 29 as presented on this document with a park and a lake and a preserve," would they say, "Well, you need to plat that"?

MR. YOvanovich: I think they might have given me the option, but I would have platted it because --

COMMISSIONER VERNON: So you could do this without platting it.

MR. YOvanovich: But I would then -- as Ms. Cook says, I would have put --

COMMISSIONER VERNON: You could do this without platting it.

MR. YOvanovich: But I would have to put a conservation easement through a separate document.

COMMISSIONER VERNON: Would that require platting to put a conservation easement?

MR. YOvanovich: No.

COMMISSIONER VERNON: Okay. So you could do this without platting it?

MR. YOvanovich: Not practically, though, Commissioner.

COMMISSIONER VERNON: As a common practice --

MR. YOvanovich: As a common practice --

COMMISSIONER VERNON: -- if you would have done this Section 29 as-is as you're representing -- as a land-use attorney who does this all the time, you probably would have done some platting in connection with creating that park and this conservation easement?

MR. YOvanovich: We would have platted the entirety of that Section 29 because we would dedicate easements on the plat, who's responsible for maintaining those easements. We would have dedicated who's got the right to use the property as part of all of that platting process.

So we would have platted this, and we would have platted the preserve as a conservation easement. We would have platted the park as a park. If we did a golf course, we would have platted it as a golf course.

COMMISSIONER VERNON: So back to Commissioner Klucik's question, which I thought was a super good question, you're saying -- well, let me rephrase it. So your understanding -- you're advocating for your client, I understand. But your understanding is that where it said the language we're fussing about, talking about where it doesn't have to be dedicated

until it's platted, you're representing to the commissioners that that was referencing the platting of Section 29?

MR. YOVANOVICH: Specifically, yes, and also generally, because remember that same provision applies to the entirety of Fiddler's Creek.

COMMISSIONER VERNON: But you understand my question, and your answer is yes?

MR. YOVANOVICH: Yes, we were going to plat it.

COMMISSIONER VERNON: Thank you.

CHAIRMAN FRYER: And I'm going to ask that counsel -- any further discussions or presentations you want to make, please do that during your rebuttal.

MR. YOVANOVICH: I will. But I'm going to reserve the right -- if we start getting into other areas of the memo that you asked us to write, I'm going to stand up and ask that I be able to address those if others are being given the opportunity to address those, because those were general requests. You can tell me to sit down, but I'm going to get up and ask if we start getting into those areas.

CHAIRMAN FRYER: Well, you can make whatever record you want, within reason. All right.

COMMISSIONER KLUCIK: Mr. Chairman?

CHAIRMAN FRYER: Go ahead, Commissioner Klucik.

COMMISSIONER KLUCIK: Could I ask Mr. Yovanovich a question based on that --

CHAIRMAN FRYER: Yeah, of course.

COMMISSIONER KLUCIK: -- discussion?

Okay. And I understand, like, this is sort of, like, a dumb question, but I -- you know, I just want to refresh my memory because maybe you're going to think, "Well, why don't you already know the answer to that?" So I admit that up front.

But are you coming before us today with this petition and saying that you do have an obligation to -- for the conservation easement to the county still and -- or not for at least a portion of Section 29?

MR. YOVANOVICH: If -- the answer is there is a future obligation to give the county a conservation area -- conservation easement over that portion of Section 29 identified as a preserve. We will do --

COMMISSIONER KLUCIK: So regardless of -- regardless of anything that you've done with the federal government or anything else you recorded?

MR. YOVANOVICH: Correct. Those are as -- those are two separate processes. We have an obligation to the county, and we have an obligation to the federal permitting agencies. They're not the same; they're separate.

COMMISSIONER KLUCIK: And so what you're also saying is that when this horse trading was done where, you know, you -- the petitioner at the time agreed to this conservation easement, that -- so I guess -- I go to Section 8.4 of the ordinance.

MR. YOVANOVICH: Yes, sir.

COMMISSIONER KLUCIK: And 8.5, it says, "Uses permitted," and then G, and part of that is park, you know, reserve area, passive recreation, and hiking/biking trails, and then G, "Any other conservation."

So I guess I'm thinking that -- like, why are you saying that the park and the lake weren't also un-developable other than, you know, as this sort of conservation where it would be conserved as a park?

MR. YOVANOVICH: Well, because -- I'm sorry. I didn't mean to interrupt you. I just can't see your face.

COMMISSIONER KLUCIK: No, no. You know what, I'm saying -- because I'm reading that --

MR. YOVANOVICH: Sure.

COMMISSIONER KLUCIK: -- and it says, this is -- the purpose is to set aside this land

and you can do all these things and any other conservation stuff on this land.

So how are we not to interpret that there's still an obligation for the whole thing to be a conservation easement of some sort and including the ability to -- you know, to do all of these things? You're saying that's a mis -- I'm misreading what that means?

MR. YOVANOVICH: You are. And if you'll give me a second, you'll also -- and I don't have the ordinance in front of me, and I'll get it. But if you'll also remember the list of things that we're allowed to do in Section 29 are active recreational uses that are also allowed to be done in Section 29, and that's in the area that's not identified as a preserve.

So this was never going to be a passive area. It was -- we looked at having equestrian clubs out there and a whole lot of other things that could be noisy that could go on that property, and that's in Section 8.5. I don't remember which letter. But if you have that in front of you, you'll see where it says --

COMMISSIONER KLUCIK: Well, yeah, help me understand, then, because 8.4, right before those uses, it says, "The purpose of this section is to establish development regulations applicable to Section 29," which is the whole area, "particularly Tract 110, the adjoining lake, and the adjoining reserve area." So what is the "reserve area"?

MR. YOVANOVICH: That's where -- "reserve" was the term used at the time for "preserve."

COMMISSIONER KLUCIK: Okay. So what it's saying is is that whole area can have all those listed uses in 8.5, and that is the limit of -- you know, the conservation is, hey, you can only do these things on it, and it lists all of them, and it expressly says it's the whole thing. It's the lake and it's the reserve area, everything. You can do all of these things on it.

MR. YOVANOVICH: No, Commissioner, I disagree.

COMMISSIONER KLUCIK: But you can only -- well, what does "uses permitted" mean then?

MR. YOVANOVICH: Well, because -- you look at Section 29, and on the master plan, there's a portion that was designated "reserve." I could not put the active recreational uses in the reserve. I couldn't do it. That was not an allowed use.

COMMISSIONER KLUCIK: So then I guess that's Section A, "Uses set forth in reserve areas as set forth" --

MR. YOVANOVICH: Right, right. So in the area that was depicted as "park" and "lake," I could put active recreational uses. I could put launching and storage facilities for watercraft. I could put all of those uses on that area. I could do an agricultural nursery, but I couldn't do those in the area labeled "reserve," now referred to as "preserve." So all of Section 29 was never going to be within a conservation area.

COMMISSIONER KLUCIK: But it was going to be -- it was going to be severely restricted as to what you could do with it. Like currently --

MR. YOVANOVICH: Correct, and that's what we're here to change. That's what we're here to change.

COMMISSIONER KLUCIK: Yeah, okay.

CHAIRMAN FRYER: I want to get back to Mr. Oldehoff. And I'll say it again for clarification, Mr. Yovanovich, you will have the opportunity to cross-examine his experts, and so you can make your points at that time, or you can make your points in rebuttal. So you have ample opportunity.

MR. YOVANOVICH: I understand.

CHAIRMAN FRYER: But if -- interruptions of the kind that you just brought to us I'm not going to permit. I'm going to ask you to just make notes to yourself and bring them up at the more appropriate time. You'll have a full opportunity to say whatever you want, but I need to try to control the flow of information here.

MR. OLDEHOFF: Thank you, Mr. Chairman.

CHAIRMAN FRYER: Go ahead, Mr. Oldehoff.

MR. OLDEHOFF: Okay. I'd like to have you hear from Mr. Forgey, please.

CHAIRMAN FRYER: Okay. And while the gentleman is coming up, Mr. Yovanovich will have an opportunity to cross-examine him, and then at that point, if Mr. Oldehoff desires, he can do redirect.

Go ahead, Mr. Forgey.

MR. FORGEY: Good morning, Mr. Chairman. Max Forgey, 236 Southeast 45th Street, Cape Coral, Florida, doing business as Forgey Planning, LLC.

CHAIRMAN FRYER: Thank you. And before you continue, back to Mr. Johnson, how much time does this witness have?

MR. JOHNSON: Mr. Chair, Mr. Forgey has 35 minutes. He's been ceded time from six others.

CHAIRMAN FRYER: All right. Go ahead, sir.

MR. FORGEY: I won't be taking nearly that much time.

CHAIRMAN FRYER: Okay.

MR. FORGEY: My clients are John Erario and Sue Caglioti, who reside on Royal Hammock Road. I will address the proposed amendments to the Collier County Growth Management Plan, which continues from the April 18th hearing by this body.

The homeowners' property is located due north of the subject property on the other side of a drainage canal.

I will not be restating Mr. Oldehoff's presentation concerning the conservation covenants on the subject property and will not address the developments of regional impact status or the evacuation times. Mr. Daniel Trescott will be addressing those.

I've provided you with an expert letter concerning land uses and the Growth Management Plan. It supersedes an April 17th letter which you received prior to the hearing two weeks ago. There is one relatively small change which I will ask to read into the record.

My résumé is on file. I have a master of public affairs degree in urban and regional planning from Indiana University, Bloomington, and as of yesterday, I'm a 31-year member in good standing of the American Institute of Certified Planners. I am a registered lobbyist in Collier County. I have appeared before this body before. I have been sworn.

As Counselor Oldehoff has stated, the Comprehensive Plan amendment is legislative in nature, and to me, in particular, that has two specific meanings. One is that neighbors have a right to be heard and, indeed, all people of Collier County have a right to be heard, and you've certainly honored that in the past.

The second, which I think is more important, is that the Board of County Commissioners is under no obligation to adopt any application, and you are under no obligation to recommend approval.

The proposed use is incompatible with neighboring uses. "Compatibility" has a specific definition in Florida Statutes. I have the entire definition in my report. The -- the important language is quote -- the existing use and the proposed use must, quote, "Coexist in relative proximity over time," and it also says, "No use or condition is unduly negatively impacted."

The impact of this proposed use will work one way only. A dense multifamily development on a single -- will have an effect on a single-family mostly one-story neighborhood, residential, and it doesn't work the other way. They won't cause an impact on the proposed use.

Chairman Fryer, at the April 18th hearing said, they would be, quote, "Sloughing off the impact to the neighbors." And he further said, "The neighbors," quote, "who will bear the brunt of the visual impact." I agree. I'm sure that my neighbors agree as well.

Mr. Bosi said on April 18th that the compatibility criterion could be checked off because of separation between the developments. I respectfully disagree. There's more to it than that. It's the one- or occasionally two-story versus five-story. It's the density of 1.42 acres per -- units per acre versus 15 units per acre. These cannot coexist in a stable manner over time.

Turning now to the Collier County Comprehensive Plan defines this area as residential and

agricultural identity in their definition. I don't see how it is possible for residential and agricultural identity to embrace a 750-unit complex on 49.9 acres. It is an inappropriate location.

And I refer you to my report, Policy 2.3 and 5.1 of the Conservation and Coastal Zone Element of your Growth Management Plan. It is noteworthy that the applicant, in 1998, promised to preserve the parent tract via conservation covenant, and I don't think I'll talk more on that.

Policy 5.1. In the staff report for the Planned Unit Development, there's a very interesting passage. Quote, "Comprehensive Planning staff has reviewed the proposed PUD and found it not consistent with the Growth Management Plan." I think it is clearly inconsistent with the entire plan.

Also, it's inconsistent with the Comprehensive Plan as a whole; otherwise, the applicant wouldn't be asking for an amendment to the Comprehensive Plan. What they're proposing to do is inconsistent with the existing plan.

Further on Policy 5.1, the development will be quote, "directed away from areas that contain threatened or endangered species." You heard testimony on April 18th regarding endangered and threatened species on this site.

Level of service, Transportation Element Policy 4.2 requires, quote, "adequate access." You already have 72-hour evacuation clearance. Mr. Trescott will be addressing that further. This would exacerbate a difficult situation to begin with, and I think that needs to be addressed. It would add an additional 343 peak-hour trips daily. That is -- actually, those numbers come from the applicant's experts. It may be more.

Housing Element Policy 1.8, quote, "Affordable housing should be located within established communities with sufficient access to community services." That is not describing this isolated -- this island of development in the middle of what is otherwise conservation land and the one-point-three-quarter mile gooseneck route that would penetrate the existing conservation areas. Inconsistent with that.

Returning to compatibility, I gave you the statutory definition, but compatibility is also a feature of the Growth Management Plan in Collier County Future Land Use Element Policies 6.5 and 7.1 and Recreation and Open Space Element Policy 1.3.2. Policy 7.1 specifically refers to urban sprawl -- which is defined in Chapter 163.3164(52). I have the whole definition in the report -- as low-density automobile dependent development -- that's what this is -- quote, "requiring extension of public facilities and services in an inefficient manner."

My report has 13 recommended findings of fact. I have added two of them, and I will be reading them. I'm not going to read the others, but I'm going to trot you through what I think are some of the important ones. I'm doing this even though I am allowed to speak for 35 minutes, and I appreciate that. But my experience with this body is that I think you actually read reports. So I don't have to give you the entire thing, but I will read two of them specifically into the record.

Finding -- Recommended Finding 4 regards the adequacy of existing entitlement. The applicant has an existing entitlement. It's been based upon years of history and negotiation and approval. Now they're asking for more. What they have, they have.

Finding No. 5, it is incompatible as defined in state statutes.

Finding No. 6, it is inconsistent with Future Land Use Element Policies 6.5 and 7.1.

Finding No. 7, the proposed use is facially inconsistent with the Growth Management Plan; otherwise, they wouldn't be here.

Finding No. 8, the proposed use would negate the residential and agricultural identity articulated in the definition in the Comprehensive Plan.

Finding 9, the proposed use is inconsistent with Policies 2.3 and 5.1 of the Conservation Element because of the isolation of the site.

CHAIRMAN FRYER: Will everyone please mute your cell phones, or if they're going to make a loud noise like that, just turn them off, please.

MR. FORGEY: Thank you.

Now I would like to read Findings 12 and 13.

Finding 12, "The proposed use which would enable development of a multifamily residential project of as many as 750 units, including a maximum of 150 affordable housing units, is located at a long distance from the community infrastructure and services and retail opportunities that are needed by Collier County's workforce and their families. The apartment units will be at least a one-and-three-quarter mile bicycle ride to the nearest bus stop and longer for elementary schools and other services and would isolate the workforce and their families from the community."

Finding 13, "The applicant has offered no evidence that they sought the endorsement of prospective employers of Collier County's critical workforce, including teachers, healthcare workers, police, firefighters, EMS, EMT, and specifically that those employers identified a need for multifamily development on the extreme fringe of the developable portion of Collier County to accommodate their workforce." Ms. Lockhart, who is not here today, was at the last hearing. I did not hear her say this would be a real boon for our teachers and school board employees. I've not heard from any other prospective employer. I'm -- I have some doubts as to the viability of this as workforce housing.

In closing, Counselor Oldehoff said that you're on a crossroads. I think that's a good image here, because as I look at it, you have a green wall of conservation lands and state lands and it really would -- is hard to develop on places that are now state parks, for instance. But the applicant is asking for you to recommend penetrating that wall for implanting a pretty high-density project in the middle of it.

And the other thing is this one and -- one-and-three-quarter-mile road extension is really the longest cul-de-sac I think I've ever seen; one way in, one way out, and it's the same way.

Commissioners, I'm urging you to deny this application for future land-use amendment, and I have nothing else to add. Thank you.

CHAIRMAN FRYER: Thank you. Questions from up here?

(No response.)

CHAIRMAN FRYER: Apparently not.

Mr. Yovanovich, do you want to cross-examine from over there?

MR. YOVANOVICH: Yeah, it's probably easier.

Good morning, Mr. Forgey.

MR. FORGEY: Good morning.

MR. YOVANOVICH: I would like to go over a few things that you testified to, but I want to make sure I understand your areas of expertise.

You are not an expert in housing, correct?

MR. FORGEY: I'm here only as a land-use expert.

MR. YOVANOVICH: Okay. But you testified as to housing and whether or not certain people will or will not find this an attractive place to live, correct?

MR. FORGEY: If I may, point of privilege. I have testified only about the future land-use aspects. I am speaking legislative, and when you really -- when I hear the words "cross-examination," I think you're getting into the quasi-judicial realm, which I have scrupulously tried to stay out of in order to address the future land-use amendment.

MR. YOVANOVICH: And I appreciate that, but what I heard you say is, "People will not want to live here."

MR. FORGEY: I did not say that.

MR. YOVANOVICH: Well, that's what I heard. And I've got my next question.

MR. FORGEY: Counselor, may I?

MR. YOVANOVICH: No. I'm asking the questions, and I would like to be able to finish the question. You can be redirected by Mr. Oldehoff.

MR. FORGEY: Very good.

MR. YOVANOVICH: You are not an environmental expert, correct?

MR. FORGEY: Correct.

MR. YOvanovich: You are not a transportation expert, correct?

MR. FORGEY: Correct.

MR. YOvanovich: Are you -- how many affordable housing units are we requesting as part of this?

MR. FORGEY: A maximum of 150.

MR. YOvanovich: Well, actually, what we're asking is for a maximum of 225. Did you -- did you read the Growth Management Plan amendment that we're proposing?

MR. FORGEY: When was that sent?

MR. YOvanovich: It's part of the application materials. It was in place prior to your April 15, 2024, memo. Did you read the application materials?

MR. FORGEY: No.

MR. YOvanovich: You did not read the application materials?

MR. FORGEY: I did not read "that" application material.

MR. YOvanovich: Let's just be clear, you did not read the proposed Growth Management Plan amendment, correct?

MR. FORGEY: I do not remember.

MR. YOvanovich: Okay. You live in Cape Coral, correct?

MR. FORGEY: Yes.

MR. YOvanovich: How long did it take you to get here today?

MR. FORGEY: About an hour and 30 minutes.

MR. YOvanovich: If part of Collier County's workforce lived in Cape Coral, is it a shorter drive for them to live in Section 29 or a longer drive for them to live in Section 29 than commuting from Cape Coral?

MR. FORGEY: I don't know.

MR. YOvanovich: Okay. What is the underlying land-use designation for Section 29 under the current Collier County Growth Management Plan?

MR. FORGEY: Agriculture and conservation.

MR. YOvanovich: Would it surprise you if it was actually designated Neutral Lands under the Collier County GMP?

MR. FORGEY: Correct. I saw -- I saw that. And I'm not sure what Neutral Lands means in land-use terms.

MR. YOvanovich: Okay. Are you aware that affordable housing is a permitted use in the Coastal High Hazard Area?

MR. FORGEY: I've been hearing that, yes.

MR. YOvanovich: Okay. How familiar are you really with the Collier County Growth Management Plan?

MR. FORGEY: I've read through it.

MR. YOvanovich: Would you consider yourself an expert in the Collier County Growth Management Plan?

MR. FORGEY: I've not presented myself as such.

MR. YOvanovich: Would you agree that Collier County staff are experts in the Collier County Growth Management Plan?

MR. FORGEY: I would hope so.

MR. YOvanovich: Do you have any reason to believe that Mr. Arnold is not an expert in the Collier County Growth Management Plan?

MR. FORGEY: I have no reason to think otherwise.

MR. YOvanovich: Do you have any reason to believe that Mr. Hall is not an expert in environmental permitting and environmental issues within the Collier County Growth Management Plan?

MR. FORGEY: I have no reason.

MR. YOvanovich: Do you have any reason to believe --

CHAIRMAN FRYER: Mr. Yovanovich -- Mr. Yovanovich, you moved from the subject of staff to people who are on the developer --

MR. YOVANOVICH: Correct.

CHAIRMAN FRYER: Would you clarify that for the witness so that he doesn't think that Mr. Hall is a member of staff --

MR. YOVANOVICH: I'm sorry.

CHAIRMAN FRYER: -- because it might not have otherwise --

MR. YOVANOVICH: Mr. Forgey, are you familiar with Mr. Hall?

MR. FORGEY: I heard his testimony on the 18th. I know who he works for.

CHAIRMAN FRYER: Thank you.

MR. YOVANOVICH: Okay. Are you familiar with Mr. Jim Banks?

MR. FORGEY: Yes.

MR. YOVANOVICH: You know that Jim Banks does not work for Collier County, correct?

MR. FORGEY: Correct.

MR. YOVANOVICH: Do you have any reason to believe that Mr. Banks is not an expert in transportation planning issues?

MR. FORGEY: No, certainly not.

MR. YOVANOVICH: Do you have any reason to believe that Mr. Minor, who is on our team, is not an expert in civil engineering matters?

MR. FORGEY: May I stipulate that the entire team that you brought with you are experts in the field?

MR. YOVANOVICH: I'm happy to have you stipulate to that. This will make it go a little bit quicker.

In your memo, you said a five-story building is a high-rise, correct?

MR. FORGEY: No.

MR. YOVANOVICH: You didn't?

MR. FORGEY: If I did, I -- five-story is not usually -- five-story is usually a mid-rise.

MR. YOVANOVICH: You wrote on Page 3 of your memo, "These two uses, low- versus high-rise; single-family residential" uses -- "single-family residential versus 750-unit residential," you wrote the word "high-rise." Was that a mistake?

MR. FORGEY: Lower versus higher. I -- in my testimony -- in my oral testimony, I said, "One or occasionally two versus five." That's the -- let's use the numbers here.

MR. YOVANOVICH: That's fine. I just wanted to -- because this is part of the record, and I want to -- I want to make sure what your actual testimony is versus your written -- your written document. Do you agree what we're proposing is not a high-rise?

MR. FORGEY: I'll agree.

MR. YOVANOVICH: Now, you did testify that compatibility can be addressed through distance between structures, correct?

MR. FORGEY: That would be -- it is not specifically in the statutory definition, but that could be one factor that you could cite.

MR. YOVANOVICH: You would also agree that buffers between structures can be an element of compatibility, correct?

MR. FORGEY: The word "buffer" isn't in the definition, but yes.

MR. YOVANOVICH: I know I've asked you this question before in other hearings: RMF-16 is Collier County's highest residential density. Are you aware of that?

MR. FORGEY: Yes.

MR. YOVANOVICH: And RMF-16 is 16 units per acre, correct?

MR. FORGEY: Yes.

MR. YOVANOVICH: And RMF-16 allows for a zoned height of 75 feet, correct?

MR. FORGEY: Yes.

MR. YOVANOVICH: Now, Mr. Arnold testified that the lowest straight zoning category for residential is RSF-1; do you agree with him?

MR. FORGEY: I haven't looked at it lately, but that -- pretty much everywhere, yeah.

MR. YOVANOVICH: And the Land Development Code in Collier County has development standards for RMF-16 to be adjacent to RSF-1, correct?

MR. FORGEY: I am not aware of that one way or another. I haven't -- I did not read that for my preparation.

MR. YOVANOVICH: So you have no reason or no ability to contradict Mr. Arnold's testimony with regard to compatibility with RMF-16 at 16 units per acre next to RMF -- I'm sorry -- RSF-1, which is one unit per acre, correct?

MR. FORGEY: The decision as to whether this is compatible is up to this body. They have to weigh those facts.

MR. YOVANOVICH: I'm just wanting to understand if you disagree with Mr. Arnold's conclusions.

MR. FORGEY: I neither agree nor disagree. I have not -- I haven't spent enough time reading the more obscure portions of your Land Development regulations.

MR. YOVANOVICH: What's the required buffer between an RMF-16 parcel versus an RSF-1 parcel?

MR. FORGEY: I do not know.

MR. YOVANOVICH: What's the required building separation between an RMF-16 building and an RSF-1 building?

MR. FORGEY: I do not know.

MR. YOVANOVICH: If I were to tell you that the minimum setback in RMF is one-half the building height, would you have any reason to disagree?

MR. FORGEY: No.

MR. YOVANOVICH: So let's use the tallest building, which is 75 feet. That would be 37 and a half feet, correct?

MR. FORGEY: If you say so.

MR. YOVANOVICH: Do you have any reason to believe that the minimum setback between an RSF-1 single-family home is a 50-foot rear setback or a 50-foot front setback?

CHAIRMAN FRYER: I'm going to interrupt for just a moment. It's 10:30. Usually we have our midmorning break at this time. How many more questions do you have, or how many more minutes do you think you'll take, Mr. Yovanovich?

MR. YOVANOVICH: Three.

CHAIRMAN FRYER: Okay. I assume that's okay with the court reporter.

THE COURT REPORTER: (Nods head.)

CHAIRMAN FRYER: Okay. Please proceed.

MR. YOVANOVICH: Do you have any reason to believe that I'm not accurately telling you that the minimum setback for an RSF-1 lot is 50 feet?

MR. FORGEY: I have no reason to doubt that.

MR. YOVANOVICH: So if you total those two together, that's a total building separation of 87 and a half feet, correct?

MR. FORGEY: Are you asking me to do math in my head here?

MR. YOVANOVICH: If you want, I'll give you a piece of paper to do the math. I'll give you a calculator.

MR. FORGEY: Why don't I just agree?

MR. YOVANOVICH: Okay. Why don't you just agree, fine. I'm sure I would have been corrected if I was wrong.

So how far apart are the single-family homes in your clients' project from the multifamily homes in my client's project?

MR. FORGEY: I do not recall. I think I heard 300 feet at the last hearing.

MR. YOVANOVICH: I think it's closer to 500 feet.

MR. FORGEY: All right.

MR. YOVANOVICH: That is roughly six times the requirement of the Collier County Land Development Code for RMF-16 adjacent to RSF-1, you would agree?

MR. FORGEY: I'm not sure why we are focusing on the Collier County Land Development Code when this is a legislative question.

MR. YOVANOVICH: Well, we're here for a couple of things, a legislative question as well as a PUD.

Is it your testimony that the PUD is absolutely compatible with the next-door neighbor?

MR. FORGEY: I am not addressing the PUD.

MR. YOVANOVICH: You're not testifying at all on the PUD?

MR. FORGEY: I'm not testifying on the PUD. I did have a quote from the PUD report.

MR. YOVANOVICH: And you are -- you acknowledge that the Growth Management Plan can, in fact, be amended through the process we're going through right now?

MR. FORGEY: Yes.

MR. YOVANOVICH: And you agree that Collier County staff are experts in all of their disciplines, correct?

MR. FORGEY: I haven't, like, read their résumés or anything. I'm sure they -- I'm sure they're qualified.

MR. YOVANOVICH: And every one of the Collier County experts has determined that this project satisfies every one of the elements of the Collier County Growth Management Plan but one, because we're here to add units to the Section 29 property that was formerly designated as active residential, correct?

MR. FORGEY: Will you repeat the question?

MR. YOVANOVICH: Every one of Collier County staff's experts has said we have fully satisfied the Collier County Growth Management Plan elements with regard to environmental, transportation, compatibility, and every other element, correct?

MR. FORGEY: Correct, with the -- but I want to specify that they did say it's the -- it is incompatible with the Comprehensive Plan. That it was --

MR. YOVANOVICH: Well, we'll --

MR. FORGEY: -- inconsistent with --

MR. YOVANOVICH: -- deal with that in rebuttal.

MR. FORGEY: Sure.

MR. YOVANOVICH: But every -- there's staff recommendation of approval, correct?

MR. FORGEY: Yes.

MR. YOVANOVICH: And they can only make a recommendation of approval if they have determined that we satisfy every element of the Growth Management Plan, correct?

MR. FORGEY: I think that's a loaded question. I think staff are sometimes directed otherwise, but I know -- I have no evidence of that here. It's -- thank you.

MR. YOVANOVICH: Thank you.

CHAIRMAN FRYER: Thank you. It's 10:34. We'll be in recess until 10:45.

(A brief recess was had from 10:34 a.m. to 10:45 a.m.)

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

CHAIRMAN FRYER: Thank you, Mr. Bosi.

Everyone, please take your seats. Let's reconvene.

And, Mr. Forgey, will you please return to the lectern. And Mr. Oldehoff is going to have some redirect.

MR. OLDEHOFF: Mr. Forgey, you have talked about the consistency of this proposed amendment with the policies and objectives in the Collier County Comprehensive Plan.

MR. FORGEY: Correct.

MR. OLDEHOFF: And to do that, you read the policies themselves; you understood

them?

MR. FORGEY: Correct.

MR. OLDEHOFF: And there are policies in the plan that this amendment, even if it is approved -- if it is approved, would be inconsistent with; is that right?

MR. FORGEY: Correct, and I specified those.

MR. OLDEHOFF: Okay. Can you specify whether this amendment complies with the policies in the Coastal and Conservation Element of the plan?

MR. FORGEY: It does not.

MR. OLDEHOFF: And can you tell us whether this amendment, if made, would comply with the policies in the plan in the Future Land Use Element?

MR. FORGEY: It would not.

MR. OLDEHOFF: It would not. Okay.

Mr. Yovanovich pointed something out, that the highest Future Land Use Map designation for residential use and construction is RMF-16. Did you find that in the plan as well?

MR. FORGEY: I was not looking for that at the time, but it was my understanding that 15 was the very high end of residential.

MR. OLDEHOFF: So what we're talking about here is a -- is a 49.9-acre project and development at 15 units per acre?

MR. FORGEY: Correct.

MR. OLDEHOFF: So looking at that, that would represent and constitute the densest development that is allowed in Collier County, according to the Future Land Use Element map designations in the plan?

MR. FORGEY: I'm going to ask for clarification here. I've heard 16. I mean, 15 and 16 are real close.

MR. OLDEHOFF: Fifteen, 16. It would constitute one less unit per acre than the highest designation for residential development in the whole county?

MR. FORGEY: That is correct, and it would be at the very high, high end of the allowable residential densities in unincorporated Collier County.

MR. OLDEHOFF: And this particular spot of 15 units an acre, its location on the very, very outer -- beyond the outer fringe of current development in Collier County, is that compatible with its location? Is it compatible with the Comprehensive Plan policies on where that kind of density should go?

MR. FORGEY: It is incompatible, as I stated in my written report, and I went into some length of that.

MR. OLDEHOFF: Thank you.

MR. FORGEY: Thank you.

CHAIRMAN FRYER: Thank you. Any further from Mr. Yovanovich?

COMMISSIONER SHEA: Can we ask a question on the same topic, or should we wait?

CHAIRMAN FRYER: Of course.

MR. OLDEHOFF: Do we recross, redirect -- do I get another redirect?

CHAIRMAN FRYER: Well, within reason, we're going to try to explore this fully, but at some point I'm going to say it's no longer reasonable.

MR. OLDEHOFF: Yeah. I was thinking that was that point. I'm sorry.

CHAIRMAN FRYER: Not quite yet.

But Commissioner Shea wants to go next.

Go ahead, sir.

COMMISSIONER SHEA: Well, it's just one of the questions. And, actually, I wanted to ask Mike. I mean, he stated that it was not in compliance with the Coastal High Hazard. Refresh my memory what staff's position is on that compliance.

MR. BOSI: The density requested is -- is consistent with what is permitted within the Coastal High Hazard Area. We allow for density bonuses of up to 12 units an acre to be applied

within the Coastal High Hazard Area on top of the base of four.

Traditionally, you would have a reduction of one because you're within a Coastal High Hazard Area. So what would be permitted by our current plan would be at 15 units an acre.

COMMISSIONER SHEA: So you disagree with the expert witness?

MR. BOSI: We have a difference of opinion.

COMMISSIONER SHEA: Okay, thank you.

MR. YOVANOVICH: Just real quickly.

I believe you told me you're not an expert in coastal -- the Coastal High Hazard Element of the Collier County Growth Management Plan, correct? I thought that was going to be Mr. Trescott.

MR. FORGEY: I think that I specified in my oral presentation that I would not be addressing developments of regional impact or evacuation times because Mr. Trescott is definitely an expert in those matters.

MR. YOVANOVICH: So tell me specifically which objective or policy we are not consistent with in the Coastal High -- in the Coastal Conservation Element.

MR. FORGEY: I would like to look at my written report.

Mr. Yovanovich, my -- on Page 4, in addressing the matter of the inappropriate location, I refer to Policies 2.3 and 5.1 Of Conservation Coastal Management Element. I can read those aloud --

MR. YOVANOVICH: That's okay. I'll deal with that.

MR. FORGEY: -- if you wish.

MR. YOVANOVICH: Policy 2.3 deals with the Florida panther environmental issues, correct? Page 4 of your memo.

MR. FORGEY: I'm looking at Page 4. I want to make sure that I -- it says that Collier County shall discourage the alteration of natural shorelines and preserve the existing natural resources within all designated critical wildlife areas to the maximum extent possible. It does not -- the policy does not specifically cite one particular species.

MR. YOVANOVICH: No. But your answer was the substantial impact of this development would have natural resources, and the habitat of the Florida panther was the basis for your statement that we're not in compliance with that policy, correct?

MR. FORGEY: Yes.

MR. YOVANOVICH: And you did testify that you're not an expert in environmental matters, correct?

MR. FORGEY: Correct.

MR. YOVANOVICH: Okay. So you found inconsistencies in an element that you have no expertise, correct?

MR. FORGEY: That is not correct. It was discussed at the previous hearing, but I didn't write the report. I am not an expert on that subject.

MR. YOVANOVICH: Okay. I just -- so we agree you're not an expert in environmental matters?

MR. FORGEY: Yes.

MR. YOVANOVICH: Thank you.

MR. FORGEY: Thank you.

CHAIRMAN FRYER: Thank you.

We have a witness who wishes to go out of order now because she has to go to work, so we're going to allow that to happen. Who is that witness?

MR. JOHNSON: Mr. Chair, her name is Tabitha Stadler. Ms. Stadler, please make your way up to the podium.

CHAIRMAN FRYER: And does this witness have any additional time?

MR. JOHNSON: No, just five minutes.

CHAIRMAN FRYER: All right. Ms. Stadler, you have five minutes.

MS. STADLER: Good morning. I appreciate your time today. As you heard, I'm Tabitha Stadler, and I live on Oak Tree Drive. So Oak Tree and Maple Tree are the only two short offshoots from Auto Ranch Road, which would be the main access to this proposed development.

And I just wanted to basically say that there's going to be huge impacts to us both very directly but then also in the character of our community. So I just wanted to detail those for you.

And I know you're operating on this 10,000-foot view, but I think it's just really important to be the person that lives there and to really see what that's like.

The first thing I'll say is I understand that it's being justified as affordable housing. Well, this is the face of affordable housing. The people that live on Auto Ranch Road, Oak Tree and Maple, you know, we're the workforce of this community. You know, I've lived here 20 years. I have two kids, ages 6 and 13, that go to school here, and we moved out there in 2005 because it was the only place that we could afford to buy something.

And even though we'd like to live maybe in a fancier community where maybe our kids could bike to the park or something, you know, there are more amenities, look at the price of housing; we cannot afford to move. Like, we're committed to being there, right, till our kids at least graduate high school, for sure. Another 11 years at least.

And I think, like many residents in this community, you know, we've been through it. We purchased the property in 2005 on a Friday, and guess what happened on a Monday in October in 2005? Anybody remember? Hurricane Wilma came over. And it was actually a trailer on the property. And we do have mixed trailers and houses in this the -- in the neighborhood and along Auto Ranch Road.

So we, without the details, practically camped there while we applied for a disaster aid loan and built a small house that's just 1300 square feet, not very big, with two kids and us in there, and, you know, we work hard and do what we can in this community.

And so the things we love about it are the quietness of the neighborhood. I actually happened to be out of town for two weeks, and I came back, and the first thing I was struck with over my morning coffee was, like, wow, I love the peace and quiet out here. So 700 homes a few -- like, a block away with probably 1400 cars going back and forth, certainly a lot of noise and dirt, right?

We also love the dark skies at night, right? And we're already starting to lose that from the Fiddler's Creek development just to the west of us that's sort of marching its way towards us. The hum of air conditioners all the time, all of these things, I think, are really, you know, corrupting sort of an out-of-town neighborhood where we don't mind driving 40 minutes to everything, to church, to drop the kids at the school we go to. But I don't know if other affordable housing people are going to want to do that kind of a commute, because you literally need to have two cars, you know, in addition to be able to do that.

So I don't know. I'm not sure it seems correct to impact people who are trying to find and scratch out a living of affordable housing in Collier County by trying to put some other in. That seems to me maybe not really serving the population that I am, that are just, you know, workers.

But let me give you some real specifics. We have always flooded. Of course, we didn't know that when we bought it. But a couple days a year I try not to my drive my car through the deep water. And they say they're going to raise the road to fix that. Well, I have serious doubts about that. Nobody's studied the water flow there, but we can see what the stormwater does, living out there, and it's not really going south. It's going east. Anyway, we -- county, we really need a stormwater master plan for that part of the county.

But we're pretty impounded by the Fiddler's Creek to the west, now Auto Ranch Road if that goes up. It just makes us this pond in the middle.

And then I have to say, you know, we have the Royal Palm Harbor just another area over, and there's a lot of trailers and affordable housing in that tract, too, that also is flooding right now. So this does not seem like a good idea to increase the flood impacts in our neighborhood. I really think what's proposed is not taking in the complexity of that matter at all.

We're also all on septic and well. So now more flooding, more contamination of the well, less resilience. I think, you know, we've had -- as a matter of fact, my daughter was two months old when Hurricane Irma came almost directly over our house. We weren't there at the time. But you know that this is something that's happening more frequently.

And in addition to the flooding, there's a safety issue. The kids wait at the bus stop at the end of Oak Tree Drive and Auto Ranch Road, and they're out there in the dark, as you know, some times of the year, so that's not -- that doesn't seem like a good idea to be shuttling all that traffic down there.

CHAIRMAN FRYER: Ms. Stadler, you're at five minutes. May I ask you a question --

MS. STADLER: Oh, yeah.

CHAIRMAN FRYER: -- or two? Did you say that you live on Auto Ranch Road?

MS. STADLER: I actually live on Oak Tree Drive, right, like -- and Auto Ranch Road. There's just two little feeder roads.

CHAIRMAN FRYER: What is the size of your lot?

MS. STADLER: It's not an acre. Maybe three-quarters of an acre. It's pretty small.

CHAIRMAN FRYER: Okay. Thank you. And thank you for your testimony.

MS. STADLER: Yeah. And I was just going to say, there's a lot of wildlife issues there. So I know you'll see the data about that, but we have seen panthers and bears and things, and so I think that's going to compound that problem as well for us, my last comment. Thank you.

CHAIRMAN FRYER: Thank you. Before we go to the next speaker, I -- and we've granted Mr. Oldehoff's clients' -- their request that they would go in a certain order, but that doesn't mean that they get to go without being interleaved by other speakers. And I want to be sure that people who want to speak in favor of the development are not automatically shoved to the back of the line.

So if -- anybody who is registered and wants to speak in favor of this development, please raise your hand.

(No response.)

CHAIRMAN FRYER: All right. I don't see any. I just wanted to be sure that we proceed in a fair manner. Thank you.

Okay. Who is -- who is next, Mr. Johnson?

MR. JOHNSON: Mr. Chair, the next person is Dan Trescott. He's given 25 minutes. He's been ceded time from four other individuals.

CHAIRMAN FRYER: Mr. Trescott, you may proceed. First identify yourself, sir.

MR. TRESCOTT: Good morning, Mr. Chairman and Members of the Council. Thank you for your service on this matter.

My name is Daniel Trescott, and I am the president of Trescott Planning Solutions. My client is John Erario and Ms. Sue C. -- I can't always pronounce her name -- and some adjacent neighbors associated -- adjacent to this project.

I've been hired to look at the hurricane evacuation issues. I have been doing land-use planning and hurricane evacuation impact analysis for 44 years. I have a Master's of Science in planning since 1980. Copies of my résumé are available if needed. I think most of the staff and a lot of people here know me because I dealt with all the DRIs for Southwest Florida for 26 years, including Fiddler's Creek/Marco Shores.

I do have a report -- in case anybody wants it -- I did for my client. I don't know who you want to provide this so, but...

CHAIRMAN FRYER: If you have something, please leave it with the court reporter. And do you have copies for the Planning Commission?

MR. TRESCOTT: Yes.

CHAIRMAN FRYER: Well, would you distribute those?

MR. TRESCOTT: You want me to pass them out now?

CHAIRMAN FRYER: Yeah. I'll give you another minute. And also staff and opposing

counsel.

MR. TRESKOTT: I didn't have -- I don't have another copy for them.

CHAIRMAN FRYER: Well, come get mine, Mr. Yovanovich.

MR. TRESKOTT: So I'd like to state just in the beginning that it's my expert opinion the proposed Comprehensive Plan amendment to change the Future Land Use Element to revise previously approved language to allow 750 multifamily residential units on less than 50 acres in Section 29 with 30 percent of the units being designated as income restricted -- also, there's a companion rezone from -- to change from preserve in part to 15 units per acre in Section 29 and a companion development DRI development order amendment to increase the density to accommodate the additional 750 units, these applications are inconsistent with the current county Comprehensive Plan goals, objectives, and policies and Land Development Code.

The applicant -- application has not provided competent substantial evidence supported by persuasive data and analysis to address the impacts of the proposal.

In my 44 years of dealing with land-use issues, particularly on hurricane evacuation, I'd say this is about the second-most worst proposal I've seen for its location. The first was probably -- is probably the Marco Shores original development which had a huge amount of dredge and fill canal lot subdivisions all over wetlands down around Marco Island and, unfortunately, a settlement agreement transferred those off, and we have what we have now with Marco Shores and Fiddler's Creek.

You know, basically, you're increasing the density. Putting this in this area, high density along with the affordable housing, is really a -- is kind of a really very bad idea. It's on land that's barely above sea level. It's in wetlands. It's in park and preserve. It's supposed to be under conservation covenants. And it's just -- also just kind of thrown off in the corner of the county sort of to be out of sight, out of the mind, maybe, you know, in the corner of the county -- corner of the urban area of the county.

So, basically, the hazard analysis on the site I've done is -- you know, in a Category 1 hurricane storm tidal zone based on the 2017 Sea, Lake, and Overland Surges from Hurricanes model, which is called SLOSH model, produced by the National Hurricane Center.

You've probably seen this map. Maybe you haven't seen the most recent one. But the red area shows all the Coastal High Hazard Area. Clearly, the project is in it.

The site is located in -- this is the actual Storm Surge Atlas Map. And as you can see, it's all red, and there's no areas that are even popping up as part of Category 1 that might be shown like they're in Fiddler's Creek or in the adjacent development.

CHAIRMAN FRYER: What are we looking at? Is that Section 29?

MR. TRESKOTT: Yes. This is the area right in here. Right in there.

CHAIRMAN FRYER: Okay.

MR. TRESKOTT: So it just shows that it's all red and subject to this Category 1 storm surge.

It's also in the -- and this shows the, you know, Zone A -- for evacuation Zone A that the project's in. It's also in a 100-year floodplain. The map shows that the 100-year flood elevation is six feet, and that's shown on this map. And then also the majority of the site is in wetlands, as indicated on the FLUCFCS code map provided by the application.

One of the neighbors provided this map that shows what was going on during Hurricane Ian. I would say that it's got a problem. It's getting flooded pretty easily. And one of the things that really wasn't addressed was stormwater.

I would say there's a clear stormwater issue on this site, particularly when we've got storm surges or any hurricane comes by. I mean, Hurricane Ian hit up on Cayo Costa, the center of it, and yet this area flooded. It's probably, you know, a hundred miles away.

Also, I might mention the stormwater was not addressed in this application. It was brought up by the -- your -- Richard Orth as some conceptual discussion about where the water should go in a stormwater management plan for the project. And apparently there was a meeting

with the applicant, but there was nothing stated on what was going to be done, so it was really not addressed.

Now, the SLOSH model, if you look at it for this site, during a Category 1, it will be inundated by 6.6 feet of stormwater -- of storm surge from a hurricane. During a worst-case Category 5, it's going to be 25 feet of water over the site. Not a good location, really, to put more density for that reason, along with some others we'll discuss.

Now, assuming the parking garage is built below -- or at the 100-year flood level, which it will -- doesn't have to. Because it's not a structure to be lived in, it could be built below that. That structure's going to get flooding in a Category 1 storm surge and, basically, if people don't evacuate, their cars are going to get flooded. This happened all over the place during Ian, and many of you probably know people that that happened to.

It's -- you know, affordable housing folks are, you know, least likely to evacuate. They don't have the money to go long distances, maybe stay in a hotel, so forth. So they might stay, try to vertically evacuate. Their cars get flooded. They can't get out. It becomes a real recovery nightmare for the county to get them and other people that might have stayed.

So -- and if the site gets flooded during a Category 3, there will be about nine or 10 feet of water over the parking garage. And during a Category 4, it's going to be about 20 feet above the base of the parking garage. And depending upon what the level of the second-floor units are, it will -- or the first-floor units, it will flood that probably during a Category 3. Clearly, that went on all over, you know, Lee County. We had a 15-foot storm surge with waves higher than that during Ian. These models are accurate. They show the true reality of what's potentially going to happen.

Because the entire site is in a low tropical storm Category 1 area, it is subject to ever-increasing storm tide heights in the future, mainly because there's more hurricanes going on than there has been in the past. This year there's more predicted than ever before.

Also, because, you know, it's a Category 1 area, more storms are Category 1s than were -- you know, stronger storms, so they come around more often, which requires people to evacuate more often.

One of the things I want to understand here is that if the project, according to the planning director, is not approvable without the affordable housing, why is it approvable with the affordable housing? I'm not sure anybody's really said that. I mean, I don't -- if we look at all the things wrong with this site, it's not.

I might mention that the site -- the model for the site produces -- shows that it's a 1-foot elevation, assumes a 1-foot elevation of the site. Basically, the storm -- you know, if you start looking at, you know, sea level rise occurring, in the last 15 years, according to NASA and recent studies and tide gauge data, the Gulf of Mexico in this area has gone up six inches since 2010. It's rapidly rising. If anybody lives on the water, they know things go underwater a lot at high tide. So it just becomes more and more of a problem as time goes on in the future.

There's also rapid intensification of hurricanes going on, which makes it very difficult to evacuate safely. You know, you get -- like Charley and even Ian, Charley was just rapidly intensified from a 2 to a 4. Not in time to evacuate everybody that would be needed.

Basically, you know, if you look at the sea level rise issue in the next, you know, 100 years it's likely that the shoreline is going to be somewhere in this red area, okay.

And another thing, as the sea level rises, it becomes harder and harder for a site to drain. It just doesn't drain. The freshwater floats on the saltwater, and the saltwater's pushing it up so it becomes more of a problem.

The remote location of this site really is like you're proposing an island to be built with a causeway to it, okay. This is really what's going on here. And, you know, this road is subject to storm surge damage. You already heard about how it's flooding. It's going to flood more and more as time goes on, particularly at high tide. And, plus, when the water flows out, it's going to start cutting off a lot of things. It's going to cut roads in half and so forth. It's really unlikely, like I mentioned, that these workforce housing people will really necessarily always evacuate.

Now, in terms of impacts on the shelters, there's a 20,000-square-foot deficit in shelters right now. And the applicant -- the project is going -- with its 85 percent occupancy rate and a 21 percent going to public shelter, basically, you've got 134 new shelter spaces being added because of the 750 multifamily units.

It's really unclear how this mitigation of cots -- providing cots and a generator -- towable generator actually reduces the deficit. In my opinion, it's going to be used to satisfy existing shelter space because there's probably not cots available enough. So it was not clear how this really increases more shelter space or reduces the deficit at all.

Now, regarding Chapter 163-3171, which deals with the coastal high hazard stuff, there's two provisions. There's the 12-hour time to shelter in a Category 5 or a 16-hour evacuation time in a Category 5 to evacuate out of the county, or provide appropriate mitigation. I would suggest this is not appropriate mitigation to mitigate these impacts either for the routes or for the shelters.

Basically, the county has a 16-hour evacuation time out of county for Category 5. That's what the default level is according to the statute. They didn't establish any other time, so that's what it is.

The current 2025 evacuation time is 72 hours for a Category 5. It's even 19 hours for a Category 1, the coastal high hazard evacuation. So, you know, the additional -- the unit generates an additional 701 evacuation vehicles which increases evacuation time by 16.8 minutes.

It also -- these people are going to have to evacuate during congested -- very congested roadways. These are -- all these designated critical evacuation sections are -- have high queuing delay times, which makes these times higher. As you can see, I've provided some evacuation times there in my analysis.

Regarding Comprehensive Plan consistency and the Land Development Code and the Development of Regional Impact, there's a capital improvement goal that says it's -- the goal is to provide adequate public facilities concurrent with the new development order to achieve and maintain in excess of adopted standards -- exceed adopted standard for a level of service.

I argue that hurricane evacuation routes and hurricane shelters are public facilities and services that are currently significantly deficient in protecting human life from natural disasters, i.e., hurricanes, and will further degrade from the impacts of the proposed development. The 72-hour evacuation clearance time is well above 16 hours, and there is a shortage of about 20,000 shelter spaces in Category 5. So this is not addressed and, therefore, is not consistent.

Goal 12, to make every reasonable effort to ensure the public safety, health, and welfare of people and property from the effects of hurricane storm damage.

Objective 12.1, maintain evacuation clearance times as required by state law.

Policy 12.1.2, land-use changes require mitigation to address the impacts of hurricane evacuation times.

CHAIRMAN FRYER: I'm going to ask you to slow down just a little bit.

MR. TRESCOTT: I'm sorry. I'm trying to -- how much more time have I got?

CHAIRMAN FRYER: Pretty much -- you've got until 11:27.

MR. TRESCOTT: Okay. I'm good, then. I'll slow down. Thank you.

CHAIRMAN FRYER: Thank you.

MR. TRESCOTT: The 750 proposed units -- project units will create an additional 170 vehicles to evacuate out of the county. This will increase the 72-hour evacuation time by 16.8 minutes, increase the public shelter deficits by 34 [sic] spaces. It is -- you know, as I mentioned, it's unclear how the mitigation proposed really addresses providing more shelter space or having this towable generator.

And it just doesn't -- so I'm basically saying regarding this goal, that it's not consistent with the Growth Management Plan, it's contrary to public health and safety interest. The proposed project has not met the requirement of Florida Statute 163-3178(8)(A).

Regarding the Land Development Code, the specific Section 3.03.05, sea level rise, 6-inch rise is supposed to be addressed. Well, it's already here, and it wasn't addressed. So it's not

consistent regarding the Land Development Code.

And as I mentioned, the stormwater manager guy for the county, Richard Orth, he was not -- his concerns about how to route the flooding that's going on currently, it wasn't discussed. I mean, I think they had a meeting supposedly with the applicant, and there was nothing stated on the record regarding that.

Now, also in the Land Development Code Section 106-34, Finding 12, it's supposed to project hurricane -- the project hurricane impacts do not balance capacity and the at-risk population in the hurricane vulnerability zone. That particular thing requires a balancing, okay. I didn't see any balancing. It seems to all be balanced on just providing affordable housing and really not looking at anything else, and everything else is okay as long as we provide affordable housing in the corner of the county on an island that they have to build with a causeway to it that's going to flood, and they're going to have to leave constantly, you know, who knows, every couple of years when a hurricane comes by, a minimal one.

So Collier County has -- already has high densities in the Coastal High Hazard Area with a 72-hour of out-of-county evacuation time, a 68-hour clearance time to shelter during a Category 5. So adding more units increasing the evacuation time and shelter deficit is not consistent with the Growth Management Plan and the Land Development Code as proposed.

As I've mentioned, locating workforce housing on the edge of the urban area in this location that's going to flood constantly -- we've already seen pictures how it already has -- it's just not the right place. It should be located where the work is; where they have to be. I mean, I guess people don't mind driving, like they're talking about, but I'm not sure everybody does, particularly when I'm sure there's locations that are better for affordable housing than this. And I know the county's been working on it. I've seen some of the work.

Now, regarding -- I mean, they really showed no data -- they showed no data showing employment areas near this. I mean, I'm sure there's a few, but they really didn't show any affordable housing study that this is an appropriate location for the housing.

And plus, you know, it's -- the majority of the affordable housing that's needed is below what this project is going to be renting for. So, you know, I'm not sure how much it really addresses the acute need for the people that are at that lower level.

Now, regarding the DRI development order, the first DRI development order, 84-3, adopted by Marco Shores, included substantial deviation language in Section 4A and subsequently amended many times, one of which includes Fiddler's Creek Section 29 addition in Development Order 89-1, Resolution 98-49. The notice of proposed change -- by the way, I dealt with all these notices of proposed change on this project.

And one of the things I like about Collier County is they actually attach the notice of proposed change to the development order. So it's part of the -- part of the conditions -- commitments that are made in that. And one of those commitments was that this -- when they added Section 29, that the 6,000 residential units previously approved for Fiddler's Creek project will not change. Well, here we are. It's changing.

So the addition of the 750 multifamily units in Section 29 should be considered a substantial deviation and should be denied for being significantly and adversely different than what was originally proposed in the Development Order 89-1.

So, finally, as mentioned, the application has not provided competent substantial evidence supported by persuasive data and analysis to address the impacts of the proposals relative to addressing a substantial deviation in DO 89-1 and maintaining out-of-county evacuation times of 16 hours for Category 5 and protecting human life from natural disasters/hurricanes. The public safety will be further degraded during a hurricane disaster if this amendment is approved.

It is my expert opinion that the proposed amendments to -- is a substantial deviation and would increase the density in very vulnerable high hazard -- coastal high hazard of the Collier County. And because of out-of-county evacuations of 72 hours -- and there's a large hurricane shelter deficit, I recommend denial of this plan amendment -- of these amendments, and based on

the competent substantial testimony presented by experts and laypersons in this matter that you've heard from and will be today, respectfully request that the local planning agency make a motion and a second to vote to recommend that the Board of County Commissioners not transmit the plan amendment to the state DEO.

CHAIRMAN FRYER: Thank you.

Before we go into cross-examination, any other planning commissioners have questions or comments? I have one that I'm going to go to. All right. And this is -- I'm sorry. Go ahead, Commissioner Vernon.

COMMISSIONER VERNON: You said the stormwater was not addressed adequately or not addressed. How would you address it?

MR. TRESCOTT: Well, I would do what the planning director said, not approve this -- it's not approvable.

COMMISSIONER VERNON: Well, that's a good point.

MR. TRESCOTT: How would I address it?

COMMISSIONER VERNON: Yeah. Let me --

MR. TRESCOTT: I don't know how you address the storm surge of the levels we're talking about. The stormwater's designed for rainfall.

COMMISSIONER VERNON: Assuming the project was going forward and you had some reasonable ability to adjust the project, what stormwater plan ideas would you have?

MR. TRESCOTT: Well, for -- to -- you know, there are -- you know, I understand it's a 25-year flood event that they design for. Some counties like Sarasota do 100-year flood event. You could design for a higher flood event. You know, you could elevate the road more to address, you know, these storm surge flooding and just rainfall flooding that's occurring, more than what they're proposing to do. So things like that, you know, it could be done.

But, you know, short of spending all that money and having to pump -- you know, having to dredge and pull up all kinds of land from the wetlands to create uplands, you know, it's best just not to propose this development in this location for all the reasons we've heard today, and to do it for affordable housing is really an assault on affordable housing people, to put them off in the county in the corner in a wetland barely above sea level.

COMMISSIONER VERNON: And there's a road already there, Auto Ranch Road, and the little side roads that we heard about which sound like they're in pretty bad shape. Are they going -- they're going to improve the roads and pay for it, right?

MR. TRESCOTT: That's what they say.

COMMISSIONER VERNON: How much are they going to raise the road?

MR. TRESCOTT: You'll have to ask them.

COMMISSIONER VERNON: You don't know? How much --

MR. TRESCOTT: I would assume -- I don't really know, but I think they're -- it's a 25-year flood event is what they design for, so I don't know what the elevation would be.

COMMISSIONER VERNON: And your recommendation if it's going forward, instead of raising the road for a 25-year event, you'd recommend raising it for a 100-year event?

MR. TRESCOTT: It would be helpful. Any -- you know, when you're dealing with storm surge, elevation is the key, so -- yeah.

COMMISSIONER VERNON: Any other ideas that would be helpful, assuming the project's going forward, in terms of stormwater?

MR. TRESCOTT: No. I mean, other than just design for more and more, because the future shows it's coming anyway.

COMMISSIONER VERNON: Which is really an elevation issue.

MR. TRESCOTT: Yes.

COMMISSIONER VERNON: Thank you.

CHAIRMAN FRYER: Thank you.

Mr. Trescott has shone the spotlight on an issue that I was going to want to get to sooner or

later. Now seems to be the most appropriate time since it was -- it underlay the questions and answers that follow his presentation, and this is that, as Mr. Bosi testified back at the last hearing, that this policy would not have been -- excuse me -- these applications would not have been approved but for the affordable housing.

And so I'm going to ask Mr. Bosi, please, to tell us, if this project did not contain affordable housing, on what grounds you would -- staff would have disapproved it?

MR. BOSI: The -- the request to amend the Growth Management Plan has been associated with what is the public benefit that's being provided for with the -- with the requested GMP amendment, and without the affordable housing, staff would struggle to find what the appropriate benefit was being provided to the applicant who's asking to deviate from what the current Growth Management Plan would be -- or would allow.

So without that public benefit, staff would have -- would struggle to find rationale and justification for the approval.

CHAIRMAN FRYER: Okay. Thank you.

Are there any specific provisions in the GMP or, for that matter, in the various criteria that we must look at in a rezone or an LDC -- excuse me, a PUD rezone, are there any specific provisions that would have caused staff to cite those provisions in its recommending of disapproval, again, assuming that there was no affordable housing on this?

MR. BOSI: Staff would have referenced, I believe -- I believe staff would have referenced the policy the Board of County Commissioners has addressed specifically related to a public benefit being associated with a -- with a request for an amendment to the Growth Management Plan. Just from -- just from a planning perspective, some of the issues that were raised in terms of -- some of the issues that were raised in terms of evacuation and the Coastal High Hazard Area, staff would have worked a little bit further with the Emergency Management team to ensure that there were policies that could be supported. Off the top of my head, I couldn't identify what policy we would have -- we would have recognized as the reason for the recommendation of denial.

Potentially, it could have been because we defer to the federal and state governments when it comes to listed species and stormwater management, and the correspondence that we did receive from Fish and Wildlife -- U.S. Fish and Wildlife that they did not support the project would have been one of the -- one of the areas staff -- staff probably would have identified as a justification for a denial of the GMP request.

CHAIRMAN FRYER: What about compatibility?

MR. BOSI: Compatibility, I believe, is a nonissue.

CHAIRMAN FRYER: Okay. What about isolated?

MR. BOSI: This area is within the Fiddler's Creek PUD, and it's been designated as Urban Residential for over 25 years. So even though it is -- the most southern and eastern remote portion of the PUD, it's already been determined by the GMP that it's in the Urban Residential designation.

CHAIRMAN FRYER: So the -- let me call on Commissioner Sparrazza now, and then I'll come back to myself.

COMMISSIONER SPARRAZZA: Thank you.

Mike, a question for you, if I may. This was one of the first times I ever heard specific data mentioned for eviction plans when a project is brought before it. If Collier County continues to grow, is this type of data reviewed and managed with the growth of Collier County -- Collier County and evacuation plans, roads? For example, Mr. Trescott said it adds 16-plus minutes for evacuating from this particular area.

As Collier County grows -- continues to grow on the eastern direction of 41, if those people wish to evacuate, obviously they're -- they have to travel on roads and get out of here. I guess my question is, is this incorporated into the plans for evacuating that the county reviews? Because this is the first time I've heard it mentioned. I may be mistaken, but more people moving

into Collier County, how do we get a percentage of them out during catastrophic hurricanes?

MR. BOSI: That's a combination of Emergency Management and Transportation. Transportation to ensure that we have an adequate level of service and we're not exceeding our adequate level of service within designated evacuation routes, and in coordination with Emergency Management in terms of what they need to grow the shelter capacity of the county to be able to provide for sheltering opportunities for people who choose not to leave the county but to utilize the public shelters that are available.

COMMISSIONER SPARRAZZA: Then pretty much every time an application comes before you, that thought process is incorporated through the various departments of the county, correct?

MR. BOSI: Correct.

COMMISSIONER SPARRAZZA: Okay. And there was no problem with this particular applicant?

MR. BOSI: They identified mitigation that was -- they felt was appropriate that would be able to expand the shelter capacity to help alleviate the additional demand that's being placed upon it.

COMMISSIONER SPARRAZZA: Great. Thank you.

CHAIRMAN FRYER: Commissioner Shea.

COMMISSIONER SHEA: Mike, just a -- I'm always worried when I hear something from the evacuation. I never hear them reject anything. I always hear them try and figure out how to accommodate. And I guess I don't see 450 beds helping the people on this island. I mean, I think they need a helicopter or something like that. I mean, they need more than that. So I guess I don't know how serious a review -- whether they're just reviewing -- because they never reject anything, and this is kind of a questionable area.

MR. BOSI: This is an area, as a said, that has been long incorporated within the -- within the Fiddler's Creek PUD. They most certainly would urge and have expectations that there would be evacuation calls for this area if there was anticipation of a Category 1 through 5 storm that was coming with that expectation. And there is a recognition that if people choose, in a low-lying area like this, to remain within their -- within their houses, that they will be on their own during the event. But what they look at is will they be able to provide adequate capacity on the road system to allow for the evacuation.

And if they -- if they do that, from a transportation standpoint, it's signed off. From an emergency management standpoint, what they try to do is to gain generators and cots to be able to expand the sheltering capacity that they currently have within the system.

COMMISSIONER VERNON: If they can get to the shelters. That's the thing that always makes me nervous about this one is we're not talking about a Category 5 storm creating a severe isolation problem or evacuation problem being in the Coastal High Hazard Area. And whether you believe sea level rising or not, science seems to think it is. It just seems like it's -- they're not thinking deep enough about evacuation of this particular site, that -- and I'm not asking you to comment on it. I'm just voicing an opinion.

CHAIRMAN FRYER: Thank you.

Commissioner Schumacher.

COMMISSIONER SCHUMACHER: Thank you, Chair.

Mr. Bosi, is there a deficit in those hurricane shelters right now, as stated by Mr. Trescott?

MR. BOSI: Yes.

COMMISSIONER SCHUMACHER: And did this adding 701 evacuations increase the time by 16 minutes; is that true? Yes?

MR. BOSI: I would suggest that it would be true.

COMMISSIONER SCHUMACHER: Okay. Thank you.

CHAIRMAN FRYER: Thank you.

What I was wanting to get to before has to do with the Corps of Engineers' decision that

was made in 2007 based upon the biologic opinion of Fish and Wildlife. And it's my understanding that that decision -- although the applicant may be in conversations with the Corps, that that decision is still the official word of the federal government; is that correct, Mr. Bosi, as far as you know?

MR. BOSI: As far as I'm aware.

CHAIRMAN FRYER: Okay. And wouldn't it be fair to say that after five years or six years, now, that that -- again, the Corps of Engineers can always overturn its decision or render a different decision or modify that. After five or six years, it's a final decision, wouldn't you say?

MR. BOSI: I don't -- "final" is a difficult word to use when you're in the permitting process. Everyone has the right to seek their due process to modify existing permits.

CHAIRMAN FRYER: Well -- yeah, but at some point, I mean, 20, 30, 40 years, at some point after a decision has been left in place -- again, it doesn't mean it can't be changed because the federal government in its wisdom, the Corps of Engineers in its wisdom, can come back in and revisit this and perhaps resculpt where it wants to see a conservation easement with something that might be consistent with what the applicant wants. But it seems to me that right now, after six-plus years, that this is a final decision. Always subject to reopening, but it's a final decision, wouldn't you agree?

MR. BOSI: Not being an expert within, you know, federal permitting, I could only conclude if it's been -- the decision has been five or six years, that any applicant would have a difficult time to alter what that final -- or what that decision was.

CHAIRMAN FRYER: Thank you very much.

Mr. Yovanovich.

MR. YOVANOVICH: Mr. Chairman, candidly, I'm at a loss. I thought I was supposed to be cross-examining Mr. Trescott. Now I don't know if I'm supposed to cross-examine Mr. Bosi. And I -- and I would like some time after I'm done with Mr. Trescott to address questions that were made to Mr. Bosi, because that's a whole bunch of new information irrelevant to what was asked of Mr. Trescott. But I don't think it's fair to make me wait until rebuttal now that we're sort of going out of line.

Typically the way this works, I put my case on, staff puts on their case, the other side puts on their experts' case, public speaks, and then we ask questions in a different order. I recognize you're allowed to do whatever you want to do. But I'm requesting the ability to deal with Mr. Bosi after lunch, because I think we'll probably go with Mr. Trescott until then.

CHAIRMAN FRYER: So you're asking to cross-examine Mr. Bosi?

MR. YOVANOVICH: I'm going -- I want him to clarify a few things that -- based upon some of the questions that were asked of him. I think I'm going to get some of that out of Mr. Trescott, but there are some assumptions that were made specifically with regard to, quote, "new units in the Coastal High Hazard Area," specifically -- and Mr. Bosi can confirm this real quickly, because I was going to ask Mr. Trescott this question. My assumption is he's going to tell me he doesn't know, but maybe he does know.

Mr. Trescott, under today's Growth Management Plan, how many units --

CHAIRMAN FRYER: Don't you want me to rule on your request?

MR. YOVANOVICH: Sure.

CHAIRMAN FRYER: Planning Commission, without objection, I think we ought to allow Mr. Yovanovich to, I guess, basically cross-examine Mr. Bosi on the subjects that had been raised out of order, and it's perfectly proper for the Planning Commission to raise subjects out of order because that's within our prerogative. So without objection, that's what we'll do after lunch.

MR. YOVANOVICH: Thank you.

Mr. Trescott, first, a couple quick questions. You're not a professional engineer, are you?

MR. TRESCOTT: No.

MR. YOVANOVICH: So you really have no expertise with regard to how to design a system to properly drain, correct?

MR. TRESKOTT: I would not see them designed, but I know how they work.

MR. YOVANOVICH: But you don't know how to design the system, correct?

MR. TRESKOTT: No.

MR. YOVANOVICH: Okay. You would agree with me that the Growth Management Plan does allow for residential units to be constructed within the Coastal High Hazard Area, correct?

MR. TRESKOTT: It's pretty obvious; they're all over the county.

MR. YOVANOVICH: It also allows for Growth Management Plan -- it also allows for affordable housing units to be constructed within the Coastal High Hazard Area, correct?

MR. TRESKOTT: If you say so. It's a bad idea.

MR. YOVANOVICH: Let's go to that.

When did you work at the RPC?

MR. TRESKOTT: For 26 years.

MR. YOVANOVICH: What were the years?

MR. TRESKOTT: From 1985 until 2012, or around then.

MR. YOVANOVICH: Does the RPC review Growth Management Plan amendments as part of the review and approval process for a GMP amendment?

MR. TRESKOTT: Yes.

MR. YOVANOVICH: Does it review it for purposes of adopting the Growth Management Plan in the first place?

MR. TRESKOTT: Yes.

MR. YOVANOVICH: So that means when the provision was added or included in the Growth Management Plan to allow for density bonuses for affordable housing, your agency reviewed and approved that, correct?

MR. TRESKOTT: I did not do it, and I don't know if they did it. So I don't know.

MR. YOVANOVICH: But it's part of our Growth Management Plan, correct?

MR. TRESKOTT: If you say so.

MR. YOVANOVICH: Do you know, or do you not know?

MR. TRESKOTT: The application says it is.

MR. YOVANOVICH: Did you review the Growth Management Plan Coastal High Hazard provisions?

MR. TRESKOTT: Yes.

MR. YOVANOVICH: Does it or does it not allow for affordable housing density bonuses?

MR. TRESKOTT: Yes. For bonuses, yes.

MR. YOVANOVICH: Okay. Now let me ask you: Did you do a calculation as to the land that's within Fiddler's Creek today and how many units can be generated under today's Growth Management Plan?

MR. TRESKOTT: No, I don't believe I have to because the development order says what's allowed.

MR. YOVANOVICH: Okay. Let's talk about --

MR. TRESKOTT: Six thousand units.

MR. YOVANOVICH: That's what the development order allows, correct?

MR. TRESKOTT: That's right.

MR. YOVANOVICH: Now, today's Growth Management Plan would allow 6,955 units, correct?

MR. TRESKOTT: If you say so.

MR. YOVANOVICH: Okay. So we're not asking for any new units in the Coastal High Hazard Area. We're simply asking for 750 of those units to be allowed to be constructed in Section 29, correct?

MR. TRESKOTT: The development order says 6,000. You're asking for 750 more. I

don't think it's -- it's irrelevant what the Comp Plan says. The development order speaks.

MR. YOVANOVICH: But the Growth Management Plan has to be internally consistent, correct?

MR. TRECOTT: And it's not.

MR. YOVANOVICH: You didn't let me -- is it a yes or no?

MR. TRECOTT: No.

MR. YOVANOVICH: It doesn't have to be internally consistent?

MR. TRECOTT: It has to be internally consistent for every single policy and goal and objective.

MR. YOVANOVICH: And today's Growth Management Plan would allow 6,955 units within the Fiddler's Creek property, correct?

MR. TRECOTT: If you say so.

MR. YOVANOVICH: Okay. I do. I say so.

MR. TRECOTT: Okay. I didn't say so, but you said so.

MR. YOVANOVICH: Okay.

MR. TRECOTT: I'm just telling you the development -- I mean, it doesn't matter what the Comp Plan says. The development order says 6,000, and they're going over it, and it's a substantial deviation. Either way, the crocodiles are moving inland because the saltwater's moving inland. I forgot to mention that.

MR. YOVANOVICH: You're an environmental consultant now?

MR. TRECOTT: I've done a lot of environmental review, yes, for this project, and others.

MR. YOVANOVICH: Is it your testimony that affordable housing units in the Coastal High Hazard Area is a bad thing?

MR. TRECOTT: Yes.

MR. YOVANOVICH: You review -- you reviewed the DRI development order for Fiddler's Creek, correct?

MR. TRECOTT: Correct.

MR. YOVANOVICH: Did you review the DRI Development Order No. 96-1 as adopted in Resolution 96-333?

MR. TRECOTT: I don't remember all the numbers, but if it was associated with a notice of proposed change to the development order, yes.

MR. YOVANOVICH: Okay. So you reviewed and approved the provision that under the housing criteria -- housing comments or conditions of the DO that says the developer shall explore the economic feasibility of providing residences within Fiddler's Creek that are affordable by middle- or lower-income families, you approved that, correct?

MR. TRECOTT: Yeah, that's what it says, so I --

MR. YOVANOVICH: So you decided, at least in 1996, it was okay to put people in harm's way?

MR. TRECOTT: Well, I didn't say here, no. It was somewhere in Fiddler's Creek.

MR. YOVANOVICH: Is Fiddler's -- do you know if Fiddler's Creek -- the entirety of Fiddler's Creek is --

MR. TRECOTT: Pretty much, yeah.

MR. YOVANOVICH: Can I ask the question before you answer? Terri gets really mad at both of us.

MR. TRECOTT: Go ahead.

MR. YOVANOVICH: Is the entirety of Fiddler's Creek within the Coastal High Hazard Area?

MR. TRECOTT: Yes.

MR. YOVANOVICH: So in 1996, it was okay to put affordable housing individuals in harm's way?

MR. TRESKOTT: Not on wetlands in preserve areas that are barely above sea level. And I went on this site when it was added, and it was wet then, and it's been wetter even since then. It's not even -- they can't even farm it anymore because it's gotten saltwater all over it so many times.

MR. YOVANOVICH: And you're aware that there are minimum elevation requirements when we move forward with a residential development in the Section 29 area, correct?

MR. TRESKOTT: Minimum elevation requirements?

MR. YOVANOVICH: Yes, to build --

MR. TRESKOTT: Well, I assume that it would be the 100-year flood level, but I don't --

MR. YOVANOVICH: My question wasn't what it is. My question is, you're aware that we're going to have to construct those residences at a minimum elevation to be consistent with the code, correct?

MR. TRESKOTT: What is that? I don't really know. What is that?

MR. YOVANOVICH: Is it a yes or no?

MR. TRESKOTT: I don't know what that is. I assume it's 100-year flood level, six feet.

MR. YOVANOVICH: I didn't ask you what the number was. I asked you if that's a requirement.

MR. TRESKOTT: It's a requirement to elevate to the 100-year flood level.

MR. YOVANOVICH: Okay.

MR. TRESKOTT: But I don't know about parking garages.

MR. YOVANOVICH: I didn't ask you about the parking garages. I asked you about the residences. We are required to elevate them above the minimum flood elevation, correct?

MR. TRESKOTT: Well, you finally asked the question correctly. Yes.

MR. YOVANOVICH: Oh, thank you. Thank you.

MR. TRESKOTT: You're welcome.

MR. YOVANOVICH: Mr. Trescott --

MR. TRESKOTT: Yes.

MR. YOVANOVICH: -- have you ever testified that it is appropriate to increase density in the Coastal High Hazard Area?

MR. TRESKOTT: Yes. I have worked for developers.

MR. YOVANOVICH: Okay. Have you ever testified that it's appropriate to increase density in, I think you called it, the Category 1 zone?

MR. TRESKOTT: Yeah, a few times, a few times, particularly if there's adequate -- adequate mitigation provided to address the impacts.

MR. YOVANOVICH: Have you ever testified that it's okay to put seniors, including skilled nursing individuals, in a Category 1 area?

MR. TRESKOTT: Which one are you referring to?

MR. YOVANOVICH: I'm just asking you if you've ever done it.

MR. TRESKOTT: I don't -- senior living -- you know which one you're talking about. Just ask the question correctly.

CHAIRMAN FRYER: Sir, sir, just answer the question. "Yes," "no," or "I don't know"?

THE WITNESS: I don't know.

MR. YOVANOVICH: Well, okay. I'll ask you --

MR. TRESKOTT: Okay.

MR. YOVANOVICH: Mr. Trescott, were you ever my consultant that testified that it is appropriate to increase density in a Coastal High Hazard Area specifically for seniors and specifically for people who are in skilled nursing facilities?

MR. TRESKOTT: Yes, and, you know why, is because they're all required to evacuate and be sheltered somewhere off site, unlike this project.

MR. YOVANOVICH: But it is okay to go ahead and put people in the Coastal High Hazard Area if there's appropriate mitigation, correct?

MR. TRESKOTT: Well, it -- there's needs to be mitigation and the provision for evacuating these people that don't have cars and need assisted living and so forth. And there's a big problem with that because there's no place for, really, them to go to, but they try so --

MR. YOVANOVICH: But you said it was okay, correct?

MR. TRESKOTT: Assuming they have a place to go, which this project doesn't -- this one doesn't meet -- this is not like that at all, and so you can't compare the two.

MR. YOVANOVICH: I can't?

MR. TRESKOTT: No.

MR. YOVANOVICH: What about the fact that that project also had an option of just regular old multifamily housing?

MR. TRESKOTT: I guess that was the -- if you say that's the case, but that didn't happen, so I don't know.

MR. YOVANOVICH: Well, it didn't?

MR. TRESKOTT: Multifamily?

MR. YOVANOVICH: Yeah.

MR. TRESKOTT: Which one are you talking about?

MR. YOVANOVICH: Are you familiar with the Ritz residences up in Bonita Springs off of Via Coconut?

MR. TRESKOTT: Well, yeah, but you have to tell me the location, all the specifics of the project, and I don't know what you're talking about.

MR. YOVANOVICH: I thought you said you knew which one I was talking about. It's the project that you --

MR. TRESKOTT: Well, I don't.

MR. YOVANOVICH: Oh, okay. Were you my expert in the Via -- for the project for London Bay Homes off of Coconut Road?

MR. TRESKOTT: Yes.

MR. YOVANOVICH: Coconut Road has one way in, one way out --

MR. TRESKOTT: That is right.

MR. YOVANOVICH: -- correct?

That project was in the Category 1 SLOSH model area, correct?

MR. TRESKOTT: Correct.

MR. YOVANOVICH: That water -- that project was immediately adjacent to mangroves, correct?

MR. TRESKOTT: Yes.

MR. YOVANOVICH: That property was just as flat as this property here, correct?

MR. TRESKOTT: No, it was a little higher.

MR. YOVANOVICH: No? How much higher?

MR. TRESKOTT: I don't know for sure, but it had been filled before, not like this.

MR. YOVANOVICH: Now --

MR. TRESKOTT: And also, you just -- you're just comparing a project that's totally different.

MR. YOVANOVICH: I'm just --

MR. TRESKOTT: Maybe not in terms of location, but in terms of what's going in there and how they addressed it. That's what matters.

CHAIRMAN FRYER: Please try to just answer questions. They will have redirect where you can have an opportunity to --

MR. YOVANOVICH: And, Mr. Trescott, the mitigation for that project was the payment of \$20,000 to -- I guess it was Lee County for --

MR. TRESKOTT: Their land development -- Bonita Springs has the same Land Development Code that Lee County has, which --

MR. YOVANOVICH: So they --

MR. TRESKOTT: -- calculates it.

MR. YOVANOVICH: They paid some money for those 300 units, correct?

MR. TRESKOTT: That's correct.

MR. YOVANOVICH: Now, are you familiar with Dan Summers?

MR. TRESKOTT: Yes.

MR. YOVANOVICH: Do you know -- who is Dan Summers?

MR. TRESKOTT: He's the Emergency Management director, or public safety director.

Could be both.

MR. YOVANOVICH: Would you agree that Mr. Summers is an expert on how to address hurricanes in Collier County?

MR. TRESKOTT: I would say in terms of hurricane evacuation and shelter stuff that they deal with, yes, but I don't know, necessarily, about if they're the right ones for mitigation, but they might be.

MR. YOVANOVICH: But he's the one who should determine shelter space and --

MR. TRESKOTT: No. Well -- no. The shelter space is a criteria that has to be followed by everybody, so it's not like only his decision.

MR. YOVANOVICH: But he's the one who would propose appropriate mitigation if we're going to increase density in the Coastal High Hazard Area, correct?

MR. TRESKOTT: Yeah, it could be him.

MR. YOVANOVICH: That's his --

MR. TRESKOTT: And I've already told you it's not appropriate, so I don't know what we're talking about.

MR. YOVANOVICH: Well, I --

MR. TRESKOTT: It's not appropriate for this project.

MR. YOVANOVICH: I appreciate you have an opinion.

MR. TRESKOTT: Okay.

MR. YOVANOVICH: Now, Mr. Summers said it was appropriate, correct?

MR. TRESKOTT: Well, he didn't explain how these cots would be used, where they would go, what shelter space increase would occur. That's what he didn't do; that's what's not here.

MR. YOVANOVICH: Did you call Mr. Summers and say, "Hey, Dan, how did you arrive at the number?"

MR. TRESKOTT: It's not my -- I don't believe that's my job to do that.

MR. YOVANOVICH: But Mr. Summers reviewed the materials, correct?

MR. TRESKOTT: Well -- or his staff.

MR. YOVANOVICH: And Mr. Summers, based upon his review of the materials, made a determination as to what is appropriate mitigation?

MR. TRESKOTT: That's what's proposed. You see it: Cots and a generator.

MR. YOVANOVICH: But you have -- you've not even given him the courtesy to call him and say, "Hey, how'd you come up with this?"

MR. TRESKOTT: Well, I assume he -- he knows how he came up with it.

MR. YOVANOVICH: And he knows --

MR. TRESKOTT: The question is whether it's appropriate, that it actually reduces the deficit.

MR. YOVANOVICH: How many hurricanes has Mr. Summers dealt with Collier County in his 20-plus-year career?

MR. TRESKOTT: Probably four -- three or four, probably, you know; Irma, Charley, Ian, Wilma. Probably those would be it for 20-year. That's 20 years back. Charley was 2004.

COMMISSIONER KLUCIK: Mr. Chairman?

MR. YOVANOVICH: Have you ever -- has Mr. Summers ever gotten it wrong on how to address --

COMMISSIONER KLUCIK: Mr. Chairman.

CHAIRMAN FRYER: Go ahead, Commissioner Klucik.

MR. YOVANOVICH: -- hurricanes in Collier County?

MR. TRESMOTT: Well, I didn't study it specifically, but I would --

CHAIRMAN FRYER: Excuse me.

MR. TRESMOTT: -- suggest that he may have got it wrong on evacuation.

CHAIRMAN FRYER: Witness, excuse me.

Go ahead, Commissioner Klucik.

COMMISSIONER KLUCIK: Yes. I guess I'm just confused.

Mr. Yovanovich, are you saying that there's a general duty to be courteous? Because you just impugned him for not having the courtesy to bring something to someone's attention, and it just seems like there's a 20-year gap in a lack of courtesy on not filing the easement, but I just wanted to point that out that you're --

MR. YOVANOVICH: Well -- and I appreciate your opinion.

COMMISSIONER KLUCIK: I'm not done. I'm not done. I'm not done.

MR. YOVANOVICH: I can't see your face.

COMMISSIONER KLUCIK: I'm not done.

MR. YOVANOVICH: Okay.

COMMISSIONER KLUCIK: I'll give you a cue when it's time.

MR. YOVANOVICH: Okay. Thank you.

COMMISSIONER KLUCIK: So, yeah. So, you know, your insinuation is that there was a duty of courtesy, and I'm just pointing out that the whole reason we're here is a lack of courtesy of the applicant, in my view. But go ahead. Thank you.

MR. YOVANOVICH: I will tell you that it is -- my course of dealings is when I disagree with somebody, I call them and give them the courtesy to explain their position.

I believe every one of my consultants, when we got comments from staff as to their expert opinion, we don't just simply lay in wait. We call them, and we talk to them. That's the way I do my business. I'm just asking if Mr. Trescott does his business the same way. He said no, which is fine.

MR. TRESMOTT: I would like to address that.

COMMISSIONER KLUCIK: And I'm going to go ahead and make my point again. We're here because, in my opinion, and I think beyond my opinion, the applicant -- we're not here -- the questions -- some of the most pressing questions here certainly could be contributed to a lack of the same thing that you're concerned about with this witness on the part of the applicant.

And so I'm just -- I'm going to emphasize that. You can keep bringing it up, and I'm going to keep pointing out that your applicant has done the same thing. So I don't think you're going to win many points on trying to impugn, you know, the witness because he didn't know what you thought would be courteous.

CHAIRMAN FRYER: Let's return to cross.

MR. TRESMOTT: I would like to address your -- you know, I assume Dan Summers knows why he proposed this as mitigation. So I would like to have had him say, "We are putting these cots in a new shelter or someplace which, you know, it's going to address the mitigation of the shelter impact from this project." I don't think he can do it because it's -- there's a 20,000-square-foot deficit. You've got to get rid of the deficit before you can start talking about how to deal with this project.

MR. YOVANOVICH: Well, perhaps we'll ask staff to bring Mr. Trescott to the Board of County Commissioners -- I'm sorry -- Mr. Summers to the Board of County Commissioners.

But in my conversations with Mr. Summers, is he wanted the flexibility to have the cots and have the generator depending upon where the storm was anticipated to come on landfall, so he wanted flexibility to address hurricane issues. That's what he told me, because I asked him.

MR. TRESMOTT: Okay. Well, that doesn't talk about shelters.

MR. YOVANOVICH: He thought it was appropriate --

MR. TRECOTT: In my opinion, these cots are going to be used for existing shelters, for people that are going to go to existing shelters.

MR. YOVANOVICH: I appreciate your opinion. That was not the opinion of Mr. Summers as expressed to me --

MR. TRECOTT: Our attorney will ask that question when it's appropriate.

MR. YOVANOVICH: Mr. Trecott --

MR. TRECOTT: Yes, Mr. Yovanovich.

CHAIRMAN FRYER: Gentlemen, gentlemen.

MR. YOVANOVICH: I haven't done anything. All I'm just trying to do is finish my questioning, and all I was going to say is, "I'm done."

MR. TRECOTT: Okay. Great. Thank you.

CHAIRMAN FRYER: We've got four minutes until what would ordinarily be a lunch break, so let's just, I think, take it. Do you want to -- yeah, please go ahead, Commissioner.

COMMISSIONER VERNON: If you don't mind, Mr. Chairman --

CHAIRMAN FRYER: No, please.

COMMISSIONER VERNON: -- I have two issues. One is before you -- you're done, right?

MR. YOVANOVICH: I am. I wasn't sure.

COMMISSIONER VERNON: Before you step away.

MR. TRECOTT: Yes.

COMMISSIONER VERNON: You talked about adequate mitigation issues, and I think in the context of cross on certain projects being approved or not approved, and then when I asked you earlier before cross, you talked about, you know, one mitigation measure that hasn't been done the way you would do it, was they're raising the road for a 25-year event. You're raising the -- you suggest raising the road for a 100-year event, and then the other issue that I sense coming out of you is maybe there needs to be more done with respect to shelters.

So those are two points that would be mitigation issues. With respect to this project, if they're going forward, would you recommend any other mitigation issues within your area of expertise? And go ahead and tell us what those are.

MR. TRECOTT: Well, other than not building in this location, I -- that's the best mitigation.

COMMISSIONER VERNON: And I'm with you on that point, but assuming the project's going here.

CHAIRMAN FRYER: Please, gentlemen.

MR. TRECOTT: You know, I don't really -- you know, I don't really know of any. You know, the law requires mitigation of evacuation route impacts and shelter impacts. I can't -- you know, that's what I'm trying to address there. I'm not sure we can go any -- beyond that.

But, no, I don't have any other ideas other than not locating it here. I mean, maybe, you know you, send buses out to them to evacuate the people that don't want to leave. You know, that's possible, but I don't think that's going to happen. I think most of these people are going to stay here, their cars are going to get flooded, and they're going to be trapped. And they can't get out. There's going to be a recovery nightmare for the county because the roads will be cut out, too, and they won't even get there. A helicopter will be necessary. So I don't have any other mitigation options other than just not build here. I don't have any other ideas.

COMMISSIONER VERNON: That's fine. I just wanted to make sure I got everything I could out of you. I don't have anything more for the witness.

CHAIRMAN FRYER: Thank you.

Planning Commission, is 30 minutes enough for our lunch?

COMMISSIONER VERNON: Yes.

CHAIRMAN FRYER: Anybody have a problem with that?

(No response.)

CHAIRMAN FRYER: Okay. Then -- sorry.

COMMISSIONER VERNON: I've got a general comment. I don't know if you want me to make it before or after lunch.

CHAIRMAN FRYER: Your call.

COMMISSIONER VERNON: But I am -- I am -- I would -- I'm real uncomfortable with putting anybody sitting up here or any of our staff or any of our attorneys in a position where they have to testify. And I understand that Mr. Yovanovich made a request; you granted that request. But just in general, I would love to find a way to stay away from that, because I think that's a very slippery slope. I don't think our staff is here to be cross-examined. I don't think our attorneys are here to be cross-examined. I don't think we're here to be cross-examined.

So I understand, and so I'm not -- I'm not screaming about this, but I'm just talking about for future. I just would prefer -- that's my preference. I think it -- I think it impinges upon their ability to give us the fullest information they can because now they're concerned they're going to be cross-examined under it.

I think we're perfectly capable of determining, you know, whether we want to agree with staff, whether we want to agree with attorneys, and I think -- I think -- I think that the attorneys for the applicant and any objectors are perfectly capable of explaining how our staff is wrong or how our attorneys are wrong without going through a cross-examination.

So I just wanted to get that out there.

CHAIRMAN FRYER: Well, it's not -- it's not too late for us to reconsider that. What do other members of the Planning Commission have to say? And this has to do with Mr. Yovanovich having an opportunity to cross-examine Mr. Bosi.

COMMISSIONER SCHUMACHER: I feel the same --

CHAIRMAN FRYER: The same.

COMMISSIONER SCHUMACHER: -- as Commissioner Vernon.

CHAIRMAN FRYER: Okay. Others?

COMMISSIONER SCHUMACHER: I do have a little concern there. Asking questions is one thing. Cross-examining and putting him record [sic] is another.

COMMISSIONER SPARRAZZA: I would be comfortable with if what staff or any of us or even our counsel has said, if there's a question on what they said or what they meant, to be asked that question. I'm cautious with the term "cross-examination."

CHAIRMAN FRYER: And I must admit that I'm the one who used it, and I think Mr. Yovanovich would probably say that he just wants to ask some questions. So I think I might have mischaracterized it.

COMMISSIONER VERNON: And I think that I'm very comfortable with that, because we're trying to -- if -- just like I try to ask clarifying questions, I think if the attorneys have respectful clarifying questions, that's fine. I just don't want it to evolve into cross-examination because -- and I'll stop here, but I do think cross-examination is -- must be respectful, but it is an adversarial process. So I think the tone on cross sometimes is -- seems more aggressive, and I think that's part of our American system of justice, and I want to stay away from that with respect to our staff and our attorneys and us.

CHAIRMAN FRYER: I think I have to take complete blame on that one, because I'm the one who used the word "cross-examination." And I think we're all clear on what -- what we want and what the limits of what we want would be when Mr. Yovanovich asks questions of staff. Does anybody disagree with that?

COMMISSIONER SHEA: I think you're just talking about rebuttal.

CHAIRMAN FRYER: Yeah.

COMMISSIONER SHEA: That's how you --

CHAIRMAN FRYER: I'm going to call on you, Heidi.

MR. OLDEHOFF: I'm going to be out of order. I apologize.

CHAIRMAN FRYER: Well, you're out of order, so please sit down.

MR. OLDEHOFF: I don't understand.

CHAIRMAN FRYER: Well, sit down.

Go ahead, Ms. Ashton.

MS. ASHTON-CICKO: I know Mr. Yovanovich has his hand up because it depends on who the county is tendering as our expert witness, which I think was Mr. Bosi earlier today. So there is an applicant's right to cross-examine the county's expert.

CHAIRMAN FRYER: Okay. So I guess it's irrelevant whether it's cross-examination or direct examination.

All right. Now, Mr. Oldehoff, did you want to be heard? Come on up to the mic.

MR. OLDEHOFF: Yes. I just wasn't clear on that, because whether it's posed in the form of an inquiry or -- it's still considered to be cross-examination whether -- anytime you're examining someone that is not your witness, it's in the nature of a cross-examination. So I was -- I was unclear what was being proposed. Can questions be posed to the staff or by the applicant or by me or not? It's either all in or all out, right?

CHAIRMAN FRYER: Let me -- let me address that. I think the main difference between direct examination or just an examination and cross-examination has to do with the asking of leading questions.

And, Planning Commission, would it be appropriate that we not permit the asking of leading questions to staff members, or what are our --

COMMISSIONER VERNON: Yeah, I'll -- since I started this. I'm not trying to change the rules. I mean, I'm going to defer to counsel on what the rules are, and I'm not trying to change the rules at all.

So I am saying, within our discretion, I want to protect us and the staff and the attorneys because I don't think it's helpful to the process if they're worried about free flowing with their commentary, us free flowing with our commentary. And the reason I say "us" is because last time I think there was discussion about possibly somebody up here being cross-examined.

So I'm not trying to change the rules at all. I mean, you've got two experts here on land use and experts over here on the rules. So I'm not trying to change the rules. I'm just trying to -- you're not -- neither side's going to impress me if you start hammering one of our staff or you start hammering one of our attorneys. It's just not -- it's not a good look. It doesn't -- it doesn't build your credibility to me. That's what I'm trying to say.

CHAIRMAN FRYER: And I'm inclined to agree with that. And I think, in the interest of moving things along after we come back from lunch, to a degree, leading questions -- and I'll come to you in a moment -- leading questions would be appropriate, but I'm going to be very -- very cautious or perhaps you could say I'm going to be intrusive if I believe that what is happening is beginning to be the badgering of a staff witness.

So I'm going to watch that carefully, and if any member of the Planning Commission believes that I'm not watching it as carefully as I should, please speak up.

All right. Do you want to have -- something else to say?

MR. OLDEHOFF: One other -- yeah. This is the litigator in me. There is a difference between posing a question -- asking a question and testifying. And in the previous exchange, there seemed to be, from Mr. Yovanovich, a lot of testifying, a lot of talking that was either directed at you or was somehow -- somehow trying to refute with his own points something that he thought that Mr. Trescott had said, and that's -- that's not proper for an examination by a lawyer. We ask questions. We don't testify. We don't try to give evidence. We don't try to make arguments while we're -- while we're presenting.

CHAIRMAN FRYER: Thank you. Before this hearing, I asked a hypothetical question of Mr. Yovanovich, and that is, in view of the fact that he has expressed an intention to cross-examine you as an expert, would he mind you cross-examining him, and he said, absolutely

he would not mind.

MR. OLDEHOFF: Right.

CHAIRMAN FRYER: And so I think we can clear the air on all of that by just permitting the cross/cross-examination so that we'll get everything out.

But in the course of that, when we're doing it, I'm going to be very cautious and very insistent upon respectful behavior, a proper decorum, not talking over one other, and it may get -- it may get more challenging for me as the chairman this afternoon, but I'm going to try to be as vigilant as I possibly can.

Having said that, it's 12:07. Let's recess lunch until 12 --

Oh, I'm sorry, Ms. Ashton, did I -- go ahead.

MS. ASHTON-CICKO: Only the county's experts are subject to cross-examination. So the people that have -- are here tendered as an expert, like Mr. Bosi, would be subject to cross-examination on the staff. Otherwise, the questions would probably come to you, and then you can decide whether you want to ask it of staff.

CHAIRMAN FRYER: Okay. Could you give me a real-world example of how that might work and indicate who the question would be asked to who's not an expert, staff person.

MS. ASHTON-CICKO: Well, me.

CHAIRMAN FRYER: Oh.

MS. ASHTON-CICKO: I am not appearing as an expert, so I'm not subject to cross-examination.

CHAIRMAN FRYER: Okay. And I understand and agree completely with that. Thank you. I just wasn't sure where you were going with it.

MR. OLDEHOFF: Mr. Chair -- I want lunch, too.

There have been several staff members that you-all have called up here, and they have -- they have given testimony, they have talked to you, and having done that, typically, though, I agree with your counsel, I prefer not to do that when I'm sitting with my boards.

But each person that has come up to give something necessarily opens themselves to being asked a question by one of the interested attorneys, and I understand that. I was thinking about possibly asking Ms. Gundlach a couple of questions --

CHAIRMAN FRYER: Well, she's an expert.

MR. OLDEHOFF: -- when I was thinking about it this morning, but she's not here.

CHAIRMAN FRYER: She's here.

MR. OLDEHOFF: There you are.

MS. ASHTON-CICKO: I believe Mr. Bosi's answering the questions for staff as to the expert witness. I don't know if she's been tendered yet as an expert for the hearing.

CHAIRMAN FRYER: Well, she's on the paperwork.

MR. OLDEHOFF: She's on the paperwork, yeah, you know.

MS. ASHTON-CICKO: It's whatever the Board decides.

CHAIRMAN FRYER: Understood. Well, we'll cross that bridge when we come to it.

MR. OLDEHOFF: Okay.

CHAIRMAN FRYER: It's 12:09. We're in recess until 12:39.

(A luncheon recess was had from 12:09 p.m. to 12:39 p.m.)

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

CHAIRMAN FRYER: Thank you, Mr. Bosi.

Let's reconvene, please. Take your seats.

During the lunch break there was some talk, with earnest hope that will not happen, but the talk of the possibility that we might have to return for yet part of a third day, and I think we all hope that's not the case.

But in the interest of expediting, I would propose that we continue to hear -- I mean, we've got a lot of public speakers -- that we hear them first and then postpone cross-examination, but I think cross-examination of the -- Mr. Oldehoff's witness has been completed and so really -- where

is Mr. Oldehoff?

He's not in the room. Well, I want to hear from him that he's agreeable with this, and I also want a commitment from -- well, from both staff and from the applicant that their experts will be back on the day that we assign for this so that -- so that he's not deprived of a full opportunity to have cross-examination just because we're going to let the public go first.

But, Planning Commission, does that seem like a reasonable approach? Anybody disagree with that?

(No response.)

CHAIRMAN FRYER: All right. Well, then I just want to have Mr. Oldehoff signal that he's okay with it, and then we'll --

COMMISSIONER SPARRAZZA: Here he comes.

CHAIRMAN FRYER: Oh, good. Mr. Oldehoff --

MR. OLDEHOFF: Yes.

CHAIRMAN FRYER: -- would it be agreeable with you -- and, of course, I recognize that you have not had an opportunity to cross-examine any witnesses yet. It's possible that we may not finish today. And we all hope that that's not the case but --

MR. OLDEHOFF: It won't be my fault. It won't be mine.

CHAIRMAN FRYER: Come up here on the mic.

What I want to know, if it would be all right with you, if we proceed and hear all the members of the public who are speaking, and then you reserve all rights to cross-examine, and we would get a commitment out of both staff and the applicant that they would have the experts that you want to cross-examine here at the next hearing.

MR. OLDEHOFF: Sure.

CHAIRMAN FRYER: Is that all right?

MR. OLDEHOFF: If that's all right with you.

CHAIRMAN FRYER: Yes, it is. Yeah, all right.

So we will -- we'll approach it that way. And I'll look to the back of the room.

Mr. Johnson, who do we have up for members of the public?

MR. JOHNSON: Chair, our next public speaker is Susan Caglioti. She has been ceded time from two individuals, so Susan has 15 minutes to speak.

CHAIRMAN FRYER: And I believe she was ceded time at the last meeting, is that correct, or do we have people who are physically present who are ceding her time?

MR. JOHNSON: These are the individuals who were present at the last meeting.

CHAIRMAN FRYER: Okay. All right. Well, then that exception is recognized.

Go ahead, ma'am, and start off by stating your name.

MS. CAGLIOTI: My name is Susan Caglioti, and my husband and I live at 18481 Royal Hammock Boulevard. We are co-chairs of Protect the Preserve, who oppose Fiddler's Creek's three applications on Section 29.

Please know that our objections have nothing to do with a "not in my back yard" mentality but are instead based on almost two years of research.

I was going to start differently than I am, and I hope that I'm not beating a dead horse, but I think it's important to have a timeline of the easements over the years that weren't filed, like just almost bullet pointed, if that's okay.

CHAIRMAN FRYER: Let me interrupt you, and you won't be charged for my interruption time-wise. But we've got a lot of speakers, and if what you want to say has already been said in substance, we would be glad to have you waive your time, and if you want to just get up and say, "I agree with everything that's been said by so and so," and then take your seat, that would help us expedite the process.

And we will -- Ms. Caglioti wants to partially repeat some things that have been said, and we're going to allow that in her case. But as it goes on this afternoon, at some point we're going to draw the line and say, unless you have a new point, we believe we've heard everything we need.

Keep in mind that this Planning Commission is very studious, reads all the material. We believe we are fully advised of everything that's been put in writing. So you're not going to improve your position by unnecessarily lengthening -- unnecessarily lengthening the day.

Thank you, Ms. Caglioti. With that, please go ahead.

MS. CAGLIOTI: Okay. So I'll eliminate a lot of what you might have heard, but the only reason I was going to do it this way is to put it in order because it gets all jumbled up. But I'm just going to just concentrate on one part of that I have.

CHAIRMAN FRYER: Well, you've got 15 minutes, so use it how you wish.

MS. CAGLIOTI: Okay. So this land was entered into the existing PUD under the guise that it was going to be taken out of the land-use inventory, not for just a little while but forever. That is part of the minutes; it's very clear. It was going to be a buffer to urban sprawl; that was very clear. They were not ever going to come back to the county no matter what growth happened. This was the land -- this was a line drawn in the sand. This was the buffer, and now we're here discussing that it's not. But I'll go into the rest of it.

The applicants have said that our opposition is just like any opposition heard over and over with this type of development. Residents crying, "This is not the place for it; put it someplace else." But if we really look objectively at Section 29, at the history, the broken promises, noncompliance, the importance of this land to -- environmentally and ecologically and actually why all of these things were and should remain in place, it is more clear that this is not the place for this development.

I am not opposed to affordable housing, but since the only way this project could get approval from staff was through affordable housing bonuses, some of the objections here are based on that aspect. Should this be approved solely because it's affordable housing?

We have seen and read about affordable housing bonuses being made in other developments. Usually it's a bonus for density, and that's that. But in this case, there are numerous bonuses being made for Section 29. Policies are made to protect existing surrounding neighborhoods, the community, protected species, habitat, et cetera. These are all being ignored in the name of affordable housing. One allowance is one thing. Many is quite another and makes this proposed development beyond unreasonable.

It was disheartening to read the staff report and see on paper that our homes were so easily dismissed in the name of affordable housing. The report contains so many admissions from staff such as this is not compatible or comparable to the surrounding area, but it doesn't need to be because of the perceived public benefit.

The size and density is not in line with ours and will allow for close to 5,000 vehicle trips daily behind our homes, but that's okay because it's affordable housing and a public benefit.

Per the report, there was a probability that our homes will be devalued due to the development on Section 29. But, again, that's okay; it's public benefit. How can the county decide it's okay to cause devaluation of existing homes and bend policies made to protect the community in the name of a public benefit? Policy states that development should be directed away from endangered protected species, which is very much present here. But that's okay again; it's affordable housing.

And for most policies on the books that couldn't actually be completely adhered to by the applicant, it was the same. Applicant is excused and doesn't have to strictly adhere to what is best here for the community because it's affordable housing.

Reading the staff report has us feeling very diminished, unimportant in the eyes of the county, and frightened to know that we are somewhat of a throwaway in their eyes. These affordable housing allowances add up and will allow this development to have major negative impacts on two neighborhoods directly, Royal Palm Golf Estates and Auto Ranch Road community.

There will be negative impacts on environmentally valuable land, destruction of habitat, risk to protected endangered species. Additionally, we have major concerns over flooding, and

there was a picture up there to show just what happens back there during a hurricane.

How can the applicant possibly expect to redirect water to the south in Section 29 where the storm surge comes from? Right now at times of storm surge, the wetlands on Section 29 absorb and hold a tremendous amount of water, preventing the complete impact of the surge from hitting our homes in Royal Palm Golf Estates. Affordable housing here, again, at what risk, why?

Why allow all of this to happen for a workforce housing development that will have diminished benefits due to this location? This development is in a high -- Coastal High Hazard zone with one ingress and egress. It is surrounded by a state park to the east, a marsh held in conservation by the county to the south, other conservation lands, it's on conservation lands to the west, and a canal to the north. Why put your residents in such a precarious situation?

Mandatory evacuation will happen. What happens to these people, thousands of residents using one road traveling through wetlands, a preserve, for two miles before reaching Route 41? And on a day-to-day basis, what about the residents who don't have vehicles? They will have to walk two miles before even reaching the proposed bus stop. To think that they can walk or ride a bike two miles through mosquito-infested wetlands in Southwest Florida heat to a bus stop is unrealistic.

Will the one bus line even work for them? They would be better served by affordable housing on a main arterial road. If you really care for our workforce, please don't approve this development.

And now for the bigger picture, bigger in relationship to the damage that will be done beyond our neighborhoods, beyond Section 29. Currently Section 29 is under a conservation covenant due to its importance to endangered and protected species. We should be careful when it comes to decisions that affect our natural resources and protect what -- and protect what we can before it's lost.

So much is ecologically interconnected. It is not only for our protected species, it is also for sheet flow, a connection of waterways from Rookery Bay to Picayune Strand and beyond. Section 29 is a link and a chain for water, it's a link and a chain for protected species, and is an important hydro period wetland.

The environmental ecological impacts here go beyond just Section 29. Why destroy all of this in the name of affordable housing which could and should be elsewhere with less risks and better, safer benefits? If approved, there's no going back on any of this. The negative impacts to our communities and natural resources will be here forever and far outweigh the benefits.

In closing, something I think is important here is that we rely on our county officials to look out for us as residents, to stand by our codes, GMP, FLUE, and CCME to make sure that developers abide by their agreements because we make our decisions based on these things.

In our case, many of us buying our homes on Royal Hammock Boulevard, knowing the status of Section 29 and the county's maps and the designation on the land and what was common knowledge here as to its preserve status, that this was land never to be built on, all this was the very reason many of us made the decisions to buy our homes here, because of what was and should remain in place.

Please consider the residents who are already here who pay taxes, spend our money in this county, vote here. We are your community. Please uphold what is truly a benefit to our community, that being the belief that agreements should be upheld, that maps and land designations mean something and should not be changed when there's no true benefit in changing them and so much at stake.

Please vote to deny.

CHAIRMAN FRYER: Thank you.

And before we call the next speaker, I want to remind everyone that, before you speak, please let us know if you have not yet been sworn in, because we can get that fixed immediately. But even if you were sworn in back on April 18th, we want to swear you in again before you speak.

Mr. Johnson, who's next?

MR. JOHNSON: Our next public speaker is Lawrence Hanba. He's been ceded time by four other individuals, one of which is Robert Weissbein. We have to figure out if Mr. Weissbein is here. Raise your hand.

(Raises hand.)

MR. JOHNSON: Okay. Very good. Lawrence, you have 25 minutes.

CHAIRMAN FRYER: What about the others?

MR. JOHNSON: They were -- these were filled out last meeting.

CHAIRMAN FRYER: Two weeks ago?

MR. JOHNSON: Yes, on the 18th.

CHAIRMAN FRYER: Okay. So these are -- these are people who ceded on the 18th plus a new ceder?

MR. JOHNSON: That's correct.

CHAIRMAN FRYER: Okay. So how much time does he have?

MR. JOHNSON: Twenty-five minutes.

CHAIRMAN FRYER: All right. Sir, if you can get it done sooner than that, that would be appreciated. And what's your last name again?

MR. HANBA: My name is Lawrence Hanba, H-a-n-b-a. I have been a full-time resident of Royal Palm Golf Estates, formerly Boyne South, for the past eight and a half years. I am a retired lawyer, and I practiced defense trial litigation in the state of Michigan for 40 years representing insurance companies, corporations, and government entities, including municipalities, counties, and school districts. I was also appointed a special assistant attorney general by the State of Michigan representing the state in complex litigation.

Chairman Fryer, I would like to save time and avoid rehashing points addressed on April 18th, as well as today, but based on some things that were said today, I think it's important that I must refer to certain facts that involve an important doctrine of American jurisprudence, an equitable doctrine known as the clean hands doctrine, which will help shed light on this zoning application for the edification of the concerned citizens as well as the print and broadcast news media.

At the Collier County Board of Commission hearing on February 28th, 1998, the applicant here used Section 29 as a carrot to obtain approval and profit from the proposed Marco Shores development. The applicant's expert witness for planning and land development, Dr. Arthur C. Nelson, who I wish was here, stated -- in response to a county commissioner's concern about urban and rural separation stated, quote, all of 20 -- "All of 29 will be a preserve" -- I know there was a discussion about that earlier today. The quote is, "All of 29 will be a preserve thereby providing a buffer between the Marco Shores development and the state-owned wetlands," end quote.

Thus, the applicant's own expert supported our save -- our Save the Preserve group's current contention that Section 29 plays a critical environmental role as a preserve in Collier County's Land Development Plan.

In response to Commissioner Mac'Kie's express concern about the future of Section 29, she asked the applicant's attorney, who at that time was George Varnadoe, if they would create a conservation easement in perpetuity to ensure there would be no development on this land.

The applicant's attorney, Mr. Varnadoe, stated, quote, "We would prefer to deed it to the State because the lands around it are owned by the State. The State has been reluctant to take title, whereas our commitment today is to provide a conservation easement or a deed, whichever they wish, but yes, it is in perpetuity." However, no easement was ever filed by the applicant's agents.

With regards to the environmentally sensitive nature of Section 29, Wayne Arnold (indicating) indicated at the 1998 hearing, quote, "No development units are contemplated for this portion of the proposed development," end quote.

To our amazement, Mr. Arnold appeared on behalf of the applicant at the September 6th, 2023, neighborhood information meeting to present the current proposed development to our community. When I asked him whether he was ever employed by Collier County, he hesitated to

respond. When pressed further, his memory was miraculously refreshed, and he recalled being employed by Collier County in 1998 as the Collier County planning service director.

In 1998, he was charged with protecting the interests of Collier County and its citizens. He obviously was unaware I had a copy of the February 24th, 1998, hearing transcript where he affirmatively supported Section 29's preservation status.

The character and topography, as well as the use of Section 29, has not changed since his statements in 1998. The only thing that has changed is the employer that signs his paycheck.

In 2007, the Balbriggan used Section 29 as a carrot to profit from another developer, Oyster Harbor and Estancia. Because those projects would destroy vital endangered species habitat, the U.S. Army Corps of Engineers requested a consultation with the U.S. Fish and Wildlife Service which resulted in a biological survey and a Biological Opinion which demonstrated that the Florida panther and the bonneted bat habitat would be seriously compromised. As a result of the Biological Opinion, the applicant's agents promised and committed in writing to set aside Section 29 as a preserve in perpetuity and file a conservation easement 90 days prior to commencing any construction. The easement was not filed within 90 days, and construction began.

The applicant's agents not only reneged on their commitments and breached their promises to Collier County, they also thumbed their nose at the authority of a respected federal agency.

Further, the applicant's agents also agreed to an off-site preservation management plan which obligated them to certain assumed duties regarding the preserve in Section 29, none of which were ever performed. Chairman Fryer pointed that out at the last hearing.

It was not until November of 2022 that the applicant's agent finally filed the conservation covenants for Section 29, but even then, they unilaterally carved out 57-plus acres for the construction of a 750-unit high-rise apartment complex -- this modification was subject to the U.S. Fish and Wildlife Services approval, but that approval was not obtained by them.

Furthermore, your file should contain a letter from Robert Carey of the U.S. Fish and Wildlife Service specifically rejecting this modification stating, quote, "Modifying the terms and conditions of the 2017 Biological Opinion to release the requested 57 acres is not consistent with the responsibility under the Endangered Species Act. The 57 acres proposed to be removed from the conservation covenant and used for development are of high ecological value to several species, including the Florida panther, Florida bonneted bat, and American crocodile."

With this letter and with the conservation covenants, Section 29 is a de facto protected preserve in perpetuity. Consequently, by approving rezoning application, Collier County could find itself in violation of the Endangered Species Act and, thereby, exposed to significant financial penalties. It is worth it -- is it worth it for Collier County to assume this risk and at the same time reward this applicant's agents given their past misdeeds and transgressions?

This risk alone should be sufficient basis to deny this application for rezoning in addition to saving your valuable time and wasting the county taxpayer money.

It is also important to address other misrepresentations made to this commission the by applicant's agents. In response to a probing question from one of the commissioners at the last hearing concerning the five-plus year time lag between the 2017 Biological Opinion and the November 2022 filing of the conservation covenants, Mr. Hall stated that they were in continuous negotiations with the U.S. Fish and Wildlife Service. This obviously was hard to believe.

Contrary to this allegation, a member of our Save the Preserve committee contacted U.S. Fish and Wildlife Service in the summer of 2022, and they indicated they were completely unaware of the applicant's plans to develop Section 29 and unaware that the conservation easement that they promised was never filed.

They thanked our member for bringing this issue to their attention, and it was this exchange of information that prompted the U.S. Fish and Wildlife to contact the applicant's agents and insist that they comply with the Biological Opinion which then motivated the applicant's agents to file a conservation covenant with the county in November of 2022. There simply were no

ongoing or continuous negotiations as you were led to believe.

At the September 6th, 2023, neighborhood information meeting, in answer to my question about the position of the U.S. Fish and Wildlife Service concerning the modification of the Biological Opinion, Mr. Hall stated that they were still in negotiations with the Service. This was simply not true.

Members of our committee had several phone calls with Robert Carey of the U.S. Fish and Wildlife Service, and he repeatedly stated that he advised the applicant's agents that the U.S. Fish and Wildlife Service was not agreeable to any modification of the Biological Opinion. This prompted me to personally call the U.S. Fish and Wildlife attorney in charge of the endangered species litigation in Washington, D.C. She agreed to have the U.S. Fish and Wildlife advise the applicant's agent in writing of their denial of any modification of the Biological Opinion, which was subsequently confirmed by the letter Robert Carey of the U.S. Fish and Wildlife issued dated January 31st, 2024.

There is a long-standing doctrine in American jurisprudence called the clean hands doctrine, and it fits this situation like a glove. The doctrine stands for the proposition that a party seeking benefits of a land transaction must do so with clean hands, and a devious party should not profit or be rewarded for their past bad deeds.

The facts I have outlined here demonstrate the applicant's agent's history of past transgressions and misdeeds. As a result, their hands are not only dirty; they're caked in mud.

Consequently, the only positive result that could come from rezoning any part of Section 29 would be a further enrichment and reward these agents for their stalling, delaying, neglecting, and failing to honor the many commitments that have been made in the past to ensure Section 29 would continue to be a preserve for protected and endangered species in perpetuity.

There is an old saying that "insanity is making the same mistake over and over and expecting a different result." Can we really believe and trust that this applicant's agents here today will abide by their current promises and commitments given their well-established track record?

Once again, the applicant's agents are dangling another carrot before this commission so they can profit for the third time from Section 29 by cashing in on the affordable housing policy.

It is interesting to review the staff reports for the past year and a half. With six rounds of submittals and responses, it is clear that the staff had several problematic issues with this application. As a result of these problematic issues, the applicant's agents raised the percentage of affordable for the proposed project three times, from 20 percent in 2022, to 22.5 percent in 2023, and to 30 percent in 2024.

Now, a discerning observer might well conclude that several Land Development Code deficiencies were simply overlooked or disregarded by these, quote, "commitments" to increase the number of affordable units for this project. If we follow the Growth Management Plan adopted by the people of Collier County, we see that there are many factors to be considered in any rezoning. It is easy for us to be overwhelmed or confused by so many factors, but they all have equal weight, and they all are equally important when deciding whether to rezone property.

One such policy clearly states, quote, "Land-use policies protect environmentally sensitive lands and habitat for listed species," end quote. And another policy states, "We should ensure compatibility of land use."

The Save the Preserve group is not against affordable housing. To the contrary, we support it. And I personally have a relative that could benefit from it; however, because of the environmentally sensitive nature of Section 29, it is not the correct parcel of land to build a 750-unit apartment complex. This commission is obviously not comfortable with this application, and for good reason.

The term "common sense" was brought up at the last hearing, and that is because this rezoning proposal simply doesn't make good common sense. Why destroy something of significance over a long-term ecological value and replace it with something that could easily be constructed at a dozen other different locations? It just doesn't make common sense.

You know, when you promulgate codes and laws and statutes, they're based on common sense, basically, okay, and that's what we're dealing with here, the principle of common sense.

During the April 18th hearing, the audience was impressed with the questions asked by the Commission members. One important question was to the staff member when he was asked, "But for the affordable housing issue, would the rezoning application be approved?" You know, the clear answer was an unequivocal "no."

This answer begs the next question: Why even have a Planning Commission or an administrative staff, for that matter, if affordable housing will trump all factors to be considered as provided in the Growth Management Plan? This doesn't make common sense.

I want to bring up the issue of the endangered bonneted bat. In the staff report recommendations section it states, "Permit approval is required for a review for the management of the Florida panther, black bear, and all other listed species." The black bear was not listed by the U.S. Fish and Wildlife Service as an endangered species. In fact, limited hunting permits are issued in the state of Florida for the black bear; however, the bonneted bat was not specifically mentioned in the report, although their habitat is actually greater than -- in endanger of extinction than the panther.

In fact, effective April 6th, 2024, just last month, the U.S. Fish and Wildlife significantly increased the bonneted bat critical habitat area in Collier County. Their proposed apartment development plans to extend Auto Ranch Road into and through a forested area of Section 29 where it has been documented, well documented, that the bonneted bat roosts and forage. The noise and light from the traffic and the people generated by this high-rise-density apartment complex and the destruction of trees to build the road will undoubtedly have a negative effect and very possible destroy this important habitat.

The applicant and his agents have successfully used Section 29 over the past 25 years as a cash cow to enhance their success and increase their profits. There comes a time to stop milking the cow, and that time is now here with this commission.

This honorable commission wasn't -- is established to represent people of Collier County and not help land developers get rich. We ask this commission to do the right thing and unanimously deny the rezoning application. Please do not pass this hot messy dumpster fire onto the County Commissioners without lodging the strongest objections possible.

To be truthful, if I were the attorney for this applicant's agents, I would, for the sake of their honor and reputation, advise them to withdraw this application and avoid the negative glare of the print and broadcast media as well as the disdain of the citizens of Collier County.

In conclusion, in summary, this hearing all boils down to these seven questions: First, is this commission willing to approve this application and ignore the clean hands doctrine and thereby telling future land developers that bad behavior and deception are acceptable behavior in Collier County?

Second, is this commission willing to approve this application and allow for the destruction of even more long-standing endangered species habitat in Collier County that today is legally protected under a valid conservation covenant that was mandated by the U.S. Fish and Wildlife Service?

Three, is this commission willing to approve this application even if such action could result in costly litigation against Collier County by conservation groups and the U.S. Fish and Wildlife Service when such actions may result in significant financial penalties assessed against the county?

Fourth, is this commission willing to approve this application and thereby disregard or ignore multiple provisions of the Collier County Land Development Code, including those provisions that are specifically promulgated to protect the rights of adjoining landowners including the right of quiet enjoyment of their property and their right to be free from increased foreseeable dangers caused by neighboring property owners?

Five, is this commission willing to approve this application even if it results in the

construction of a 750-unit apartment complex for essential workers that is situated in the middle of wetlands that are deemed high-risk special flood hazard areas by FEMA?

Six, is this commission willing to approve this application even if the result in the construction of a 750-unit apartment complex for essential workers in [sic] only one means of ingress and egress, which is Auto Ranch Road, that is over one and three-quarter miles from the nearest thoroughfare and which was under water after the last hurricane and which also transects right through the heart of the protected habitat of the bonneted bat and highly endanger their roosting area?

And, finally, No. 7, is this commission willing to approve a high-density, multistory apartment complex for essential workers that is more than six and a half miles from the nearest fire station and other emergency services?

If you answer yes to all of these questions, then the people of Collier County really don't need a Land Development department and they don't need a staff -- land planners either. They merely need one person to find more vacant land so that more high-rise, high-risk apartments can be built for essential workers in Collier County.

I urge you to do the right thing: Unanimously reject this application in the strongest terms, and I thank you for your time.

CHAIRMAN FRYER: Thank you.

Next speaker, please.

MR. JOHNSON: Next speaker is John Erario, who has been ceded time by six others. So John has --

CHAIRMAN FRYER: Mr. Hanba, come on back, sir. I'm sorry, Commissioner. Go ahead.

COMMISSIONER VERNON: That's okay. I pushed late.

Real quick, the clean hands doctrine, I understand it. Equitable defense, equitable remedy, however you want to say it. We're sitting here legislatively. I don't know. I would think we're amending a statute, statutory. As a common-sense matter, I hear you loud and clear, but you're a lawyer, trial lawyer, and I didn't know if you were citing -- is there some case law -- or how that equitable remedy applies to what we're doing.

MR. HANBA: Well, I'm not here as a lawyer representing this group.

COMMISSIONER VERNON: No, I know, but I'm just --

MR. HANBA: The clean hands doctrine is a well-known -- I mean, you went to law school. In fact, three or four other of you guys went to law school and, you know, it's been 50 years since I had property law but, man, one of the things I remember is the clean hands doctrine and as it specifically applies to land transactions.

COMMISSIONER VERNON: Okay. Thank you.

CHAIRMAN FRYER: Thank you.

Next speaker, please.

COMMISSIONER KLUCIK: Mr. Chairman?

CHAIRMAN FRYER: Yes. Go ahead, Commissioner Klucik.

COMMISSIONER KLUCIK: Yes. And just on that point, I think as -- yes, this is legislative, and I think the doctrine is sound and, yes, it really applies, as it was mentioned, when there's litigation, but it certainly would inform legislators and inform -- you know, do yeomen's work in informing us of what things are, you know, just not tenable. And I think if the hands aren't clean, that's -- you know, that does -- can help inform how we make our decisions, so...

CHAIRMAN FRYER: Thank you.

MR. JOHNSON: Mr. Erario, please proceed to the podium. You have 35 minutes.

MR. ERARIO: Thank you.

CHAIRMAN FRYER: And these are all people who ceded on April 18?

MR. JOHNSON: That's correct.

CHAIRMAN FRYER: Thank you. Do you have a copy for Mr. Yovanovich? And the

court reporter, did she get a copy?

MR. ERARIO: I can give her one.

CHAIRMAN FRYER: She needs one, and also staff.

MR. ERARIO: She can get this copy. Who's the most important person to get this one?

CHAIRMAN FRYER: Have you got one more?

MR. ERARIO: I have one more besides this.

CHAIRMAN FRYER: Give it to Mr. Yovanovich, and I and --

COMMISSIONER SHEA: I can share, too.

CHAIRMAN FRYER: I want to be sure the County Attorney has this as well.

MR. ERARIO: I'll bring another copy up when I'm finished, okay? I have an extra copy. I can bring it up.

CHAIRMAN FRYER: Do you have one, Mr. Bosi?

MR. BOSI: Yes.

CHAIRMAN FRYER: Okay, good.

MR. ERARIO: Good afternoon, Chairman Fryer and Commissioners. My name is John Erario. I live on Royal Hammock Boulevard in Royal Palm Golf Estates, and my home is one of many that are located along the spreader canal that directly borders Section 29.

I first became aware of the applicant's petition to rezone Section 29 for construction of a dense residential housing project at the July 7th, 2022, neighborhood information meeting. Shortly after that meeting, I became involved in the Protect the Preserve group. In the ensuing 22 months, the group and I have become intimately familiar with many of the intricacies of these applications and the history behind them.

I've personally met with a number of both BCC and CCPC commissioners as well as more than a dozen county directors and staff in upwards of 20 in-person and video meetings. The presence of much of the material in your packets originated from our group.

The testimony of our attorney, our experts, and the community all dovetails into a single voice of opposition to the applicant's petitions and their plan to essentially eviscerate the heart and soul of Section 29. We ask you to consider all of the many legal and common-sense arguments that come to the same conclusion.

In essence, we are asking this commission for one thing and one thing only: To simply not endorse, for this applicant, the privilege of amending the Comprehensive Plan with their preposterous request.

I ask for this denial for many reasons but primarily because the GMP changes requested by this applicant do not make sense and cannot work in this place and on this land.

I would also respectfully propose that these proceedings present a unique opportunity for this body to set a precedent for future similar Comp Plan changes -- challenges, rather. When land such as Section 29 comes up for rezoning consideration, in these instances, when the bar for changing the law might be thought of as higher, when the land in question is more valuable, protected by covenant, will an applicant win approval under the umbrella of the need for affordable housing? We ask the consideration to recommend allowance or denial of such changes under such conditions be undertaken with the greatest degree of care.

A vote to block these applications will be an affirmation that the GMP and its current language as it pertains to Fiddler's Creek, your affirmation that the objectives and policies of the FLUE and the CCME are sound. In fact, the reality is that your recommendation to deny these applications will do absolutely no harm to this developer. No entitlement whatsoever will be taken away. No barrier will be placed in the way of their 6,000 allowable residential-unit build-out. No harm done if the GMP, as it exists today, remains unchanged.

I'd like to address the following topics:

One, muddy waters. The applicant has a history of using misinformation and obfuscation to achieve their goals. Can we believe anything they say?

Two, getting a straight answer. We heard disturbingly specious testimony from the

petitioner's counsel and experts on April 18th.

Three, county disinterest. Prior to this hearing, the Growth Management and legal departments have not been receptive to studying the distinction between a conservation covenant and a federal permit.

Four, the affordable housing calculus. Can Growth Management unilaterally suspend certain code and policy requirements in exchange for a public benefit?

I propose to you that we cannot see this rezoning request in its proper context, to see it in the light of day unless we look back, and this applicant does not want you to look back, because when you do, already muddy waters become muddier.

The applicant would have us believe that this is a benign application, a simple request to rezone 50 or so acres of old farmland for residential use. They say it's land they already own, it's part of their PUD, and to sweeten the deal, they offer the affordable housing cherry on top. Excuse my reference, but that's what comes to mind.

That's how applicants were -- that's how the applicants first presented to the county in 2021, this plan, and to the public in the first NIM in July of 2022. But if only it were all that simple. By following the facts concerning some of the past action of this developer and inactions as well, a complex picture of Section 29 unfolds, one that sadly portrays the applicant as a manipulator of truth with a verifiable track record of disseminating misinformation, as they did in the 9/6/23 neighborhood information meeting when Tim Hall stated for the record that discussions to modify the Section 29 covenants were ongoing with the Fish and Wildlife Service when, in fact, they were not.

This is an applicant who knowingly violated their federal U.S. Army Corps permit for five years. Along the way, they created numerous fictions. They misled, deceived, and misinformed, and I will point out to you how we have witnessed this in this very hearing. They don't want you to look back and hear the false narratives, the diversions, the deflections, the distractions.

This is an applicant who, as I stand here today, is again under internal investigation by the Army Corps for additional noncompliance with their federal permitting responsibilities. Site maintenance in perpetuity and annual reporting on the conserved land are mandatory permit provisions. To the best of our knowledge, the Army Corps can find no records to verify that the applicant has complied with their agreed-upon offsite conservation maintenance plan for Sections 19 and 29, yet another example of an applicant who projects a history of flying under the radar of compliance unless and until caught. I propose to you -- and I'm not happy to do it -- that this is, unfortunately, a well-earned reputation.

From day one of these applications, the petitioner has hid from the county numerous items of crucial information, and this is now well known. It's an indisputable fact that the requirement in 2017 to establish a conservation easement on Section 29 prior to the Oyster Harbor and Estancia construction was not fulfilled until conservation covenants were created in November of 2022.

When we ask why, what do we get? Does Mr. Yovanovich, Mr. Hall, or Mr. Arnold proffer any reason that doesn't dissolve into a fog of word games and confusion? This was a mutual agreement. The deal was crystal clear. The Army Corps would grant to Fiddler's Creek a permit to build Oyster Harbor and Estancia on the condition -- not the suggestion, the condition that a conservation easement would be established on the 606.8 acres of Section 19 and 29. But for five years they never did it.

Two weeks ago, in this room, we heard for the first time a story that they were given a pause or a reprieve in the timely fulfillment of that directive, but there was no such thing. And point of fact, it was supposed to be a straight-up quid pro quo. They got the quid without giving the pro.

And as Mr. Oldehoff said, they ate the steak and didn't pay the bill, and I'll add, until they were tracked down five years later and dragged back to the restaurant.

But you don't have to take my word for any of this. Right here in this room two weeks ago you heard the outrageous stories, the halting explanations, the nonanswers from the petitioner's

attorney and experts. Take Mr. Yovanovich and -- by the way, I have time-stamped references to everything that I'm about to refer to from two weeks ago so there can be no doubt these are quotes from the actual text of what was spoken.

These are quotes from his testimony from two weeks ago. Things like: "We've been totally above board with every agency." "We were not hiding the ball from anybody. We weren't saying, 'Screw you. Catch us,'" or "Do you want me to record it, then unrecord it? That's what we were doing. But the thing we didn't do is record it and then amend it. It becomes messy," or "Eventually they said record something, so we recorded it," or "We don't have to put all 600 acres into mitigation. In hindsight, we should have just bought the PHUs, but we didn't buy the PHUs," and maybe most deceptively of all, "We're still talking through this process."

What does this -- and I'm not happy to refer to it this way, but what does this blathering doublespeak tell us? It tells us that their game is to misrepresent and blur the facts until our eyes glaze over.

CHAIRMAN FRYER: Mr. Erario.

MR. ERARIO: Yes.

CHAIRMAN FRYER: I'm going to interrupt you for a moment, and I won't charge your time for it, but please try to avoid ad hominem attacks on people individually. If you think that someone misstated something, say what they said and then say what you believe is the truth, and then we can draw our own conclusions.

But I just -- I don't think it helps your situation. I don't think it's really consistent with the decorum that we want to have here in this room.

MR. ERARIO: I apologize for that. It's part of, I guess, my emotional state, but I do apologize.

CHAIRMAN FRYER: Thank you.

MR. ERARIO: I'll refrain from that.

You will hear evidence derived from our own research as well as from documents received under FOIA to assure you that the applicant's assertions that they had the blessing of the Corps to take a furlough from compliance with their permit responsibilities for five years are untrue.

I present you with two e-mails from 2022 as evidence of such. And if you could put up, just briefly, Mike, 1A, 1B, 1C, and 1D. They're all copies of e-mails.

So these e-mails present correspondences between the Army Corps and the U.S. Fish and Wildlife Service which essentially disclosed that their first -- their first notice of noncompliance between those two agencies was in 2022, which completely discounts the narrative that there had been ongoing conversations starting in 2018 that resulted in some sort of a reprieve from them filing the covenant. I won't take the time to read through the highlights, but if you could just glance at them on your own, I'd appreciate it.

What's even more interesting about these e-mails than what they say is what they do not say. They do not say, "We've been talking through this process with the applicant." They don't say, "The applicant is noncompliant, and we know about it, but it's okay because the project is still under review." They don't say, "Let's do a compliance review and get this all straightened out."

Instead they say, "As of right now," right now being August 11th, 2022, "no one has approached us about modifying the permit." This is directly contrary to the testimony we heard two weeks ago.

Let's be crystal clear -- and, Mike, could you put up Exhibit 6, please. This is an important exhibit.

This involves a phone conversation followed up by an e-mail from Bob Carey of the Fish and Wildlife Service yesterday, so it's the most current information we can possibly put our fingers on.

CHAIRMAN FRYER: Are you going to be offering these into the record?

MR. ERARIO: Yes.

CHAIRMAN FRYER: Okay. Well, we don't need to have copies up here because you're

going through them, that's fine, but be sure the court reporter has a hard copy.

MR. ERARIO: Okay. Absolutely.

Bob Carey's e-mail, if we look at it -- and just give me a second. I want to get my copy from my notes.

I sent an e-mail to Bob Carey yesterday at 2:48 p.m. asking him to answer two very specific simple questions. One question was, to the best of your knowledge, did the Service have an agreement with the permit holder to suspend or delay the requirement for the creation of the conservation easement on Sections 19 and 29 as mandated by the Biological Opinion at any time prior to the notice of noncompliance sent to the applicant in 2022?

Bob Carey's response to me at 4:04 p.m. was -- and this is very important to take into consideration in regard to previous testimony -- "I have no indication that the Service had an agreement with the permit holder to delay meeting the terms and conditions of the Biological Opinion." And I'll let that speak for itself.

The reality is, Commissioners, that they got caught. They were cited, and they were forced to create the covenants. And, Mr. Chairman, I would ask you if you think it would be useful to this commission to hear from the petitioner's counsel to explain these two diametrically opposed versions of the noncompliance issue.

You will hear more evidence from another presenter to support our contention that the applicant has a pattern of recreating the past in order to fit their narrative. He will address Mr. Yovanovich's claims that, in his words, "We are talking through this process" with reference to supposed ongoing talks to buy mitigation land in Glades County, if you remember that testimony from a few weeks ago.

You will see that this, too, is -- I don't know if you can use the word "lie" -- is a misstatement meant to confuse you and to hide the true facts of the matter. Under oath, I testify that on a call with Mr. Carey's office on April 19th, 2024, I was assured that the Fish and Wildlife Service letter of January 31st, '24, is a final determination.

Mr. Yovanovich continues to claim that he can modify the agreement. He points to a clause in the covenant. But that ship has sailed. He asked and he asked and he asked again. What he cannot accept is that he has been answered. There is no longer any pathway whatsoever with regard to modifying the Army Corps permit and the Biological Opinion. It's over.

In fact, the very purpose of the letter, the January 31, '24, letter, is a direct written response to Turrell Hall, and to Tim Hall in particular, to clearly state the Service's position on modification and discredit Mr. Hall's publicly memorialized statements at the September 20 -- at the September 6th, '23, NIM, statements that were totally inconsistent with the actual facts of the matter.

The Fish and Wildlife Service letter provides us with incontrovertible closure to the fabrication that modification was in September of '23 or is now still under review. It's a final action that contains words such as "not possible," "unable to process." There can be no doubt of this.

The letter itself is called a "letter of modification inability." It reiterates and memorializes their long-standing position using the following words -- which I think we've already heard before, but I'll say quickly -- "modifying the project and the biological assessment in the context of the original Corps permit is not possible," and I'll forego reading the rest of that.

Moving on. Numerous representations made by the petitioner's counsel and experts during the course of this hearing are so deeply troubling to me that I feel compelled to cite each and every one of them in detail; however, for the sake of time, I will only mention a few in order to get them into the record.

Regarding Mr. Hall, time after time after time we heard halting responses to yes-or-no questions. Here are just a few examples from his testimony in this room two weeks ago. And please note that I have provided you with an exhibit which will provide time-stamp references from the video recording of the meeting for each of the following quoted excerpts.

When Mr. Hall was asked about noncompliance with the BO in 2018 and to discuss why the required easement on Section 29 had still not been filed in July of '22, he stated -- he said, "The Service requested that we do a compliance analysis or a compliance check to see what was or was not done with respect to the permitting. We told them no, the easements had 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 easement on the property and then take it off."

In light of the e-mails we have presented, unless Mr. Hall can provide some proof of these statements, we must question their veracity.

At one point Mr. Hall was asked regarding the non-filing of the easement in 2018. "You went ahead with that development in Oyster Harbor and Estancia, and you're saying you were in communication with the Fish and Wildlife Service the whole time and they never required that easement, and they never asked you to record it?"

And Tim answered, "Yes. They understood." That's a keyword. "They understood that it had not been recorded." Again, in light of the e-mails we have presented, this appears to not be true.

At another point Mr. Hall said, "We've been technically noncompliant with the permits, but we've been in coordination with Fish and Wildlife Service so that that was not a hidden noncompliance." Per the internal Army Corps e-mails that we have put into evidence, we know that as far back as August of 2022, the Corps, in their own words, stated, "As of right now," 2022, "no one has approached us about modifying the permit."

"No one has approached us about modifying the permit." They did not say, "We're following up on your five-year amnesty."

This perception they have created that for five years there was a secret, unwritten understanding that the noncompliance was just fine with the Corps is not supported by any document we can find or anything that has been communicated to us by the federal agencies. I would ask the Chair if the petitioner is able to produce anything to verify their purported claims of Corps-sanctioned noncompliance.

Mr. Hall referred to the wildlife value of Section 29 as "at the lower end of the scale." In fact, the environmental value of Section 29 and, in particular, the portion of Section 29 earmarked for development, was reaffirmed in crystal clarity in the January 31 letter from Bob Carey to Turrell Hall. Quoting from that letter, Mr. Carey writes, "The 57 acres proposed to be removed from the conservation covenant and used for development are of high ecological value to several species, including Florida panthers, Florida bonneted bats, and American crocodiles. This acreage also protects the watershed of Rookery Bay National Estuarine Research Reserve." Clearly, this expert assessment of Section 29 by the U.S. Fish and Wildlife Service is at odds with Mr. Hall's expert opinion that this acreage is at the lower end of the scale.

And one last word concerning Mr. Hall's testimony from April 18th, when asked about telemetry data on the map provided with the January 31st, '24 letter, he stated, "I believe the document you're looking at shows all of the recorded radio telemetry data points from 1989 until now. So it's over the course of however long that is, 35 years, multiple cats at different times." Those are his words.

He also stated, "The way I can tell which way the cat's moving is because each one of these data points has a day associated with it, so you can track how the cat moves based on the days and where they were located on those days." Now, I don't know what Mr. Hall is seeing when he looks at that map. I don't see time stamps. I do see telemetry hits and an inset list of corresponding radio collar ID numbers making the map important because it validates verifiable tracking data showing the presence of Florida panther in Section 29.

But is it Mr. Hall's expert opinion that he can recreate from that map when and in what direction each particular cat moved over a period of 35 years? That's 12,775 days. I leave it to you to consider if this falls under the category of an expert opinion.

The petitioner sent a traffic expert up to the podium who presented a report illustrating

six-year historical crash data for the intersection of Auto Ranch Road and Route 41. The report concluded that there were six crashes in six years. Now, this report -- I'll leave out a comment I was going to make about it. I will point out that the crash data they brought to this hearing was compiled over a six-year period on an intersection with Route 41 and a 1.2-mile dead-end rural road.

The report covers vehicular traffic that is generated solely by the residents of this dead-end road. The TIS data projects, their TIS data, that there will be more than 4,800 daily turns at this intersection when and if the project is built.

I ask you, what does six crashes at the intersection of a dead-end road have to do with 4,800 daily trips on a through street? We may have been better served by hearing what the pedestrian protections -- what pedestrian protections will be put in place to control the movement of speeding vehicles and drivers anxious to get home who will be tempted to jet down a straight, smooth newly-paved roadway alongside a sidewalk separated from the road by just a few feet past driveways where kids will be riding their bikes and people walking their dogs. But, no, instead we hear about six accidents in six years on a dead-end road. It's a strategy that speaks for itself.

In his own words, Mr. Arnold gave us his -- Mr. Arnold gave us his personal version of the facts numerous times on April 18th. When speaking about Section 29 with a proposed density of 15 units per acre not being out of character with the surrounding area, a neighborhood of one-story, single-family homes on one-third-acre tracts, he said, "I'd argue that it's not really out of character because, as Rich mentioned, to the northeast you're going to have a town. It's going to have a lot of density."

So it's not out of character because a future town that hasn't been designed or built yet is going to have a lot of density, a town that may someday come into existence in the next 10 years or so, according to Mr. Bosi's opinion?

Or in response to a question about Section 29 touching corners with Fiddler's Creek proper, he said, "There are some provisions for non-continuity, and I think we have another example where they touch corners."

With all due respect, since he brought it up, can Mr. Arnold show us where in Collier County we have another example, in his words, of a comparable PUD where two distinct multi-hundred-acre parcels of land touch corners at a single point and where that condition precludes any possibility of connectivity for pedestrian, bicycle, or motor vehicle movement as it does here in Fiddler's Creek? I would ask the Chairman if we can know if and where this place exists.

Mr. Arnold showed us some representative pictures from a photo point in the Royal Palm neighborhood. The photos are taken from the perspective of standing curbside on Royal Hammock Boulevard which is an average of 100 to 150 feet north of the canal; however, the visual impact will actually be seen from a resident's backyard lanai, not the street in front of their house.

One of the photos shows the lanai behind a resident's home, and it's clearly visible how much closer that lanai is to the residential construction than the photo point. The photos are grossly misleading because they represent a manufactured viewpoint that does not conform to the diagram that they presented.

Mr. Arnold -- and, Mike, could you put up Exhibit 3, please.

Mr. Arnold was asked to estimate the traveling distance from the middle of where the apartments will be located out to Route 41. His response was, "About a mile and a half" --

THE COURT REPORTER: Can you slow down?

CHAIRMAN FRYER: Slow down.

MR. ERARIO: I'm sorry. How much time do I have left?

CHAIRMAN FRYER: Let's see. You have until -- 1:16 and 35 is 1:51.

MR. ERARIO: Okay. I'll go slower. I'm sorry.

Mr. Arnold was asked to estimate the traveling distance from the middle of where the apartments will be located out to Route 41 along Auto Ranch Road, and his response was, "About a

mile and a half."

I've gone onto Google Earth, and I've created the actual distance, which is more like 2-point-something miles. So the distance along Auto Ranch Road has been measured at exactly 1.2, and using Google Earth we add another .8. So a more accurate estimate of the total distance is, in reality, two miles, not 1.5 miles. So, again, misinformation.

And this is extremely troubling. He was asked to comment on an exchange with a resident at the 9/6/23 NIM where the speaker stated, "Now, I know that Tim just said those conservation covenants were filed. They're on record in Collier County in November of 2022."

And his response to that is, "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 from 2017 to 2022." Now, we have to really think about that for a second. I can't convey emphatically enough just how disconcerting this statement is.

Mr. Arnold is the director of planning and a co-founder at Grady Minor, whose company has been the civil engineer of record for this Fiddler's Creek project during its entire five-year history. We ask the Chair to question how this seasoned professional forgot or misremembered or got confused to the extent that he didn't know if the Oyster Harbor/Estancia development had "ensued," using his word, between 2017 and 2022.

This is an outrageous statement. We know that construction on the site started in 2018, and certainly he knows this as well. There is something disturbingly wrong with this misstatement, and I will entrust to the Planning Commissioners how to process this diversionary and possibly false statement.

I'd like to touch upon Mr. Arnold's description of the applicant's consultation with Dan Summers -- and we've heard a little bit -- heard a little bit about this already -- and the Emergency Management department to come up with the appropriate mitigation for construction in a Coastal High Hazard storm area.

The mitigation prescribed by Mr. Summers is being presented as offsite cots and a generator, as we know. The Chair questioned, two weeks ago, if this was an appropriate mitigation for a high-density development in the Coastal High Hazard Area, and we join you in expressing our concern.

Per the statute, the appropriate mitigation calls into consideration emergency evacuation and on-site safety challenges, not just cots and a generator somewhere in a building miles away.

With respect to Mr. Summers, we asked how offsite cots and an offsite generator address the potential emergency conditions that would exist for residents of the proposed development if they should be flooded in and without power for an extended period of time.

The stated directors of the statute state -- and it's 163.31789(2)(D) -- "a component which outlines principles for hazard mitigation and protection of human life against the effects of natural disaster including -- including population evacuation which take into consideration the capability to safely evacuate the density of coastal population in the event of an impending natural disaster." I submit to you that whatever formula Mr. Summers used to come up with cots and a generator to answer the challenge of evacuation and human safety falls a bit short.

COMMISSIONER KLUCIK: Mr. Chairman?

CHAIRMAN FRYER: Go ahead, Commissioner Klucik.

COMMISSIONER KLUCIK: If I may, I am going to have to leave, but I would -- I would like to say a few things before I leave. And I don't know if that leaves you without a quorum. It looks like you have a quorum. But I have some --

CHAIRMAN FRYER: Well, yeah -- you can't be counted toward a quorum anyway. But when do you have to leave, sir?

COMMISSIONER KLUCIK: In 15 minutes, so I was wondering -- I have about a five-minute -- five minutes that I would like to --

CHAIRMAN FRYER: All right. We will --

COMMISSIONER SHEA: Let him finish.

CHAIRMAN FRYER: Yeah, I'm going to.

You have -- you have four more minutes, Mr. Erario, and then we'll hear from Commissioner Klucik.

COMMISSIONER KLUCIK: Thank you, sir.

MR. ERARIO: Okay. I will -- I'll cut short some of my comments here. I had essentially my comments regarding the legal staff and Growth Management staff. I'll just say very briefly that for years, at least -- at least one-plus years, we have tried diligently to have them review what we believe is an essential difference between enforcing or adhering to the terms of a conservation covenant and the idea or the policy that federal and state permits are deferred until site review. I would just submit that we strongly believe that those are two different considerations. They cannot be lumped under the same umbrella.

And as much as we tried to get those questions answered before this hearing, we were unable to do so, and that included multiple e-mails and some meetings with Derek and Heidi and with Mr. Klatzkow.

So we would just say that we maintain that the county has a duty to review and enforce already existing land-use restrictions and that there is a clear distinction between enforcing a federal permit and abiding by the terms of a covenant, and we have some references to that and already mentioned FLUE Policy 7.1 and CCME Objective 6.1, which I will not read again.

CHAIRMAN FRYER: Two minutes, sir.

MR. ERARIO: Mr. Chairman and Commissioners, if this application wins your recommendation, the resulting damage that will be done to Section 29, to the surrounding wildlife habitat, and to the neighboring human communities is obvious. But looking further, the repercussions of a decision to approve would be far-reaching and would resonate long into the future.

Other developers who own land that is protected under easement or covenant will come into the room and cite the decision you make today. Will it be a decision that will encourage the evisceration of other preserved land parcels by tomorrow's developers who will use affordable housing and the funding of capital improvements as an incentive to do an end run around GMP guidelines, or will it be a decision that upholds the county's commitment defined by the objectives and policies of the GMP and the LDC to prevent development in places where it simply does not belong?

We acknowledge the need for more affordable housing projects in Collier, but we do not support the transparent use of affordable housing in instances like this by a developer who will actually be enriched by 70 percent of the units which will reap enormous long-term financial gain.

Will the applicant on this land win the day by dangling the affordable housing carrot? If we are to believe that the existing protections on 29 and the many varied concerns for negative effects on the surrounding community matter, then will affordable housing still be the determining factor?

CHAIRMAN FRYER: Less than 30 seconds.

MR. ERARIO: I propose today that the bar has not been met to amend the GMP in favor of what the applicant is asking for. Approval essentially amounts to rewarding this applicant for not living up to numerous prior agreements.

In closing, on behalf of all of us in this room and online remote who support the arguments I've presented, I beseech you not to recommend approval of these applications. I implore you to put a stake in the ground today and say, "No, there is a limit to how far a developer can expect the laws and codes to be amended." I plead with you to send a message to this and all future developers that agreements mean something. Honoring contracts and permits mean something.

This is the first year of a new century of Collier County government. Let it be written that a bell was sounded today signaling that we're back on course, that anyone who wants to be both a good neighbor and a good developer, no matter how big you are, no matter what kind of influence you wield, the rules will apply.

All I ask is that today you vote unanimously not to make an exception to the rules on behalf of this petition and this application.

CHAIRMAN FRYER: Thank you, sir. Thank you.

Now, Commissioner Vernon, you're signaling, but Commissioner Klucik has asked to speak.

COMMISSIONER VERNON: I have two seconds. All I was going to say is don't forget to submit your exhibits.

CHAIRMAN FRYER: Actually, he had.

COMMISSIONER VERNON: No, she doesn't.

CHAIRMAN FRYER: I believe he did -- you have --

THE COURT REPORTER: (Shakes head.)

COMMISSIONER VERNON: She doesn't have a copy; that's all.

MR. ERARIO: I have another one here. Who would like it?

CHAIRMAN FRYER: Give it to the -- give it to the court reporter.

COMMISSIONER VERNON: The court reporter needs it; that's all.

CHAIRMAN FRYER: Thank you. Thank you very much.

Commissioner Klucik, you have the floor, sir.

COMMISSIONER KLUCIK: Thank you, Mr. Chairman, and thank you for indulging this. I really apologize. My son is graduating from Ave Maria University, so is his fiancée, and I'm meeting her father for the first time in about 10 minutes. So there you go. That's the important family event.

So the original -- these are the things I'm thinking as I -- you know, as we've cogitated what -- you know, all of the evidence before us.

The original ordinance, 98-13, mandates in Section 5.5 that the landowner grant the county a conservation easement on all 693 acres in Section 29. Unequivocal. There's no way to interpret it otherwise.

And by all accounts, including in Varnadoe's, the attorney for the petitioner at the time, according to his repeated assurances, this was a negotiated requirement that, you know, approval seemed to hinge on that during -- if you read the minutes -- for approving Ordinance 98-13, which is the Fiddler's Creek PUD.

The land-use summary table, it's -- and I would hope that Mr. Bosi could put that up. It's called Section 3, and land-use summary, Marco Shores Planned Unit Development. But it states, recreation and open space -- this is all part of 98-13. "Recreation and open space will increase from 790 to 1483," which is the 693 acres. And then it says in the footnote it includes 693 acres of preserve, and then it even says, "100-acre park with lake in Section 29 will originally contain a nursery, and park uses will be developed later in the project." So all 693 acres, all 693 acres.

The ordinance in Section 8.5 provides a list of permitted uses in Section 25 -- 29, and this is every acre of Section 29. And it lists all the items. And then Item G, which is the last item, makes it very clear that these are all related to preserving this land because it says, "Any other conservation, recreation, or related open-space activity or use." G, "any other conservation." So that's all 693 acres have a conservation easement, and the conservation easement allows those things.

And Florida Statutes 704.06 tell us that conservation easements inquired [sic] by a government body can include recreational or open-space use.

So, you know, back to my original point, the original ordinance was very clear that all 693 acres are off limits for all future use, and that was a bargained requirement of getting their ordinance approved. They had to state on the record that they were going to preserve all 693 acres.

Section 5.5 of the ordinance also requires, "will comply with LDC Section 3.2.8.4.7.3," which we've been talking about. Well, that LDC section requires -- and this is key. This is really important, and I hope we can have that portion up on the screen. It requires, "Any such

conservation easement shall be provided for all of the protected preserve acreage," meaning all 693 acres of the Fiddler's Creek addition, not just a portion of it, and that the conservation easement is required to appear also on the subdivision plat with specific land dimensions and specific restricted uses.

It doesn't say that you don't file it until you plat it. There's nothing that states that. The plain language of this section of the LDC does not state anywhere that a conservation easement is not required until the subdivision is platted. It simply does not state that. Rather, it requires that any such subdivision plat must include the information that is contained in the conservation easement or tract.

LDC Section 3.2.8.4.7.3 actually implies that the conservation easement will preexist and then be incorporated into any eventual future subdivision plat. You cannot read it -- the language in it plainly does not state that you don't have to give the easement until you plat it. That's just not correct. Whether people have been reading it that way or not, that's not what it says.

It does not stave off the requirement to record a conservation easement particularly in this situation, but it does ensure that any eventual subdivision plat of that land must recite with specificity the restrictions of any such conservation easement.

So what it's saying is -- and here's the language. This is the language I'm quoting. "A nonexclusive easement or tract in favor of Collier County shall be provided for all the protected preserve areas" that are required -- and I'm inserting "that are" because that's the only way to read it -- "a nonexclusive easement or tract in favor of Collier County shall be provided for all protective preserve areas that are required to be designated on the subdivision plat." So that easement needs to be included in the subdivision plat. That's what that paragraph says.

Then it says, "Boundaries of all" acquired -- "all required easements shall be dimensioned on the subdivision plat." Again, this is all aimed at making sure the plat includes everything that's in the easement. There's a conservation easement. "Hey, guys, don't forget you've got all these restrictions. Make sure to include that in your plat."

And it also says, "Required protected/preserve areas shall be identified as separate tracts or easements." Again, it's making sure that the existing tracts or easements are included with specificity, so everybody knows what's off limits; where does this apply?

And then it says, "All requirement easements for tracts for protected/preserve areas shall be dedicated on the final subdivision plat" -- "to Collier County," I would insert there because that's in the end. "All required easements or tracts for protected/preserve areas shall be dedicated," and where shall they be dedicated? On the final subdivision plat to the Collier County. And also those recorded easements or tracts shall establish the permitted uses for said easement or tract on the final subdivision plat.

So the whole thing, that whole section is making sure that the plat includes the conservation easements. It does not stand in any way -- you cannot read that to say that you don't have to have it, you don't have to record the easement until later. And here it doesn't matter. So we have to have compliance. So that's what it said. The ordinance said you have to comply with the statute -- or this LDC section. So the LDC section simply says that if there's a conservation easement, you have to record it in the plat.

So it was due 20 years ago, or whatever, 25 years ago, and they never did it, and this is nonsense, in my view. This is -- it's outrageous. And I would be voting against it. Unfortunately, I won't be voting because I do have, unfortunately, important family commitments. So there you go.

CHAIRMAN FRYER: Thank you, Commissioner. And before you leave, I want to compliment you on a very good piece of lawyering and research. I found it to be clear. I have not made up my mind how I'm going to vote yet, but I want the applicant to know that I share your concerns and would -- and will want to hear some persuasive arguments to the contrary when time comes.

MR. YOVANOVICH: There were -- I'm not going to ask the witness any questions. I'm

just asking, can I have a copy --

CHAIRMAN FRYER: What do you need?

MR. YOVANOVICH: I just would like a copy of the un-redacted documents he gave you. They're all public records.

CHAIRMAN FRYER: Do we have that?

MR. ERARIO: Those documents --

CHAIRMAN FRYER: Come to the mic. Come to the mic.

MR. YOVANOVICH: I'm not asking questions. I just want --

CHAIRMAN FRYER: I understand. I hear you.

MR. ERARIO: As I mentioned, some of the documents that I've presented were obtained through FOIA, and they were redacted by the agencies who presented them.

CHAIRMAN FRYER: Do you have anything that provides any more information that had not been redacted than what you've already supplied?

MR. ERARIO: Absolutely not.

CHAIRMAN FRYER: Okay.

MR. ERARIO: Any document that I presented that has any redactions on it were done by the issuing agency of that document.

CHAIRMAN FRYER: Okay. Did you want to say something, Mr. Oldehoff?

MR. OLDEHOFF: Yes. I can help him. Gary Oldehoff.

I have letters from the Fish and Wildlife Service -- their FOIA people -- that came with FOIA requests that identify what has been identified -- or has been deleted or redacted and why. And I can -- I can get those, you know, letters in. These are just redactions that are made --

CHAIRMAN FRYER: Okay.

MR. OLDEHOFF: -- by the federal government according to their federal regulations.

CHAIRMAN FRYER: I think his request has been answered. Thank you very much.

So it's --

COMMISSIONER KLUCIK: Mr. Chairman?

CHAIRMAN FRYER: Yes. Go ahead, Commissioner.

COMMISSIONER KLUCIK: I was going to say, I'm going to submit those remarks that I read from. I'm going to submit them for the record. I'm going to send them to Mr. Bosi and Mr. Bellows, if they can be added to the record.

CHAIRMAN FRYER: Thank you. It's 2:02. We'll be in recess for 10 minutes until 2:12.

(A brief recess was had from 2:02 p.m. to 2:12 p.m.)

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

CHAIRMAN FRYER: Thank you, Mr. Bosi.

Ladies and gentlemen, let's -- let's return to our seats and continue, because we have lots to do and not a lot of time in which to do it.

I have -- I'm of the view -- and I'll ask the Planning Commission to -- if they wish to overrule me, it's their prerogative. I'm of the view that, for the most part, most of the issues, if not all of the issues, have been pretty well put out on the floor. Now, if there are brand-new issues that have not been put out, definitely we want to hear about those, but if it's now a matter of repetition, I think, without taking away your opportunity to speak, ladies and gentlemen, it might -- it might serve you best in the long term to let nature run its course.

Having said that -- having said that, I'm also going to exercise the prerogative of the Chair. Going forward, people who have signed up to speak, whether they've been ceded time or not, will henceforth be limited to three minutes whether they're on Zoom or in person.

With that, who's the next speaker?

MR. JOHNSON: Mr. Chair, the next speaker is Josette Riopelle, and she has been ceded time by one individual, so Josette --

CHAIRMAN FRYER: Well, she's -- we're not ceding time. This is going to be three

minutes per shot. It's going to be the lightning round.

MR. JOHNSON: Ms. Riopelle, please proceed to the podium. Followed by Edward Pinardi.

CHAIRMAN FRYER: Okay. And, ma'am, you are fully entitled to say what you want during your time period, but my recommendation would be if you have new material for us to consider, I'd focus on that during your three minutes. State your name.

MS. RIOPELLE: My name is Josette Riopelle.

CHAIRMAN FRYER: Spell your last name.

MS. RIOPELLE: R-i-o-p-e-l-l-e.

CHAIRMAN FRYER: Thank you.

MS. RIOPELLE: I am a resident of Royal Palm Golf Estates with my husband and my little dog. And excuse me for chewing gum. I have a dry-mouth problem, so hopefully that's not going to affect --

CHAIRMAN FRYER: Understood.

MS. RIOPELLE: Okay. So I'm going to point out a couple of things real quick in my three minutes. The first is that under LDC Section 10.02.08, there is -- it speaks about instituting a grant of special privilege to an individual owner as contrasted with the public welfare. It's our belief that if this goes through, that will contract special privilege to this particular owner. Now, I had some -- some things, but I'm going to skip over those because I want to show -- if you would put up No. 1, Mr. Bosi.

CHAIRMAN FRYER: While that's happening, I want to commend you, ma'am, because that is something new. I mean, we've heard a little bit about it, but to bring that to our attention is helpful, and I commend other people to do the same thing when it's your --

MS. RIOPELLE: Did you catch that? It's -- if you need to review it, LDC Section 10.02.08, Subsection F.12, and it goes into it.

CHAIRMAN FRYER: Thank you. Okay. Go ahead.

MS. RIOPELLE: The second thing, if Mr. Bosi would put that up, in the original speech, a picture was given very quickly by Mr. Arnold and a photo rendering of what we, as neighbors, would actually be looking at. This is a better description. Very easy to see -- average person.

Down at the bottom are our little one-story homes. Next to it is a 40-foot palm tree. Behind that is the 69-foot -- which will actually be bigger than that -- size. There's no amount of pushing that back 242 feet or 500 or 80, all these numbers that have been thrown out, that you are not -- this is not going to be very visible. And we are not talking about one building. We are probably talking about eight or 10.

The other part I would like to point out, if Mr. Bosi would then put up No. 2, again, it's been clarified that if it wasn't for affordable housing, this would not go through. I took some time and did a -- looked at the actual amounts of affordable housing that are available. These are from -- these numbers are taken from the -- excuse me. I actually -- that's because I have to skip here. But -- okay, per the Collier County Growth Management Division, as you see it up there, the first listing is all of the homes -- this is all just east of Collier road on either north or south of 41 till you get down to Royal Hammock.

There are currently in that area 1,506 affordable units available. I'm not saying, you know, they're empty, but there are 1,506 affordable units currently there.

Then, Mr. Bosi, if you'd put up the second. And if you need, you can ask Mr. Bellows. He gave me the information for this.

There are any -- there are four major proposals all along Greenway Drive, which is also on the south side of 41 east of Collier, but it's further west towards Collier than Royal Palm. It shows every one that's in the works now, which we will presume would be all approved because they all have a component of affordable housing, and you will see that that is adding about -- I can't -- now I forget -- 810 more units currently will be added. So you're going to take the 1500 roughly, the 800 roughly. We're already going to have 2300 without this little 250 units that are in an

environmentally and ecologically sensitive area that is supported on three sides. As somebody said, it's a green spath [sic].

You have a state park, you have a marsh, you have an estuarine. And from a personal standpoint -- and I sit there every night. I watch the birds fly from Collier Seminole -- there's 800 acres of mangrove -- over to the Rookery and back. They make -- flocks of them make that every single day, and every single night we hear the bats.

CHAIRMAN FRYER: We're at three minutes, but in fairness to you, do you have any new points that you want to make?

MS. RIOPELLE: The only other one was as far as special privilege, there's also a development called -- changes being requested. It constitutes substantial changes. It's in the LDC Section 10.02.13, which means that they are asking for a substantial change from the mitigation that they were proposed -- that they were required to do.

CHAIRMAN FRYER: Okay. Thank you, ma'am, very much.

Next speaker.

MR. JOHNSON: Next public speaker is Edward Pinardi. Edward Pinardi, please proceed to --

CHAIRMAN FRYER: Mr. Pinardi?

Okay. And you're going to supply those to the court reporter.

MR. PINARDI: That was misinformation. I ceded my time.

MS. RIOPELLE: To me.

CHAIRMAN FRYER: Oh, okay. Sorry. Next.

MR. JOHNSON: Next person is Gary Oros. Gary Oros, please proceed to the podium. He's followed by Michael Hagan.

UNIDENTIFIED SPEAKER: He had to go to work.

CHAIRMAN FRYER: All right. Next.

MR. JOHNSON: Michael Hagan? Michael Hagan, are you here?

(No response.)

CHAIRMAN FRYER: Next.

MR. JOHNSON: David Bowton. David M.W. Bowton.

CHAIRMAN FRYER: That's you; come on up.

MR. BOWTIN: It's a mistake. I didn't want to speak.

CHAIRMAN FRYER: Okay. Next.

MR. JOHNSON: Katelin Reisinger. Katelin Reisinger?

CHAIRMAN FRYER: Here comes Ms. Reisinger.

Take five minutes because -- we're moving along here. Spell your last name for me.

MS. REISINGER: R-e-i-s-i-n-g-e-r.

CHAIRMAN FRYER: Thank you.

MS. REISINGER: Am I good to start?

CHAIRMAN FRYER: Yes, ma'am.

MS. REISINGER: Thank you.

CHAIRMAN FRYER: Five minutes.

MS. REISINGER: Good afternoon. My name is Katelin Reisinger, and I'm a senior at Marco Island Academy who will be attending the University of Florida for marine science in the fall. I have lived in Eagle Lakes for 17 years, which is saying a lot because I'm 17 years old.

And when talking about attainable housing, I think it's important to mention my dad is a beach manager who goes by "Old Beach Guy," and my mom is a respiratory therapist, and they're both putting three children through college, including my brother in law school, and me and my identical twin sister through our first year of university, yet I'm standing here not speaking as a resident of my community or an environmentalist. I'm standing here as a scared 17-year-old who's watched her favorite parts of her community be bulldozed and turned into apartment complexes.

Nearly 20 years ago, my dad bought this house for one reason, the amazing environment in

the backyard. Growing up, I have grown to love and respect this land. Since I was six years old, I've sat outside watching this preserve. Now I have all my regulars, which I've named, such as Oscar, the osprey, or Amy, the anhinga.

However, you are interested in the common birds that I've grown to love. I'm here today to tell you about the endangered ones such as snail kite and wood storks. And I'm going to assume that none of you guys are birders. But a snail kite is so awesome to see. They are super endangered and so rare, and they're awesome birds.

But you've all -- moving out of the bird section, I've also seen tons of black bears and tons of bobcats, and I've seen a Florida panther less than two miles away from my home.

As much as I have a distaste for the potential flooding of my childhood home, which others will speak on much better than I can, I feel a personal need to protect these animals I've grown up with. So I'm asking you today to help you [sic] protect these animals that mean so much to me.

Thank you.

CHAIRMAN FRYER: Thank you, ma'am, and good luck in your studies.

Next speaker.

MR. JOHNSON: Mr. Chair, our next public speaker is Nick Marino. Nick Marino followed by --

CHAIRMAN FRYER: Mr. Marino.

MR. JOHNSON: Mr. Marino?

CHAIRMAN FRYER: Not here. Next speaker.

MR. JOHNSON: Haydn Clough. Haydn Clough, G or C-l-o-u-g-h.

MR. CLOUGH: It's pronounced Clough, Clough.

MR. JOHNSON: My apologies.

MR. CLOUGH: That's all right. First name's Haydn, H-a-y-d-n.

CHAIRMAN FRYER: Thank you. You have five minutes.

MR. CLOUGH: Well, thank you. I appreciate that.

I want to say first I have not had a faith in government, government issues and government rulings.

The first time I was ever involved in a government issue was the last time that we had a meeting, and this is my second time.

I'm hoping that by today -- and our friends and family of Royal Hammock will be heard today and that you guys will make the right decision with the right information. And I appreciate your candor on the chiding of us and the forbearance of us, and I appreciate that, for this is most of us first times being here. So thank you.

So Mr. Klucik had asked the question of Chris Koren when she was here the first time, and she didn't have the answer for that. I have the answer. So the last time Chris Koren was asked, when we had the flood of Ian -- they talked about the water and the water receding and the water issues, and it was within two inches of her home.

My wife called me and said, "You need to come. You need to come see this now."

I observed a 4-foot wall of water coming from San Marco Road through that field and dump into the canal. When that canal had filled up, it had breached the land and came through the undeveloped pieces of property.

That night we were having a super moon, and the high tide was at 4 o'clock in the morning. At that time my home was already an island, and I sit approximately 10 feet above sea level. The land in my property goes down on a slight angle. I could be anywhere 18 inches, 12 inches above sea level at the canal level.

So the night when we went to sleep at 11 o'clock, I had, within eight feet of my pool, water. I had 10 feet in the front of my house, and I had three feet of standing water at my mailbox.

To answer his question directly, he had asked when the water started to recede. It was a day and a half later that the water started to recede. It was more like seven to 10 days before the water was back down at a base of -- level that you could say the canal was either full or a little

higher than normal.

At that time, we took a drive around. We went over to Goodland. We went over onto Auto Ranch Road. We went to see a few other places that were affected by this devastation. Auto Ranch Road had still two feet of standing water on that road, and their -- as they so eloquently put it, the hamlet that's over there was buried in water.

My suggestion, common sense -- I'm just a regular layperson. If you took a tub and you put a sponge in the bottom of the tub, the land, and you put a rock inside that tub, the water's coming out. Any other future rains or heavy rains that come in the seasons with Florida, we're going to be drowned. And if they want to do their things and elevate the road to this 25- and 100-year flood zone, they might as well raise the road 40 feet, because what they're going to do with that is not make us an island; they're making us a pit for the water to come into. We're not going to be just clay in [sic] water. We're going to be suffering with water.

And since Ian, my homeowners' insurance has gone up almost \$4,000 just because of Ian.

CHAIRMAN FRYER: You have about a minute and a half, sir.

MR. CLOUGH: Yes, sir. Thank you.

I feel, from what I've seen -- and, again, I'm just a regular layperson. I feel like this side is presenting itself to me as a carnival and the huckster with the shell and the pea. Where is it now? Where is it now? We know where the pea is, but it's hidden, and then it appears somewhere else where it should be. And I think that everybody else is speaking on that as well, and I won't go any further on that.

In the beginning, the first that we heard of this, their goalposts have constantly changed. At first, it started out as eight buildings at 45 feet high, then 10 buildings at 65 feet high, and then 12 buildings at 75 feet high; four floors, six floors. The goalposts are constantly changing to the point where Mr. Yovanovich had said the last time that we were here -- because I wrote it down to the quote -- he looked at you and pointed a finger and said, if I want to build a town out, there, I'm going to build a town. Me, respect of the Court and the issue here, I found that deplorable.

So, in closing, you guys have a motto for the state that you represent, "Exceeding expectations every day." I hope that you would hear us, look at the law, do the right thing, and bring my expectation back in the government, faith.

CHAIRMAN FRYER: Thank you, sir.

Next speaker.

MR. JOHNSON: Next public comment is Gayle Ripetto, Gayle Ripetto. Gayle will be followed by Brad Cornell.

Ms. Ripetto?

CHAIRMAN FRYER: Ms. Ripetto here?

(No response.)

CHAIRMAN FRYER: Apparently not.

MR. JOHNSON: Okay. Brad Cornell, please. Please make your way up to the podium, either one.

Brad will be followed by Richard Solimine.

CHAIRMAN FRYER: Thank you. Five minutes, Mr. Cornell.

MR. CORNELL: Good afternoon, Mr. Chair, Commissioners. I'm Brad Cornell. I'm the policy director for Audubon Western Everglades. I'm here on behalf of Audubon Western Everglades and Audubon Florida that owns Corkscrew Swamp Sanctuary. I appreciate the opportunity to address you on this concerning proposal before you.

Audubon has reviewed the proposed revisions to the Growth Management Plan, the Fiddler's Creek PUD, and the Fiddler's Creek development order. Based on numerous factors and principles, we strongly oppose the approval of these changes. Our reasons are summarized below, and I'm going to try and be briefer, because people have made lots of good points, and you-all have asked us to be as brief as we can.

The proposal is inconsistent with the Growth Management Plan. Audubon Western

Everglades and Audubon Florida object to changing the plan's Rural Fringe Mixed-Use District Neutral Lands on Section 29 to add 750 residential units almost 70 feet in height.

Audubon helped write the Rural Fringe Mixed-Use policies and helped defend them in court, along with Collier County. That was back in 2003. We were side by side in court. Undermining their intent by increasing the density in an environmentally sensitive area that U.S. Fish and Wildlife Service has required to be a permanent preserve for endangered panthers and Florida bonneted bats is unacceptable.

Second, Audubon agrees with staff's recommended condition to require a new approved Army Corps of Engineers Section 404 permit before granting a Site Development Plan or plat. Audubon recommends an additional condition including requiring a new U.S. Fish and Wildlife Service biological opinion before granting a Site Development Plan or plat.

Also, if the county is deferring to federal wildlife experts, U.S. Fish and Wildlife Service specifically, Audubon recommends that that be the basis for recommending denial of this, because that is, indeed, what the Service has said to Collier County and to the developer.

Third, the site is inappropriate for development due to the offsite impacts to hydrology of the surrounding conservation lands and preserves as well as adjacent communities. The staff reports note, the stormwater management issues will require a, quote, "comprehensive approach" to solve the stormwater management needs of this site." That plan has not been created and is not likely to solve the many low-elevation problems short of doing things like bridging the entire length of Auto Ranch Road, to answer one question about what would we do about stormwater. That would not be a cheap solution, and it still would leave a lot of areas flooding.

And I want to point out one other example. Corkscrew Swamp Sanctuary has lost, almost entirely, its nationwide renowned wood stork rookery, and one of the main contributors to that loss is the stormwater management and flood protection canals that have drained not only the Golden Gate Estates around -- and the Corkscrew Island neighborhood but have also drained all of our wetlands.

And so we dry down entirely every year now, and that hardly ever used to happen in years past, and that's the consequence of poor stormwater management, and we would tell you that this is not a place you're going to succeed with a stormwater management plan.

And, finally, Audubon notes the inconsistency of this proposed intensive development with many Collier County zoning and planning review criteria, and those would be numbered 1, 2, 6, 8, 9, 11, 12, 13, 14, 15, and 16, as enumerated in the PUD amendment staff report starting on Page 18.

So, again, we do oppose the approval of this or recommendation of approval. We hope you will vote to recommend denial. Thank you.

CHAIRMAN FRYER: Thank you, Mr. Cornell.

Next speaker, please.

MR. JOHNSON: Richard Solimine. Richard Solimine, followed by Adele Solimine.

UNIDENTIFIED SPEAKER: They're not here.

CHAIRMAN FRYER: Not here.

Next, please.

MR. JOHNSON: Andy Wells-Bean. Andy Wells-Bean, step on up to the podium.

UNIDENTIFIED SPEAKER: Not here.

CHAIRMAN FRYER: Okay. Next.

MR. JOHNSON: Next speaker is Lynn Coppel. Lynn Coppel, C-o-p-p-e-l.

MS. COPPEL: I had ceded my time to Mr. Cornell.

CHAIRMAN FRYER: He's finished, so thank you.

Next speaker.

MR. JOHNSON: Carl Gille, G-i-l-l-e. Carl Gille. These were people that were going to cede time to Glenn Russo.

Carl Gille. Mr. Gille, do you want to step up to the podium? Followed by Kirk --

MR. WHEALE: I thought maybe Carl Gille was me. I'm Kirk.

CHAIRMAN FRYER: Well --

MR. WHEALE: I thought maybe my handwriting was bad.
(Simultaneous crosstalk.)

CHAIRMAN FRYER: Who are we supposed to be hearing, Mr. Johnson?

MR. JOHNSON: This is supposed to be Carl Gille, G-i-l-l-e.

CHAIRMAN FRYER: We're looking for Mr. Gille. Is he there? Is he here?
(No response.)

CHAIRMAN FRYER: Next.

MR. JOHNSON: Kirk W-h-e-a-c-e.

CHAIRMAN FRYER: Is that you?

MR. WHEALE: Yes, it is.

CHAIRMAN FRYER: Give us the spelling of your name one more time.

MR. WHEALE: Yes. It's K-i-r-k, and the last name, W-h-e-a-l-e.

CHAIRMAN FRYER: W-h-e-a-l-e?

MR. WHEALE: -l-e.

CHAIRMAN FRYER: Got it. Okay, sir. You have five minutes.

MR. WHEALE: So I'm a member of Fiddler's Creek, and I want to cede my time, if I could, in lieu of the number of people who have not been able to speak, to Glenn Russo, because he's a developer and had -- it doesn't really -- it doesn't really involve Section 29, but at the very end of this whole proposal, there was some things in Fiddler's Creek. And if I could have him talk for a little longer than I will, I'd be appreciative.

CHAIRMAN FRYER: Well, you now have the floor, sir, and you have about five more minutes.

MR. WHEALE: Well, I'm done. Thank you.

CHAIRMAN FRYER: Okay. Thank you very much.
Next speaker.

MR. JOHNSON: Next speaker is David Bendel, B-e-n-d-e-l.

CHAIRMAN FRYER: Mr. Bendel?

MR. BENDEL: I ceded my time to Mr. Russo.

CHAIRMAN FRYER: Okay. All right. Is Mr. Russo here?

MR. YOVANOVICH: He already spoke.

MR. JOHNSON: Mr. Russo is on Zoom.

CHAIRMAN FRYER: I'm sorry?

MR. YOVANOVICH: He spoke last time.

CHAIRMAN FRYER: He didn't speak last time.

COMMISSIONER VERNON: Yeah, he did. Can I -- let me --

CHAIRMAN FRYER: Go ahead.

COMMISSIONER VERNON: Yes, he did speak. I specifically -- I don't think I clearly said it, I guess, but kind of on the memo I wanted his issue addressed.

MR. YOVANOVICH: And I addressed it.

COMMISSIONER VERNON: And I didn't read your memo, obviously, well enough.
But -- let me finish.

So Mr. Russo did speak; however, I would like to hear from him again because I wasn't clear on the details of what he was saying -- and maybe this will refresh everybody's recollection. He was saying he thought there was a bunch of changes in the GMPA or the PUDA well beyond what -- everything that was going to be discussed which, as Kirk suggested, would impact Fiddler's Creek. And so I wanted -- I did want -- I'd be interested in hearing what he has to say if he can be more specific, because he wasn't very specific.

CHAIRMAN FRYER: All right. Is Mr. Russo on the phone?

MR. JOHNSON: Mr. Russo should be on Zoom.

CHAIRMAN FRYER: Well, since the Commissioner wants to hear from him, we'll hear from him, and he'll have five minutes.

MR. RUSSO: Hello?

MR. JOHNSON: Mr. Russo, is that you?

MR. RUSSO: Yes, it is.

CHAIRMAN FRYER: Go ahead, sir. Did you hear the questions that Commissioner Vernon asked?

MR. RUSSO: I did, and I specifically prepared the details requested by the commission member. If you could put up Exhibit P5, please.

MR. BOSI: Mr. Russo, you provided an Exhibit P14, Exhibit P15, Exhibit P16, Exhibit P1 through 4, and a Fiddler's Creek hearing reduced. So I'm not sure which one you'd like up.

MR. RUSSO: I gave you Exhibits P5, P6, and P8. I'd like those up in series. One of the homeowner presidents is there. She printed it out as well. I believe she also --

CHAIRMAN FRYER: Mr. Bosi, do we have 5?

MR. BOSI: No. He has Exhibit P14, Exhibit P15, Exhibit 16 --

CHAIRMAN FRYER: Just bring the exhibit up if you have it.

MS. ADAMCZYK: I gave him a complete copy already, and they're all there.

CHAIRMAN FRYER: Okay. All right. So you want Exhibit 5 up first?

MR. RUSSO: Five, P5.

CHAIRMAN FRYER: P5. Madam Court Reporter, do you have these?

THE COURT REPORTER: (Shakes head.)

COMMISSIONER SHEA: No.

CHAIRMAN FRYER: No. All right. So we -- do you have another full copy for the court reporter? Bring it on up and provide it to her, please.

MR. RUSSO: So, Commission Members, this is the 2018 approved egress and ingress for Estancia. You can see the black line is where the traffic was supposed to be leaving the site under the 2024 proposed plan.

Please put up P6.

All of that traffic that was supposed to go out to Tamiami is now being redirected on Estancia south through the Marsh Cove, which was a dead-end street, all the way out through the development, redirected on Collier. So traffic -- the traffic pattern is being changed from Tamiami, which is very underutilized, and all that traffic is being shifted over through our development and out to Collier, and there has been no traffic analysis of the traffic intersection on Collier.

The bypass lanes, the deceleration lanes, the geometry of the intersection on Collier has not been analyzed. And I can tell you, Mr. Chairman, everything I'm going to say has not been spoken to in all of these hours of testimony.

If you can go up to P8, please.

And I'm going much faster than I would like, but I'm trying. So I have my team here in Connecticut, my development team, and they superimposed the 2018 plan on top of the 2024 plan, and these are all the areas that we've identified that have changes, most of which would require a public hearing. None of these, per the staff comments -- and I met with your staff twice. I met with Ray, and I met with a complete team of Carol and -- I'm sorry, Jaime Cook and Nancy, and the director, and none of these changes have been analyzed as part of this application. They specifically said they only focused in on the two areas that were identified at the entrance of Collier County and Tract 29; that no evaluation of any of these changes that we've identified have been in any way analyzed by staff.

And most troubling is the -- we go back to P6, that rerouting of traffic through the development, through Marsh Cove, and through parts of Fiddler's Creek through the entranceway, that was not analyzed. There is no traffic study. There's no impact study. And so this is what I am bringing forward today.

So Mr. Yovanovich said that, well, we don't have to -- all those changes that were done on the plot level -- and so they're basically calling it "truing up the map."

So they had a master plan in 2018. They have numerous nonconforming plat plans, and now they want the master plan to follow the plat plans, which is really the tail wagging the dog.

Mr. Yovanovich -- so when you look at what does constitute review, what should trigger traffic studies and what should trigger the public-hearing process, there's three possibilities. This is a -- there's a substantial change, an insubstantial change, and a minor change.

Could you go back to P8, please.

Mr. Yovanovich's memo says that all these changes here are all minor in nature, and he cites the minor activity which is -- in his memo he says that minor site alterations are allowed, and he cites specifically road alignment.

If you go to the next -- P9, please. P9, on the upper one, is where 2018 you can see the preservation land, and you can see the buffer around the preservation land. The area below that is the 2024 preservation land, and I would submit that the amount of open space has been reduced by more than 5 percent. That would trigger a public hearing and would require an environmental review under the planned urban development procedures 10.02.13 -- I'm trying to get the proper citing -- E.1.C, and that is on Exhibit P16.

Why don't you hold off on the P16 for a minute and just go to P10.

I submit, Mr. Chairman, that these changes should have been identified like the Tract 29 and the Collier County. None of this was identified and, in fact, was completely not reviewed by staff.

2000 -- the upper one is the 2018. The lower one is the 2024. You can see that they had a preserve area that was surrounded by a buffer, natural water buffer, and now what you have is an encroachment on that preserve. Once again, the open space has been reduced by more than 5 percent. You've got incompatible uses to preservation. You have houses backing up, whereas in 2018 you had the preserve, and you had this pretty good body of water, which is even better than an open space, because it's a natural barrier. All that's been replaced with houses that almost touch. There is one residential house that -- I wouldn't say almost touches. I would say it was significantly closer than any residential use that was approved in 2018. So that's another what we can consider major change.

And if you can go to P11. So this area here is -- the upper portion is 2018. That is Marsh Cove. It's a dead-end. There is a golf course and water body between us and what I'll call Estancia south, and down below that connection they made a connection to connect all of southern Estancia -- Estancia to exit through our development and out to Collier road.

If you can go to P12.

The upper section represents '18, and a traffic -- if you change the traffic circulation, that triggers a public hearing, and that needs to be analyzed. Mr. Yovanovich is mis -- is misapplying the minor section of that regulation. He's claiming a realignment of the road is allowed. Realignment of the road is not traffic patterns or traffic circulations. That's if you had a road ahead, a bend in it and you wanted to make a straighter, or the intersection you wanted to move 10 feet one way or the other, and it does not affect traffic patterns. If you affect traffic patterns, that is not considered minor. It's considered major and requires an analysis. None of this has been analyzed.

And to talk about traffic patterns, the one up above, most of Estancia was -- could make its way out to Sandpiper. Down below, all of northern Estancia has been cut off by a body of water. You cannot get from northern Estancia, which is now owned by Taylor Morrison, you cannot get over to Sandpiper. It's my assumption -- I have a theory here that when the developer sold the land to Morris Taylor -- or Taylor Morrison, he sold away his access point, and now he's stuck with southern Estancia with no access point, and now he's trying to go through Marsh Cove and redirect the traffic that was intended to go on the county road of Tamiami and redirect it to Collier. And that's the last thing the county wants.

We all know that Tamiami down by the Publix is very underutilized. There's not a traffic issue down there. But at Collier when you have rush hour and you have all those people leaving in the island, all of those intersections have very degraded service of -- level of service, and now you're redirecting, and we don't even know that that intersection can handle this additional traffic.

So the other important thing that Mr. Yovanovich brought up is he said, well, the access point -- and this is a very important point. The access point -- if you go to P6, back to P6, he says, the access point -- that point which connects southern Estancia to -- through Marsh Cove, he says, well, that access point, that was approved by a plat, and he cites the plat on Volume 70.

And we had a big meeting, and four or five people from the county was there. And I said, "Well, there's a plat out there" -- because they said, "No, no, that approval's not connected."

I said, "Well, there's a plat out there that says it is connected."

And Jaime Cook said, "Well, that was approved as an easement so that the county could have access to the preservation land and that the CDD could have access."

Why -- I looked at the -- while we're in the meeting, and I looked at that and I said, "Well, it's a 100-foot-wide easement, and it has the exact same geometry, including intersects, as an access road."

And she said, "Well, that was not approved as an access road, and it cannot be used as an access road without having proper traffic analysis done."

CHAIRMAN FRYER: Commissioner Vernon, if -- I want to be sure that your question is fully answered. You have -- you're certainly entitled to that. The witness has had 13 minutes, and we'll give him as much time as you need to have your questions answered, sir.

COMMISSIONER VERNON: It's super helpful, and he's very much answering my questions, and this appears to be a lot more than minor to me, at least the way he's presenting it. So this is super helpful to me. And also I wanted to make sure -- because there was so much going on last time, I want to make sure my fellow members on the Board understood my concerns. Whether you agree with it or not, it's -- nobody's talking about this.

CHAIRMAN FRYER: Thank you. And I apologize for interrupting. I just wanted to be sure that --

COMMISSIONER VERNON: Yeah. I think, Mr. Russo, you know, if you can wrap up, that would be great.

MR. RUSSO: So if you go to -- if you can go to P14 -- so a lot of what I just talked about is map reading. It's talking -- it's looking at the text of the planned urban development. It's technical. It's really just looking at what is allowed, what categories things fall into.

But I'm going to give you a practical picture, like -- and again, my presentation is based on someone who does this for a living, and now I'm going to give you something that would be something that might be the perspective of someone who lives there, which I also do.

This picture represents the road into Marsh Cove. This picture represents all of the traffic from southern Estancia that's going to use this road in and out. The fire, the ambulance, all of that's going to use this road, the single-wide road that you can see that this truck -- and I would submit that this truck is about the same as a service truck to go to the clubhouse, which is also being serviced by our road.

You can see there's absolutely no room. It's a very narrow single lane in and a single lane out. And, in fact, if you can look to the right of the dump truck, that -- you see that car. That's where we get our mail. So we're going to be getting our mail -- pulling off and pulling out to get our mail on a road that is going to service all of Marsh Cove, all of southern Estancia.

And if you can go to P15.

And so P15 represents the future clubhouse, which is already 90 percent built. This is also using that little narrow road I just showed you, and this is almost a 40,000-square-foot clubhouse with over -- I believe over 300 members, plus their guests, plus the restaurant, and -- and special events that they would have.

So you're taking Marsh Cove, which was a dead-end street, you're adding this massive

clubhouse with all of that traffic, and now you're -- now you're adding all of southern Estancia's traffic.

And I would make a point that when I came into the staff, the original comment was, "Oh, well, he's still accessing out to -- through Estancia."

And I said, "No, that's not an access. It looks like an access point."

If you can go back P6.

And so there is a little access point next to the preserve, and that's not the access point. That's an -- as far as Jaime Cook, she clarified in the meeting that I had with staff. She says, "No. That is not full access. That's an emergency access." The -- and so the maps and what is presented was so vague and confusing that it took me two weeks to decipher it.

And then when I did meet with the staff, I spoke with Ray in his office, and he said, "Absolutely, we did not evaluate any part of the change or any part of the proposal. We didn't even believe it was part of the proposal except for the two areas outlined in red, which was the entry at Collier and the Tract 29."

So there is a lot more going on here. And when -- and when you look through the application there's one line in the application that says, "Rearranging residential tracts to the east," and that one line in, I think, a 55- or 88-page application -- if you can go to P8 -- if you can go back to P8.

Hello? Oh. Okay.

That one line in an 88-page or 50- -- I don't remember. It was a thick application. That one line represents all the activity that I've just mentioned. All the connecting roads through Marsh Cove, all the open space reductions in and around the two preserves are all -- the only description in the application is that one line.

And during last week, Mr. Yovanovich said, "Well, we're just truing up the map." And what truing up the map means, I believe, is that they want to take all these plat plans. They did not follow the master plan, and now they want to take the master plan and have them copy the plat plans, which is completely backwards on the process.

I took an -- I took about a 45-minute presentation, and I boiled it down to 15 minutes. So -- but, Mr. Chairman, I do believe, to your point, everything that I've said to you and the details I've laid out and the concerns that I've given you -- and I represent four HOAs that are inside Marsh Cove -- all of the information I just gave you over the last 15 minutes has virtually not been talked about in two full days of public hearings.

CHAIRMAN FRYER: Thank you, sir.

Commissioner Vernon, any questions?

COMMISSIONER VERNON: (Shakes head.)

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

Next speaker.

MR. JOHNSON: Mr. Chair, I need some clarification. I have 14 registered speakers that wanted Mr. Russo to speak on their behalf.

CHAIRMAN FRYER: He has.

MR. JOHNSON: Okay. So should we disregard those 14?

CHAIRMAN FRYER: Yes.

MR. JOHNSON: Okay. Moving right along. We're going to move to Zoom. Patricia Russ. Patricia Russ, please speak. Ms. Russ, R-u-s-s.

CHAIRMAN FRYER: Next speaker.

MR. JOHNSON: Sharon Clayton.

MS. CLAYTON: I ceded my time to the last speaker.

CHAIRMAN FRYER: Okay. Thank you.

Next.

MR. JOHNSON: Andy Moore? Andy Moore or Mr. Moon.

CHAIRMAN FRYER: Here comes Mr. Moore. Nope.

UNIDENTIFIED SPEAKER: Andy Moore is not here.

CHAIRMAN FRYER: Okay. Anybody else?

MR. JOHNSON: That's all the registered speakers.

CHAIRMAN FRYER: All right. Do you want to be heard? Do you want to speak?

MS. ADAMCZYK: Yeah. I originally ceded my time to Glenn Russo.

CHAIRMAN FRYER: Come on up. Have you been sworn in.

MS. ADAMCZYK: Yes, I have.

CHAIRMAN FRYER: Okay. Tell us your name, and then you'll have five minutes.

MS. ADAMCZYK: Thank you. I won't take that long. My name's Lisa Adamczyk, A-d-a-m-c-z-y-k. I'm an HOA president within Marsh Cove, one of the four.

Interestingly, Glenn did a great job presenting, but a couple points I want to make based on this impact, genuinely -- as a healthcare professional, is the length of time it will take for EMS to get in and out of there. I've had a handful of my homeowners already have a very lengthy delay based on that one-way road.

Just to put it into absolute perspective, currently right now Marsh Cove has 212 homes on that little, skinny road with the -- we knew that Phase 3 was coming with the potential of around 100 homes. We've never really heard a definitive number. And now we're hearing that this Estancia, that will be connected, will have 350-plus homes, not to mention the golf course/golf club, which has currently 319 members, anticipated to have 350 members. Also, all their food, everything will be coming down that road.

It's been on record in pretty much every single meeting I've attended, Marsh Cove master association, my own meetings, and Fiddler's Creek Foundation as it relates to the safety of the bicyclists and the pedestrians and pretty much everybody who rides down those roads, the solution was just drawing or stamping out little people on bicycles and pedestrians on one side of the sidewalk. That was the solution.

But, anyway, I just urge you to deny this on behalf of Fiddler's Creek. We do have ideas and thoughts of rerouting. We're not opposed to alternatives. But, anyway, thank you.

CHAIRMAN FRYER: Thank you very much.

Do we have any more registered speakers?

MR. JOHNSON: No more registered speakers.

CHAIRMAN FRYER: All right. Anyone in the room who's not spoken but wishes to be heard at this time?

Sir, please come on up. And if you have not been sworn in, let us know, and we'll fix that, and then state your name.

MR. FERRIBY: I was.

CHAIRMAN FRYER: You were, okay. Go ahead.

Are those slides?

MR. FERRIBY: Yeah, please.

CHAIRMAN FRYER: Okay.

MR. FERRIBY: I do have one for the court reporter. Go ahead.

CHAIRMAN FRYER: All right. Go ahead.

MR. FERRIBY: Hi. My name is Robert Ferriby. I live on Royal Hammock, and I've lived there for 20 years.

Like many of the people here, my house was built in 2005, and so our houses are extraordinarily low.

I know that we've talked about these easements at length. I will not go on very long about that; however, I'd like to introduce a new term that many are familiar with, and that term is "condition precedent."

It's been made clear by this point in time that the applicant had an obligation to file an easement.

CHAIRMAN FRYER: Sir, did you cede your time to Susan Caglioti?

MR. FERRIBY: I did not.

CHAIRMAN FRYER: Okay. Proceed.

MR. FERRIBY: Thank you.

It's been pretty well established at this point in time that they were required to file that easement. We've heard about the reasons or lack of reasons why it was not done.

I would submit that at the point in time they became -- that they reached the agreement that they would file the conservation easement, at that point in time forward had the legal obligation to do so and could not start construction -- we've been through that -- until such time that they did.

I would submit -- and perhaps I look at this a little differently than some others -- that, in fact, to this day they still have not satisfied that condition precedent in that they did not file an easement, as was required of them, for the entire 600 acres. Instead, they unilaterally, without authority from anyone, not Army Corps, not U.S. Fish and Wildlife -- they went ahead and separated out, they cherry-picked 50 acres that would be very useful to them, and they put additional language in the easement that's not contained in the other covenants. It's self-serving language that would allow them to address housing and modification of the easement at a later date, and that was never authorized along the way.

I have prepared and -- if we can put No. 1 up. Just two weeks ago we were here, and we heard Mr. Yovanovich in his presentation indicate that he was -- that they were still negotiating with Fish and Wildlife, and he was very specific in his presentation when he said -- and I wrote this down as accurately as I could. The applicant has -- and he was talking about currently, two weeks ago -- the opportunity to modify this agreement if they buy a 120-acre farm for \$1.6 million, and that would be for mitigation in exchange for the property.

Now, the reason they got to that point, we know from FOIA requests, is that in January and February of '23, Mr. Hall, on behalf of the applicant, had requested from Fish and Wildlife a list of properties that they might use to mitigate. And what occurred was David Shindle from Fish and Wildlife sent a letter to Mr. Hall, and included in that letter is a real estate site. So indicating, perhaps, this is land that you could use.

And as you can see from the description, it's 120 acres. It is located in Glades County, and it's even got the address. And we know that true [sic] from other hearings and other information that we got that this is the property that Mr. Yovanovich, just two weeks ago, said they're going to use to mitigate the exchange of this property.

And if we can have Exhibit 2, please. And yet it took me about five minutes. I went on Google, and I looked it up. The property that they, just two weeks ago, indicated that they were going to use to exchange for the subject property here has already been sold. Not only has it been sold, it was sold in July of '23, 10 months ago, and yet it's suggested now that it should be part of the exchange. And I would submit that that seems to be the norm for the manner in which this proposed change has been presented, not only to you but to the county in general.

I've sat here, as you have, for a couple of days, and I've heard reason after reason why this project won't work. I've only heard one good reason why perhaps we should think about it, and that's the workforce housing; however, with all the problems that have been presented, I would ask, is it really worth upsetting not only the homes but the lives of 350 families for a project that has so many difficulties?

Thank you.

CHAIRMAN FRYER: Thank you, sir.

Anyone else who has not registered but nonetheless wishes to be heard on this matter, now would be the time to raise your hand. Seeing no hands raised -- oh, I'm sorry. Come right on up. Sorry.

MS. RIOPELLE: I'm the only one you cut off at three minutes. I just want to make one --

CHAIRMAN FRYER: You've already been up.

MS. RIOPELLE: You only gave me three minutes, not five. Can I just make --

CHAIRMAN FRYER: Oh, we just gave you three?

MS. RIOPELLE: Yes.

CHAIRMAN FRYER: Go ahead, go ahead.

MS. RIOPELLE: This is the statement that -- my name is Josette Riopelle, R-i-o-p-e-l-l-e, resident of Royal Palm.

This just is to finish up when I showed you the two pieces of paper with the current and proposed affordable housing in this small section east of Collier. And those that I showed you, when we add them in, have the potential for 2,585 units of affordable housing in District 1 east of Collier.

All -- each of these projects, with the exception of Section 29, connect directly to U.S. 41. You don't require any other rebuilding of roads or whatever. They all have direct access points. I have a picture of every one of them, if you care to see it, a point where it is already four lanes, not two.

None of these projects will result in the destruction or abandonment of property that has served as long-standing preserve for the benefit of protected and endangered species, nor do any of these projects involve the rezoning of land that is currently protected under a conservation covenant -- majority of them are rural agricultural -- mandated by the U.S. Fish and Wildlife pursuant to federal laws enacted for the benefit of protected and endangered species.

Common sense would dictate that all of these locations are far better locations than Section 29 for the new affordable housing in Collier County.

Thank you.

CHAIRMAN FRYER: Thank you very much.

And if there's anyone else to whom we only gave three minutes and you want another two, we will entertain that now.

(No response.)

CHAIRMAN FRYER: I don't see anyone rising for that.

Therefore, without objection, we will close the public comment portion of the hearing, and I'm going to ask Mr. Oldehoff to come up here, please. And I want to hear from counsel, both him and Mr. Yovanovich, as we decide what we're going to do for the remainder of the day.

What is -- what is your proposal, sir? And then I'm going to ask Mr. Yovanovich for his.

MR. OLDEHOFF: My proposal is to dispense with further examination, cross-examination, and just make a four- or five-minute closing.

CHAIRMAN FRYER: Okay. Mr. Yovanovich? Either one.

MR. YOVANOVICH: I don't have the same desire to do a four- or five-minute close.

Normally I don't respond to what the public says, but we're going to have a rather extensive response to what I think were unfair and inaccurate accusations about me and my team.

So I would imagine I'm going to have a rather lengthy rebuttal as part of our presentation. I'm going to have several questions of Mike, not cross-examination, but clarifying questions. So I really don't think that we're going to get done today.

And my proposal is, if he doesn't want to ask any cross, that's fine, but I would request that we just come back -- I guess it's going to be in July because I think Gary's not available in two weeks, and -- that's what I would -- I would request we be able to do -- I, candidly, would like to get a copy of the transcript, because there was a lot of stuff said that was inaccurate and words like they basically called us liars, and I think we should be given an opportunity to address that specifically, and I, candidly, can't remember it all by memory, at this point, what was said.

CHAIRMAN FRYER: Okay. Response?

MR. OLDEHOFF: Yeah. My proposal was that -- I could have some questions for people to go -- you know, to go on. I could do that. I just didn't see anything to be really gained at this point by doing it. I think you have everything in front of you.

If Mr. Yovanovich is going to insist on prolonging this, then I think that, in fairness to my clients, I probably should reserve -- I mean, I tried to see -- you know, I talked to Ms. Gundlach

and I said, listen, I want to ask you to confirm this. She looked it up. She's ready to confirm. I tried to, you know, make it as quick as possible. But I think that I'd be obliged to do that. But like I said, I just -- if it hasn't come out in the last two days --

CHAIRMAN FRYER: Okay.

MR. OLDEHOFF: It's your call.

CHAIRMAN FRYER: I've got it. I've got it. What's your schedule look like for July 18?

MR. OLDEHOFF: Can I check with my boss first? Can we take a five-minute break, and can I check with --

CHAIRMAN FRYER: Yeah. In fact, we'll take a 10-minute break till 3:23.

(A brief recess was had from 3:13 p.m. to 3:23 p.m.)

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

CHAIRMAN FRYER: Thank you, Mr. Bosi.

Ladies and gentlemen, let's reconvene.

To bring everyone up to date, we've had some conversations up here about scheduling, and it's clear that Mr. Yovanovich does not believe he has sufficient time this afternoon to complete his rebuttal, and so we are going to have to go into another day.

And the -- as a practical matter, given our availability and given the availability of the room and the fact that we've been preempted on June 20th by the Board of County Commissioners, unless we can go with a special meeting, and I'm going to -- and I'll turn that over to Mr. Oldehoff in a moment -- that our first time available would be this July 18-19 two-day time frame we've set aside. But go ahead, Mr. Oldehoff.

MR. OLDEHOFF: Yeah. I wanted to propose a special meeting to see if we could have this special meeting to get this done between the 20th and the 30th of May.

CHAIRMAN FRYER: All right. Mr. Yovanovich, what does your calendar look like?

MR. OLDEHOFF: Let me be exact, the 21st.

CHAIRMAN FRYER: 21st, yeah.

MR. OLDEHOFF: I'm in the air the 20th.

MR. YOVANOVICH: I currently have time scheduled to be gone for two weeks.

CHAIRMAN FRYER: In that time period?

MR. YOVANOVICH: That time period, yeah. Now, if my plans change, you know, we can talk about it, but right now my plans are to be up north.

CHAIRMAN FRYER: Well, I mean, we're going to be respectful of your time as we are of Mr. Oldehoff's time.

MR. OLDEHOFF: Thank you.

CHAIRMAN FRYER: So it sounds like that's not going to work.

MR. OLDEHOFF: Okay.

CHAIRMAN FRYER: All right.

MR. OLDEHOFF: The 18th of July I would be amenable. If a date does open up sooner and --

CHAIRMAN FRYER: We're not going to be able to --

MR. OLDEHOFF: -- if it's your pleasure --

CHAIRMAN FRYER: I don't see how we're going to be able to do that.

MR. OLDEHOFF: Well, I would -- if you want to do it sooner.

CHAIRMAN FRYER: Well, I'm just -- I'm one person here, and I've got to be respectful of lots of people's calendars. So as a practical matter, it seems to me that July -- Mr. Bosi, you look like you want to say something. No?

MR. BOSI: No. What I was going to say is if it's up in the air, we're trying to pick it, I'm not sure how I could get clearance to -- that Rich would be available, that Mr. Oldehoff would be available, that the Planning Commission's going to be available, then in coordination, is the room available? It does make it complicated, and then notification of the public as well is a very

important aspect.

CHAIRMAN FRYER: I get it. I get it.

MR. BOSI: We have to --

CHAIRMAN FRYER: And so, I mean, we're accommodating Mr. Oldehoff's schedule, and we're going to accommodate Mr. Yovanovich's schedule, too, which together pushes this to July 18, unless someone has a better idea.

MR. YOVANOVICH: Mr. Chairman, are we going to -- we're going to have him finish up his cross, correct, so -- or are we into my rebuttal?

CHAIRMAN FRYER: Well, it is -- it's less urgent to do so. We've got -- I mean, we've got an hour and a half, and we ought to use that time rather than recess early, but I -- what do you -- what do you say, Mr. Oldehoff? Do you want to --

MR. OLDEHOFF: What I say is I'd be willing to move my cross-examination until after he's gone ahead.

MR. YOVANOVICH: I don't think that's going to happen.

CHAIRMAN FRYER: No.

MR. YOVANOVICH: That would be nice, but no.

CHAIRMAN FRYER: You're going to have to do it before rebuttal. And so if -- you know, if we were going to be real good stewards of time, perhaps you'd be willing to start it today and then continue to the 18th, but I'm not going to force you to do that.

MR. OLDEHOFF: Well, okay. I mean, I can start today, and we'll carry it over to the 18th.

CHAIRMAN FRYER: Okay.

MR. OLDEHOFF: All right.

CHAIRMAN FRYER: All right. Is that agreeable, Mr. Yovanovich?

MR. YOVANOVICH: He's in his case right now. If he wants to go --

MR. OLDEHOFF: Well, we're so fluid when it comes to whose case it is. This is a pretty fluid proceeding.

CHAIRMAN FRYER: I just don't want to be too fluid.

MR. OLDEHOFF: I want to make sure that it's okay with the Chairman.

CHAIRMAN FRYER: Well, it -- I think we've reached a consensus here that's going to work with everybody or be the least inconvenient with everybody. And I appreciate Mr. Oldehoff willing to start his cross now, and then when we return on the 18th, the first thing we'll do is he will resume his cross, and then we will hear the rebuttal for, within reason, however long it lasts.

MR. OLDEHOFF: Well, maybe it makes more sense if I start my cross when we come back on the 18th, and then everything is fresh instead of stale.

CHAIRMAN FRYER: That's fine, too.

MR. OLDEHOFF: Okay. Can we do that?

CHAIRMAN FRYER: That's fine. Planning Commission?

MR. OLDEHOFF: Thank you.

(Simultaneous crosstalk.)

CHAIRMAN FRYER: I don't think so. We've closed public comment. We've heard all the speakers and registered speakers.

MR. YOVANOVICH: That's all I want to make sure, Mr. Chairman, if I may. We're done with public speakers, correct?

CHAIRMAN FRYER: Yeah, as long as you understand that the planning commissioners can call people back.

MR. YOVANOVICH: Absolutely. I understand that.

CHAIRMAN FRYER: Yeah. But we've closed --

MR. YOVANOVICH: You did that with Mr. Russo.

CHAIRMAN FRYER: We've closed public comment.

MR. YOVANOVICH: Okay.

CHAIRMAN FRYER: All right. I'm open for any suggestions on how we spend the rest of this time, and I would also be delighted to adjourn, but --

MR. OLDEHOFF: I would respectfully request adjourning.

CHAIRMAN FRYER: Let's hear from Commissioner Vernon first.

COMMISSIONER VERNON: Well, you know, I never make a decision till everything's done. I mean, I think Rich knows that. It's the first time you've appeared before me. But sometimes I think it's appropriate to give comments. And here I feel like I should probably give some comments so that people understand what they're coming back to, and I don't know how -- if anybody else wants to make some comments.

CHAIRMAN FRYER: Yeah. I think that's in order, and also Commissioner Schumacher is signaling. So as far as I'm concerned, you have the floor.

MR. OLDEHOFF: Well, I --

CHAIRMAN FRYER: Okay.

MR. OLDEHOFF: I'm not sure about that.

CHAIRMAN FRYER: Well, you didn't want to cross-examine.

MR. OLDEHOFF: Well, I know, I know. I just -- go ahead.

CHAIRMAN FRYER: Thank you.

COMMISSIONER VERNON: I was going to say, I wasn't asking for permission, but...

CHAIRMAN FRYER: Go ahead, sir.

COMMISSIONER VERNON: You know -- so, you know, these are going to be rambling comments, but I think they'll help both sides.

You know, I wish we weren't here. I feel like -- a little bit like we're here because our county, our wonderful county has just failed for over the last 20 years to deal with affordable housing. And, you know, as a result we're in this position where it's -- you know, it doesn't matter what meeting I go to, affordable housing's the No. 1 issue.

And so, you know, that's a huge plus for the applicant, but at the same time, there has to be a line in the sand. There has to be something that just because you have affordable housing, you don't get approved. There's got to be something more to it.

You know, I thought Mr. Hanba's comments were pretty compelling to me. And then I wrote down -- I listened to Mr. Erario. I thought they were pretty compelling to me.

Then I wrote down Mr. Russo's comments were pretty compelling to me, and then I listened to Brad Cornell. I thought that was pretty compelling, and then I stopped writing down names, because I think a lot of stuff was said by you guys which was rolling around in my head, frankly. It was.

And I've -- you know, I have -- on multiple occasions over the couple years I've been on this board, I have commented on Mr. Yovanovich's clients and his presentations as being -- "good neighbors" is the term I've used, and I've really -- I've really pushed people objecting to projects he's brought before us to deal with his clients because his clients were being good neighbors.

And so I think it's only fair that I comment. You know, going back to Mr. Hanba's comment about clean hands, I've got concerns about some of the stuff that's being presented and how it's being presented, and I'm just being as candid with you guys as I can. It troubles me, and it troubled me before I came in today.

And I thought Mr. Klucik's comments were very good and very well thought out, and that is his field; he's a real estate attorney.

So I -- you know, I think you sense -- I mean, I'm not going to make a decision until I hear all the evidence, but, you know, where I sit now, I don't see this project getting -- I'm going to vote against it based on what I've seen so far, and I think it's helpful for you to know that.

MR. YOVANOVICH: That's fine. Why don't you-all vote right now, and we'll just move on?

CHAIRMAN FRYER: That's --

COMMISSIONER VERNON: Well, I don't think that's really a professional response, to

be honest with you.

MR. YOVANOVICH: It's not fair.

COMMISSIONER VERNON: I am trying to assist both parties in understanding where my head is after listening to two days of testimony. And I'm going to keep an open mind, as I always do, and I'm going to listen to anything else that's presented to me. And I thought your response would be the exact opposite. You know what you're heading into as opposed to having no idea what I'm thinking.

MR. YOVANOVICH: May I reply?

COMMISSIONER VERNON: Well, that's up to the Chairman.

But, anyway, I just wanted -- I thought it would be helpful to both sides. And a lot of times I don't comment, but I thought it would be helpful here because I've heard a lot of testimony.

MR. YOVANOVICH: May I briefly?

CHAIRMAN FRYER: Quickly.

MR. YOVANOVICH: And, Mr. Vernon, I think you took my comment out of character, because it's true, I didn't expect you to tell me you were going to vote against the project. That caught me off guard. At that point, if your mind is made up, and I don't -- and normally it's not. You give me guidance, but you don't make that last statement that you made, which is, "I'm going to vote against the project." That threw me. And I apologize if I came off as flip, but that is why I said what I said.

COMMISSIONER VERNON: I don't take any -- I think everybody knows I don't take stuff -- it's hard to get to me -- taking stuff personal. So I didn't take that personal.

And I'll tell you exactly why I said how I see things right now, how I'd vote and why I've never -- probably -- I don't want to say "never done" -- rarely done that before, because it seems clearer to me than usual.

MR. YOVANOVICH: Okay.

COMMISSIONER VERNON: All right? But I have said two or three times during my statement, "I have not made a decision," and I am going to listen to all the evidence before I decide.

And I have commented directly to you in past situations where I've said, "I'm leaning this way, I'm leaning this way," and I've changed my mind during it. And I think, you know, I may do that. So I'm not giving you a final decision. I'm just telling you where I stand based on seeing two days of evidence, which is a lot of evidence.

CHAIRMAN FRYER: Thank you.

Commissioner Schumacher.

COMMISSIONER SCHUMACHER: Chair, I just wanted to thank all of our public speakers and the presentations that occurred today. I know it takes a lot to come in here and spend the whole day with us and put your opinions out there and your information especially. I just wanted to thank those that did come up and gave new information and different perspectives.

I thought that Josette's inventory of affordable housing that's coming online was extremely helpful when you look at that area and the things that are occurring.

I'm glad that we're going to take a recess and allow Mr. Yovanovich to do his rebuttal, because I think he needs to be given the appropriate amount of time to give his presentation. I know I've got a slew of questions for his experts as well. But I'm looking forward to that.

And then the last thing I was going to do, I actually was just going to make a motion to adjourn.

CHAIRMAN FRYER: Let's hold that in abeyance, if we may.

COMMISSIONER SCHUMACHER: I will.

CHAIRMAN FRYER: Thank you.

COMMISSIONER SCHUMACHER: Withdraw my motion.

CHAIRMAN FRYER: Okay. Commissioner Shea.

COMMISSIONER SHEA: I just wanted to reiterate -- it's been a long time -- Mr. -- Commissioner Schumacher's comments. You know, usually sometimes we sit here

and we hear people -- and we want to hear everybody, but they keep saying the same thing. You guys have done a very good job at least respecting our time not by duplicating everything. I thought it was pretty well organized.

I also had a question for Chris. I want to make sure I understand what the Russo issue was. Is that -- is the issue that this application has a lot more buried -- a lot more changes buried in the application than we're talking about? And I'm gathering that's what he was saying?

COMMISSIONER VERNON: Yes.

COMMISSIONER SHEA: Okay.

COMMISSIONER VERNON: And that is addressed -- I haven't -- I've got to go back and look at Mr. Oldehoff's brief again.

COMMISSIONER SHEA: Yes.

COMMISSIONER VERNON: But I did go back and look at Rich's brief. And what Rich has said -- I mean, you can read it. But I think what Rich is saying is it falls under minor changes that they're making, so they didn't have to really present that because that's within the staff's purview.

And so Mr. Russo made it sound like it was a lot more significant. So I wanted to drill down in what Mr. Russo was saying so that I could decide for myself whether I thought it was significant. If that -- does that answer your question?

COMMISSIONER SHEA: Yeah, yeah. I just -- so it sounds like the staff agreed with the applicant that they were insignificant.

MR. YOVANOVICH: They approved the changes.

COMMISSIONER SHEA: Right? Because that's the issue is there's a lot more buried in it, major traffic changes and things like that.

MR. BOSI: Staff is of the belief that the changes that were made during the platting process in regard to being somewhat different than what was shown on that individual master plan, that that master plan is a conceptual master plan, and that the criteria for an insubstantial change to that master plan allows for internal realignment of the roadway system as long as it's not going to affect a water management area as well as a conservation area.

And those plats were approved as part of -- as part of those -- insubstantial change process or minor change process. What I --

COMMISSIONER SHEA: Even if it affects transportation? To me that would seem --

MR. BOSI: It clearly states that internal roadway realignments, even external points can be processed as an insubstantial change. That's what our code says. You might not like it, but that's what our code says. So staff feels that it met that threshold.

But what staff would readily admit is that it could have been and should have been a little more pronounced within the application materials, that the master plan changes were more than just minor changes to the east. It could have been -- referenced at least the plats that created the new access, the alignments, in that regard. So I think it could have been culled out a little bit better. But staff processed them -- our plat review processes them underneath that qualification of an insubstantial -- or a minor change that's allowed for by the code.

MR. OLDEHOFF: Mr. Chairman.

CHAIRMAN FRYER: Go ahead.

MR. OLDEHOFF: I did not address that question because Mr. Russo said that he would cover it, and it was his question, his issue, and I thought that it was something that I would defer to him on. But I really do think, having heard Mr. Russo's comments, that I believe I should take a look at this, and I should give you memoranda like Mr. Yovanovich has given you on whether this code provision is triggered. Because it seemed to me, when I was listening to it all, that Mr. Russo was spot on and that what we were dealing with -- when you deal with the kinds of changes that Mr. Bosi is talking about, those are not minor changes.

A minor change is -- the classic example is you get -- you get your master plan, but when you go to the Water Management District to get a wetland delineation, a jurisdictional delineation,

you get that, and it comes back, and it's different. It's a little bit different than you had -- than you had thought when you did the layer on your planning that showed that. If that roadway needed to be shifted a little bit, not much, just by a few feet, in order to comply with the wetland that was there, that would be considered a minor -- a minor deviation.

But where you're talking about changing the entire -- the fundamental network -- roadway network within the PUD, it's always been my experience -- always been my experience with every code I've written and every code I've worked with that that's -- that requires more. That's not something that could be done at the staff level because it does have very significant impact on the parts of the PUD that are already developed.

MR. YOVANOVICH: Mr. Chair, if I may.

CHAIRMAN FRYER: Thank you.

Yes, please go ahead.

MR. YOVANOVICH: The ship has sailed. We went through the process that we have to go through to make those modifications. We did that through the plat process, which was a public-hearing process approved by the Board of County Commissioners. We are simply trueing up the master plan.

We're not here to discuss the approval of that. That change has already been made. We are now showing you what was already approved through the platting process. That's where we are.

If they think it was wrong at the time we did the plat, that was the opportunity to appeal that decision.

I have an approved plat with this new road alignment. The ship has sailed on their ability to appeal that. And we're not here to talk about whether or not staff did the right thing or didn't do the right thing. That decision was already done. There was a different appeal process for addressing that.

So this is ministerial, if you will, for purposes of just showing you what has happened, bringing it forward to show you what we did through the very process approved by the Land Development Code.

I mean, you may say in hindsight you don't agree with the staff decision, but that decision's been made and the -- so we could continue to talk about this, but it's not -- it's not relevant to whether or not you're going to undo that master plan as far as the road alignment.

CHAIRMAN FRYER: Thank you.

MR. OLDEHOFF: Mr. Chairman, if I reach --

CHAIRMAN FRYER: No, just a moment. Just a moment.

I'm going to ask for Mr. Bosi to weigh in.

MR. BOSI: In terms of can you -- can you undo the approval of those plats, the ship has sailed in that regard in terms of the period. But if you felt that those changes that were made substantially affect the overall PUD in a manner that's negative, I think that could most certainly influence your perspective on this application.

CHAIRMAN FRYER: Okay. Mr. Yovanovich, did you want to reply to that?

MR. YOVANOVICH: Yeah, kind of.

Again, change the code. If you think -- if you think that this should not be a staff-level decision -- which it wasn't. It was a Board of County Commissioners' level decision because it was approved in a public-hearing process. That's what the code says. I don't know. I heard what Mike said, but I don't think you can now say, "We're not going to true up the master plan," which somehow means the plats don't take effect. I don't think that's what he's saying, but I don't think he -- the master plan is going to change in that effect. That has nothing to do with Section 29, as we've all just talked about.

But the master plan is the master plan, because I went through the process to make the changes to the master plan. So that realignment, that decision has been made. It was made properly. I don't think Mike's saying we didn't follow the process, and I don't think you can

un-ring that bell.

CHAIRMAN FRYER: Planning Commission, do you want to hear anything more about this today?

COMMISSIONER SHEA: No.

COMMISSIONER SCHUMACHER: No.

CHAIRMAN FRYER: Thank you, Counsel.

Let's see. We will then continue this matter to July 18, possibly July 19, when we earnestly hope we'll be able to wrap it up.

And with that, I'm going to ask if there's any old business to come before the Planning Commission.

(No response.)

CHAIRMAN FRYER: Apparently none. Any new business? And there was a -- apparently none. There was a gentleman who wanted to be heard under public comment. Come forward. Are you -- did you want to be heard on some other matter?

MR. ERARIO: Just a very quick question for you.

CHAIRMAN FRYER: On this matter?

MR. ERARIO: Yes.

CHAIRMAN FRYER: Quick. Come ahead.

MR. ERARIO: Let me -- this is John Erario speaking.

It's not -- my question is that in the time interval between now and when we return, will -- I'm sure that both sides will be accumulating information that could be relevant. Will we be able to have access to the commissioners to, for example, address -- in particular, there were a lot of -- I think there's going to be a lot of questions about what is the accuracy of many of the things that I stated and quoted. We could present you, in a meeting --

MR. YOVANOVICH: No.

MR. ERARIO: -- with some very helpful information to point out in the -- in the video replay exactly where those time stamps are and to compare them to my testimony and to the information that I gave you, which shows those time stamps. I'm wondering if we'll have access to you to do that during the two months that we'll be away.

CHAIRMAN FRYER: Let me say this, that if you're going to take the time to write something up, I'll take the time to read it. Beyond that, I don't -- well, it's up to individual planning commissioners.

I don't foresee having more meetings with members of the community. But if you believe that there is some significant value, then send me something in writing, and I'll make a decision.

MR. ERARIO: Would the other commissioners be open to that as well?

COMMISSIONER SHEA: We're always open to something you submit in writing.

MR. OLDEHOFF: I'm going to tell my client --

CHAIRMAN FRYER: Just a moment, sir.

We -- some of us are willing to listen to third parties between meetings and some are not. I am subject to certain limitations and conditions, and as I said, from my perspective, if you write something up, if you take time to do that, I will take the time to read it. And if you -- and if, in your writing, you make a case for why I should meet again with you, I will consider that. My inclination is is that I will not do it, but I will certainly consider it.

MR. ERARIO: Okay.

MR. OLDEHOFF: It will be done through me. It will be done through me, through me.

CHAIRMAN FRYER: You guys --

MR. OLDEHOFF: Because I want to make sure -- and Counsel -- we're agreeing on something here. There really should be no communications between lawyers and you. There should be -- it should be verboten, forgotten. No, please, no. No communications at all.

If there is something that comes up like this or comes up like this, let it come in through normal channel, through the staff with the package, then the package comes in.

CHAIRMAN FRYER: Well, that's just not the way we do it here.

MR. OLDEHOFF: Okay?

MR. YOVANOVICH: I'm fine with that. But, Mr. Chairman, at some point the public comment's got to be done. He got up there. He testified. I think he's the person who said, "This is the section of the video where I'm quoting," and maybe I have you wrong [sic] with somebody else -- but got up there and said, "Mr. Yovanovich said this at this point in the meeting." I don't think we need to do this anymore.

CHAIRMAN FRYER: Let me repeat --

MR. YOVANOVICH: I think I should be allowed to be prepared for my --

CHAIRMAN FRYER: Please, please.

As I said, if you take the time to write it up, I will read it. I am not inclined to have another meeting, but I can't imagine what you would write in that material, but if you wrote something in there that I felt strongly that I needed to meet with somebody on, I would do so. I just can't believe that that's going to happen.

But we're not going to -- we're not going to change our procedures of long standing about whether we as planning commissioners -- and I understand your point about how we're jurors as well and we take these things, but we're also quasi-legislators as well as quasi-judges and quasi-jurors. And so the rules that we have in this county and the rules that we have in this state under the Sunshine Law, frankly, are strange in some respects.

MR. YOVANOVICH: My only request --

CHAIRMAN FRYER: Sorry?

MR. YOVANOVICH: I have one request.

CHAIRMAN FRYER: Go ahead.

MR. YOVANOVICH: And I don't think it's unreasonable.

CHAIRMAN FRYER: Okay.

MR. YOVANOVICH: If he's going to provide something to you, I should get a copy.

CHAIRMAN FRYER: I think that's reasonable.

MR. YOVANOVICH: And I think it should be 30 days before July 19th so I have some time to process it and I don't get it the day before, and I'm sitting here going, you know -- I think 30 days. I'm not going to give him anything.

CHAIRMAN FRYER: Just a moment. Just a moment. If you two can agree on a schedule like that, it's going to be okay with us.

MR. YOVANOVICH: Is that fine?

MR. OLDEHOFF: Thirty days, both of us.

CHAIRMAN FRYER: And we will -- and in addition to copying Planning Commission members and staff and the County Attorney, be sure that you copy one another.

MR. OLDEHOFF: Absolutely, absolutely.

CHAIRMAN FRYER: Okay. Thank you.

There was a gentleman who wanted to be heard on something under public comment. Is that gentleman still here?

(No response.)

CHAIRMAN FRYER: If not, Commissioner Vernon, you're --

COMMISSIONER VERNON: Yeah. I just want to say, as a matter of -- as a matter of right, you know, telling me who I can and can't talk to is not something I'm interested in hearing from an attorney. You know, I brought -- last time it was, like, we have to do a special disclosure. No, we're not changing our rules. We're going to do it the way we do it. That being said, I want everybody -- I think Rich Yovanovich knows this, but I typically don't -- I'm not saying I don't do it, but I typically do not read stuff, except for I did read the briefs somewhat -- but I typically don't read stuff and I typically don't talk to people between meetings because of -- and this is -- I think I'm the outlier in the group, but just from my legal background, I -- you know, I sort of -- I like to come in, listen to the evidence, make a decision.

So I just don't want any of your clients to get offended if they're e-mailing me or sending me stuff and I don't look at it before the -- before the hearing. I'd rather hear it in this room.

CHAIRMAN FRYER: And, you know, my background is the same as yours, but we're in a different environment here. And the Sunshine rules here go back to a situation that happened around 1998, 1999 that we, unfortunately, remain saddled with. And I try to operate within the custom and practice of this county even though some of it seems, frankly, strange to me. But there you have it.

Anything else before we adjourn?

(No response.)

CHAIRMAN FRYER: If not, without objection, we're adjourned.

There being no further business for the good of the County, the meeting was adjourned by order of the Chair at 3:39 p.m.

COLLIER COUNTY PLANNING COMMISSION


EDWIN FRYER, CHAIRMAN

7/18/24

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.