

July 18, 2024

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

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

Edwin Fryer, Chairman
Joe Schmitt, Vice Chair
Robert L. Klucik, Jr.
Paul Shea
Christopher T. Vernon
Amy Lockhart, Collier County School Board Representative

ALSO PRESENT:

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

ABSENT:

Randy Sparrazza
Chuck Schumacher

PROCEEDINGS

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

CHAIRMAN FRYER: Thank you, Mr. Bosi.

And before we launch our meeting today, Commissioner Klucik has indicated that his computer is not working properly, so I'd appreciate --

COMMISSIONER KLUCIK: I don't have the connection.

CHAIRMAN FRYER: He has no connection, so -- here's Mr. Miller, who will address that.

And while he is -- while he is at work on our behalf, I'll greet everyone with a word of good morning. And also to say that the July 18, 2024, meeting of the Collier County Planning Commission is hereby called to order.

Would everyone please rise for the Pledge of Allegiance.

(The Pledge of Allegiance was recited in unison.)

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

COMMISSIONER SHEA: Chairman Fryer?

CHAIRMAN FRYER: Here.

COMMISSIONER SHEA: Vice Chair Schmitt?

COMMISSIONER SCHMITT: Here.

COMMISSIONER SHEA: Secretary Shea is here.

Commissioner Vernon?

COMMISSIONER VERNON: Here.

COMMISSIONER SHEA: Mr. Klucik is here.

Commissioner Sparrazza is not here, and Commissioner Schumacher is not here.

And Ms. Lockhart --

MS. LOCKHART: Here.

COMMISSIONER SHEA: -- is here.

We have a quorum, sir.

CHAIRMAN FRYER: Thank you, Secretary. The -- let's see. Commissioner Schumacher told us back on May 16 that he would not be in attendance either today or tomorrow, if we need to be here tomorrow. His absence, of course, is excused. And Vice Chair Schmitt has also recused himself from the Fiddler's Creek matter and will be departing before they are heard, or at least not participating in it, and so his absence from that point forward, of course, is also excused. And Commissioner Sparrazza's absence is also excused.

Having said that, addenda to the agenda, Mr. Bellows.

MR. BELLOWS: Good morning, Commissioner. No other changes to the agenda.

CHAIRMAN FRYER: Okay. And may I remind everyone that we have reserved this room for tomorrow if needs be. Naturally, we're all hopeful that it will not be necessary. But if it is, we've got the room, and so we fully expect to complete this matter or these matters, if not today, then certainly tomorrow.

And to that point I want to know from people who are in attendance if anyone knows if he or she cannot attend tomorrow for a possible continuation of today's agenda if that becomes necessary.

Please, may I hear from you.

COMMISSIONER KLUCIK: I would not be in a position. I have client matters. I have closings tomorrow.

CHAIRMAN FRYER: Thank you, Commissioner Klucik. Then --

COMMISSIONER SCHMITT: And if it's the continuance for Fiddler's Creek, of course, I will not be here.

CHAIRMAN FRYER: Understood. It's my understanding that Commissioner Sparrazza can be here tomorrow, but Commissioner Schumacher cannot. So, I mean, there's also a potential

quorum issue that we're going to have to --

COMMISSIONER KLUCIK: And as I mentioned to you, I have to leave at 3 today.

CHAIRMAN FRYER: You did mention that, thank you. And your absence from that point forward, of course, will be excused.

All right. Same question, then, August 1, 2024. Anyone know if he or she cannot be in attendance at that meeting coming up?

(No response.)

CHAIRMAN FRYER: If not, it looks like we'll have a quorum. I'm glad to see that. Same question for August 15. Anyone know if he or she can't be here for August 15? If not, I hope that we will be solid for our August meetings.

Approval of minutes, we have two sets of minutes for action today. Those are the minutes of our May 2, 2024, meeting and those of our May 16, 2024, meeting. Are there any objections to our voting on both sets in the same motion?

(No response.)

CHAIRMAN FRYER: There being none, are there any corrections, changes, or additions to either the May 2 or May 16, 2024, minutes?

(No response.)

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

COMMISSIONER SCHMITT: Make a motion to approve as submitted.

CHAIRMAN FRYER: Both sets?

COMMISSIONER SCHMITT: Both sets, yes.

CHAIRMAN FRYER: Thank you. Is there a second?

COMMISSIONER SHEA: Second.

CHAIRMAN FRYER: Further discussion?

(No response.)

CHAIRMAN FRYER: If not, all those in favor of approving both sets, please say aye.

COMMISSIONER VERNON: Aye.

COMMISSIONER SHEA: Aye.

CHAIRMAN FRYER: Aye.

COMMISSIONER SCHMITT: Aye.

COMMISSIONER KLUCIK: Aye.

CHAIRMAN FRYER: Opposed?

(No response.)

CHAIRMAN FRYER: They are both unanimously approved.

BCC report, recaps, Mr. Bellows.

MR. BELLOWS: Yes, at the last Board of County Commissioner meeting there were no land-use items presented.

CHAIRMAN FRYER: Thank you, sir.

Chairman's report, none today.

Consent agenda, none today.

Public hearings, advertised, the first matter to be heard today --

COMMISSIONER KLUCIK: Mr. Chairman.

CHAIRMAN FRYER: Yes, sir, Commissioner.

COMMISSIONER KLUCIK: If I might ask staff -- okay. So I downloaded the agenda packet for Monday's meeting. Has it changed since then?

MR. BOSI: No changes.

COMMISSIONER KLUCIK: Thank you.

CHAIRMAN FRYER: Okay. Thank you.

***The first matter to be heard today is PL20240000400, and this is the Collier County 10-year water supply work plan large-scale Growth Management Plan amendment that's here before us on second hearing for recommendation on adoption. The matter's purely legislative in

nature with no quasi-judicial components, so no need for swearing in of witnesses or ex parte disclosures.

And with that I'll turn it over to staff.

MR. BOSI: Thank you. Mike Bosi, Planning and Zoning director. We do have representatives from our Utilities department if you wanted to -- if there was specific questions about some of the changes that were made.

The Planning Commission had heard this in March. It was transmitted by the Board of County Commissioners in April to the State. The State had a couple comments, really procedural changes to the 10-year water supply plan. It's procedural. Every five years we have to make sure that we're identifying the sources of freshwater to satisfy the population expected within the -- within the county.

So if there's any questions, staff would be available to answer. We're looking for a recommendation of approval. Like I said, this is the second time you've heard it. And there's been no substantive changes to the 10-year water supply plan.

CHAIRMAN FRYER: Thank you.

And I agree with the characterization furnished by Mr. Bosi. I've looked at the material, and staff identified quite clearly the few procedural changes that appeared before us for the first time in this material, and all the rest is the same as it was last time we heard it. That doesn't mean we can't comment on it. It's just that it would be the second time around. And with that, Vice Chairman Schmitt is signaling. Go ahead, sir.

COMMISSIONER SCHMITT: Yeah, I believe the executive summary -- the staff report pretty much summarizes what I would describe as nothing more than de minimis changes or scrivener's errors, with that, I would recommend approval as proposed.

CHAIRMAN FRYER: Thank you. Is there a second?

COMMISSIONER SHEA: Second.

CHAIRMAN FRYER: Now, any further discussion? We haven't -- actually, we probably need to ask for staff and for the members of the public, if anyone is here. Is anyone here who either has registered or who has not registered but wishes to be heard on this large-scale Growth Management Plan amendment? Please raise your hand.

(No response.)

CHAIRMAN FRYER: Seeing no hands raised, I look to our staff at the back of the room. Anyone registered online or otherwise letting you know that they want to speak?

MR. SABO: Mr. Chairman, there's no registered speakers.

CHAIRMAN FRYER: Okay.

COMMISSIONER SCHMITT: My only comment is unless the staff is compelled to believe that they want to present something on the record.

MR. BOSI: No.

CHAIRMAN FRYER: Great.

MR. BOSI: Staff's satisfied.

CHAIRMAN FRYER: Thank you.

Any questions, comments, or observations from the Planning Commission?

(No response.)

CHAIRMAN FRYER: If not, there's a motion and a second before us for a recommendation of adoption on this large-scale Growth Management Plan. All those in favor, please say aye.

COMMISSIONER VERNON: Aye.

COMMISSIONER SHEA: Aye.

CHAIRMAN FRYER: Aye.

COMMISSIONER SCHMITT: Aye.

COMMISSIONER KLUCIK: Aye.

CHAIRMAN FRYER: Opposed?

(No response.)

CHAIRMAN FRYER: It passes unanimously.

Thank you, staff.

***The second matter we have before us is PL20230017241. This is the Immokalee One-Stop Mixed-Use Planned Unit Development Z -- MPUDZ. All those wishing to testify in this matter, please rise to be sworn in by the court reporter.

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

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

CHAIRMAN FRYER: Thank you.

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

MS. LOCKHART: None.

COMMISSIONER VERNON: None.

COMMISSIONER SHEA: Staff materials only.

CHAIRMAN FRYER: Thank you.

Matters of public record, conversation with the representative of the petitioner, and meeting with staff.

COMMISSIONER SCHMITT: Conversation with Mr. Yovanovich, who is the legal counsel representing the petitioner.

COMMISSIONER KLUCIK: The public record and staff meeting.

CHAIRMAN FRYER: Thank you, and we have no one on the phone. So that takes care of our ex parte disclosures.

With that, I'll recognize the applicant's representative. You have the floor.

MS. HARRELSON: Good morning. I'm Jessica Harrelson, certified planner with Peninsula Engineering here representing the applicant, Southwest Florida Workforce Development Board.

Here with me today are Rich Yovanovich and our traffic consultant, Norm Trebilcock.

The request for this Immokalee Square MPUD rezone is requesting to rezone the subject property from Estates to the Immokalee One-Stop Mixed-Use PUD to permit up to 40,000 square foot of limited commercial uses or up to 16 dwelling units per acre for a total of 61 residential dwelling units.

The subject property is located at 750 South 5th Street in Immokalee. It's located within the Estates zoning district and designated within the Urban Mixed-Use District, Commercial Mixed-Use District of the Immokalee Area Master Plan.

The property is located within the airport zoning overlay, and the proposed development complies with the height restrictions of this zoning overlay.

The property is also within the wellfield protection zone. The PUD does not contain any land uses that would impact the public water supply, and all development will comply with the standards outlined in the LDC for groundwater protection.

The property is 3.84 acres developed with a multi-tenant office building permitted in the year 2000 as a public use providing community support businesses to the public. At the time the permit -- the project was originally permitted, the use was allowed under that LDC at that time as essential service.

Oh, sorry.

Surrounding land uses are a public -- Collier County public school to the north, and that school site preserve wraps around to the east and to the south. We have developed an -- undeveloped residential land uses across the right-of-way to the west.

Access will be from a direct connection from South 5th Street. Landscape buffers include a 15-foot Type B to the north, a 10-foot Type D along the right-of-way, and then existing vegetation satisfies buffer requirements along the remaining boundaries.

Development standards include 25-foot front and rear yards, 15-foot side rear yards, and a

maximum building height of 35 feet for commercial uses, and 40 feet for residential.

To highlight some of the more important developer commitments included in the PUD, we did coordinate with the airport authority. We've added a commitment that requires notification to any future residents regarding the proximity to the airport located in Immokalee and the potential for any noises created by the operation of that airport. The maximum trip -- daily trip generation for the mixed-use PUD shall not exceed 172 two-way peak-hour net trips, and Dark Skies lighting will be installed.

So, again, the site is designated within the Urban Mixed-Use District Commercial Mixed-Use Subdistrict of the Immokalee Area Master Plan. The purpose of this subdistrict is to provide for higher density residential and mixed-use development.

Nonresidential uses included in the PUD are compliant with what's allowed in the Immokalee Area Master Plan, which permits C-1 through C-4 uses and a base density of 16 dwelling units per acre.

The commercial uses included in the PUD are appropriate and compatible with the adjacent neighborhood and, in summary, the list includes general and medical offices, churches, educational services, essential services, and recreation.

Conditional uses of the C-4 district are allowed through the conditional-use process.

And, again, residential is permitted, multi-family at 16 dwelling units per acre.

The neighborhood information meeting was held on April 9th, earlier this year. No one attended or participated online. And to date, no objections from the public have been received.

We presented the project to the Immokalee CRA Advisory Board on May 15th, and we received a letter of support from them.

And to conclude, there are no deviations being requested from the LDC. The rezone has support from the Immokalee CRA Advisory Board. Again, no public opposition has been received. The rezone is consistent with the county's Growth Management Plan. It complies with the Land Development Code, and county staff has recommended that the Planning Commission forward this to the Board with a recommendation of approval.

CHAIRMAN FRYER: Thank you, Ms. Harrelson.

MS. HARRELSON: Thank you.

CHAIRMAN FRYER: Any questions or comments for the applicant at this time?

Go ahead, Mr. Shea.

COMMISSIONER SHEA: I'm losing my voice; pardon me. What is the -- what's going to happen with the existing building?

MS. HARRELSON: Well, the intent of the rezone is to allow some additional services and commercial uses at the property. It may be completely redeveloped, or the existing building may be utilized.

COMMISSIONER SHEA: Okay.

CHAIRMAN FRYER: Anything else from up here?

(No response.)

CHAIRMAN FRYER: If not, I have a couple of things. First of all, as I -- in a conversation I had yesterday with Mr. Yovanovich, I mentioned that I would suggest that the applicant also reserve the ability to do a true mixed-use project rather than either/or, and subject, then, to the trip cap as the mitigating factor on how large either one of those can be.

MR. YOVANOVICH: And, Mr. Fryer, as we discussed yesterday, we're fine with that as long as we don't have to go back and do another neighborhood information meeting.

CHAIRMAN FRYER: Yeah.

MR. YOVANOVICH: Because at that neighborhood information meeting, we presented it as an either/or.

So we'll be happy to make that change at the Planning Commission's direction, but we don't want to have to go back and go backwards in the process.

CHAIRMAN FRYER: Understood. That's a reasonable point. I'm going to ask

Mr. Bosi and the County Attorney, if necessary, what their take is on another NIM, whether it's necessary if we do this.

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

First of all, the fact that no one attended the NIM, I'm not sure -- I would suggest they wouldn't be required to have another NIM. The intensity that was associated with the -- with the either/or proposal is going to be the intensity that we agree upon would be the most if it was a mixed-use project. So based upon those two factors, I would suggest that another NIM would not be required.

CHAIRMAN FRYER: Thank you. Anything from the County Attorney on that?

MS. ASHTON-CICKO: I agree with Mike.

CHAIRMAN FRYER: Okay. Thank you.

So then we would take it that the applicant would accept that additional flexibility because of the finding that no new NIM is required.

MS. HARRELSON: Of course, and I'll work with staff to get the changes made.

CHAIRMAN FRYER: Thank you.

Now, something that I do get in my craw up here having to do with uses, and under -- under the principal uses, B8, business services, you did quite a good and thorough job of vetting that SIC code and taking out the things you didn't want.

MS. HARRELSON: Thank you.

CHAIRMAN FRYER: So that pleasantly surprised me, but then I wondered why you didn't do the same thing for some of these others that are catch-alls. And so since you didn't, I'm going to run through that with you and find out if --

COMMISSIONER VERNON: Mr. Chairman.

CHAIRMAN FRYER: Yes, sir. Go ahead.

COMMISSIONER VERNON: Can we go back to the screen? I think you had it on the slide about two, three slides ago. Is that what -- that's what you're referring to, right?

CHAIRMAN FRYER: Yeah, the principal uses if it goes commercial.

All right. So with that, I'm going to start with SIC Code 7999. The following uses are permitted in that SIC code, and it would surprise me greatly if the applicant wanted to retain any of these, but let's find out.

Shooting galleries, astrologers, betting information services, billiard and bingo parlors, bookies, bookmakers, cave operation, circus companies, fireworks display services, fortunetellers, gambling establishments, gambling machines, off-track betting, pack trains for amusement, ping pong parlors, pool parlors, shooting galleries, shooting ranges, skeet shooting, and slot car racetracks, whatever that is. May -- would you be willing to exclude those the same way you excluded from 3789?

MS. HARRELSON: Yes, that's no problem. Like you said, it's a catch-all, and there's no problem taking those out.

CHAIRMAN FRYER: All right. Thank you.

Then going down to B4, 6099 -- and if this is something you want and can explain to me, that -- I'd certainly consider that. But it allows for something called deposit brokers. I don't know what that is.

MS. HARRELSON: We can remove it. It's not going to be needed.

CHAIRMAN FRYER: Okay. Thank you.

Then, again, my compliments to you on B8 because you did a good job of extracting the ones that -- I would have been very surprised if you wanted to keep any of those, so that was good. Then under 7911, included in that is dance halls.

COMMISSIONER KLUCIK: We need Yellow Pages, though. I don't understand. Who's going to do Yellow Pages? We need more space for that. Phone directories is -- sorry. I was trying to do levity instead of --

CHAIRMAN FRYER: Thank you. And --

COMMISSIONER KLUCIK: -- instead of stress.

CHAIRMAN FRYER: Instead it turned out as a little bit of levitation. But thank you. 7911 has dance halls. Is that something you need?

MS. HARRELSON: No.

CHAIRMAN FRYER: Okay. So those -- those will come out.

And then under 8099, here I go again, blood donor stations, sperm banks, medical photography and art, organ bank.

MS. HARRELSON: We could remove them.

CHAIRMAN FRYER: Okay. And then under 25, loan brokers, SIC Code 6163, remove?

MS. HARRELSON: Yes, no problem.

CHAIRMAN FRYER: Okay. And my respectful request to you and your colleagues when they come back before us, don't make me do this every time.

MS. HARRELSON: Okay.

CHAIRMAN FRYER: Okay. Thank you very much.

MS. HARRELSON: Thank you.

CHAIRMAN FRYER: So the application, then, will be amended or is being amended to remove those uses and also to add flexibility of a mixed-use project subject to the traffic peak-period trip count.

So anything further from the staff -- or, rather, from the Planning Commission?

COMMISSIONER KLUCIK: Mr. Chairman.

CHAIRMAN FRYER: Yes, sir.

COMMISSIONER KLUCIK: Go ahead, Joe.

COMMISSIONER SCHMITT: Good catch. That's all.

COMMISSIONER KLUCIK: Thirty-nine, what's the tower height? Is that also -- is that a thing that you would probably want?

MS. HARRELSON: It would be subject to the LDC. I'm not sure off the top of my head, unless staff can confirm that.

MR. BOSI: The limitation for a tower height in a C-4 zoning district is 185. That's the highest that it could go. But it also has to meet separation distances, so I'm not sure 185 would be able to fit based upon the size of this parcel. So the size of the parcel may obligate that the highest that it can go is 135 feet to meet the separation requirements from the adjoining -- adjoining parcel lines.

COMMISSIONER KLUCIK: That just seems like a -- you know, if you're not going to -- planning to do that, that seems like something to take out just like the other stuff that the Chairman just was talking about.

CHAIRMAN FRYER: Any objection from the applicant to removing that as well?

MR. YOVANOVICH: Do we have a tower now?

MS. HARRELSON: No. That's fine.

CHAIRMAN FRYER: Okay. So the tower comes out as well.

Thank you, Commissioner.

Anything further for the applicant?

(No response.)

CHAIRMAN FRYER: If not, it's time for us to hear from staff.

MR. BOSI: As recommended with -- or as indicated within the staff report, staff is recommending approval. All of the division departments that reviewed it have signed off on the petition. With the modifications that's requested from the Planning Commission, the staff is in agreement with all the changes and would recommend approval from the Planning Commission to the BCC.

CHAIRMAN FRYER: Thank you very much. Nothing further from staff, then?

MR. BOSI: Nothing further.

CHAIRMAN FRYER: Okay. Public speaking. Staff in the back, please bring me up to speed on that.

MR. SABO: I'd be happy to, Mr. Chairman. There are no public speakers for this item.

CHAIRMAN FRYER: Thank you.

Are there -- any people in the room who have not registered to speak but nonetheless would like to be heard on this matter, now would be the time to please raise your hand.

(No response.)

CHAIRMAN FRYER: And I see no hands raised, so we'll close the public speaking portion of this hearing. And we'll take the matter into our hands for deliberation and action. And the action in question would be only on the PUD. There would be no EAC action required.

COMMISSIONER SCHMITT: Yeah.

CHAIRMAN FRYER: Vice Chairman.

COMMISSIONER SCHMITT: Yes. I make a motion to approve subject to the changes as proposed by the Chairman and the additional change removing Item 39 doing with communication towers. So I'd make a recommendation for approval.

CHAIRMAN FRYER: Thank you. Is there a second?

COMMISSIONER VERNON: I'll second.

CHAIRMAN FRYER: All right. Further discussion, now would be the time.

COMMISSIONER VERNON: I had just a curiosity question. I should definitely --

CHAIRMAN FRYER: Go ahead, Commissioner.

COMMISSIONER VERNON: -- definitely know the answer to this, but I don't. What time was the NIM meeting? It's required to be after 5, right, by rule?

MR. BOSI: Yes, after 5 is when we --

MS. HARRELSON: 5:30.

COMMISSIONER VERNON: 5:30, okay, thank you.

CHAIRMAN FRYER: Anything further from up here?

(No response.)

CHAIRMAN FRYER: It's been moved and seconded to approve. All those in favor, please say aye.

COMMISSIONER VERNON: Aye.

COMMISSIONER SHEA: Aye.

CHAIRMAN FRYER: Aye.

COMMISSIONER SCHMITT: Aye.

COMMISSIONER KLUCIK: Aye.

CHAIRMAN FRYER: Opposed?

(No response.)

CHAIRMAN FRYER: It passes unanimously.

Thank you, applicant and staff.

We're moving right along smartly here.

***The next matter is PL20220005665. This is the Elanto at Naples RPUDZ.

All those wishing to testify in this matter, please rise and 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.

COMMISSIONER VERNON: Vernon has none.

COMMISSIONER SHEA: Staff materials only.

CHAIRMAN FRYER: Staff materials, communication with applicant's representative. That's all.

COMMISSIONER SCHMITT: Spoke with Mr. Yovanovich, the attorney representing

the petitioner, and I did receive an e-mail late yesterday, and it appears it just went to the Planning Commissioners asking about questions about affordable housing. Did any of that go to the staff, from Emily Tejano?

I did not answer it, but it had to do with questions of affordable housing, and it went -- I see it went to all the commissioners. But I -- I did not take the liberty, nor did I think it was right for me to try and respond to it. It would have been something that Cormac would have probably had to respond to.

MR. BOSI: And I don't think staff received it. If you could forward that to me, I can distribute it to the appropriate staff, and we can respond.

CHAIRMAN FRYER: Okay. Thank you.

COMMISSIONER KLUCIK: And the public record as well as staff.

CHAIRMAN FRYER: Okay. Ms. Lockhart, I'm not sure I heard your --

MS. LOCKHART: None.

CHAIRMAN FRYER: None. Thank you very much.

All right. Mr. Yovanovich, you have the floor.

MR. YOVANOVICH: Thank you. Good morning. For the record, Rich Yovanovich on behalf of the project team.

With me today is Benson Whitney as a representative of the applicant. Mr. Mulhere is not here; he had a recent procedure yesterday. So I'm going to do an overview of the entire presentation, and Jeremie Chastain can assist in any of the planning-related questions you may have after I do the overview. Mr. Trebilcock is our transportation consultant, and Bridgette Theriault is our environmental consultant. I introduced Jeremie Chastain. And Terry Cole is our professional engineer.

COMMISSIONER SCHMITT: Rich, before you get started, I want to make a correction. The email is from Bob Weissbein, W-e-i-s-s-b-e-i-n. So I will make sure that's forwarded.

MR. YOVANOVICH: Okay. The subject site is located on Tamiami Trail East right across from -- this is Fiddler's Creek in this area right here.

It's 51.83 acres in size. And our request is to rezone to an RPD to allow for a total of 310 -- we called them multifamily dwelling units. And I'll get into a little bit more detail as to the type of product we're doing, and so will Benson -- at 6.02 units per acre.

We're not asking for a Growth Management Plan amendment to get the increased density. I'm sure the Planning Commission remembers that you recently amended the Growth Management Plan to increase and allow for the ability to ask for increases above the base density through the affordable housing program by utilizing the current Land Development Code matrix for density bonuses, and that is what we're using. We're using the current Land Development Code matrix to ask for six bonus units per acre, and what we are providing in return for those six bonus units per acre is 10 percent of the units will serve the 50 percent and under income category, which is the very low category. I have not yet been involved with a project that has sought to get to that level of income.

So I hope -- I hope that is -- I know staff was happy that we came in at that category, and I hope that the Planning Commission will be happy as well.

COMMISSIONER KLUCIK: Mr. Chairman?

CHAIRMAN FRYER: Commissioner Klucik.

COMMISSIONER KLUCIK: What was the motivation for that particular category?

MR. YOVANOVICH: The developer could meet that category. They're very interested in providing affordable housing, and that got them to the density they needed for the project instead of -- we could have gotten to the same six bonus units by going in a higher category, but it would have been more units that would have been income restricted.

I think, to date, this probably is the first project that's going through the process using that recent amendment to the Rural Fringe Mixed-Use District.

As I mentioned, we are -- the project -- and Benson will do a much better job than I'm

going to do in trying to explain this. It's a horizontal multifamily project which your code doesn't really address or describe because we're going to have what would look like a single-family unit, we're going to have some duplexes, and we're going to have some townhomes, and there's no real category for that type of project. So we've defined it as a horizontal multifamily because your typical multifamily is buildings three units or more, but we'll have some that don't have three units in them.

So it's going to look at some points like a single-family project, it's going to look at some points like a villa project, and it's going to look at some points like it's a townhome project.

What we did not want to build is we did not want to build your typical four-story apartment complex on this piece of property. We wanted to provide a different product for people who are living in Collier County.

So with that, it's, we believe, a very unique concept. I think you saw it one other time for a project up on Immokalee Road, but it's becoming a project that's becoming more and more popular with -- basically, it's called a build-to-rent concept. And I'm going to -- I'm going to be quiet right now, and I'm going to ask Benson Whitney to come up and explain the concept of the project, go over that, and then I'll take you through briefly the master plan and a couple other aspects, and then we'll be available to answer any questions you may have.

CHAIRMAN FRYER: Commissioner Vernon.

COMMISSIONER VERNON: Did you say "built to rent"? Is that --

MR. YOVANOVICH: It's a concept of build to rent.

COMMISSIONER VERNON: Build to rent?

MR. YOVANOVICH: Build to rent.

COMMISSIONER VERNON: Thank you.

COMMISSIONER KLUCIK: Like an apartment building?

MR. WHITNEY: Well -- so in a nutshell, build to rent is --

CHAIRMAN FRYER: State your name for us, sir, for the record.

MR. WHITNEY: Oh, sorry. My name is Benson Whitney. And I work for Property Reserves, and that's the company that -- I'm in charge of all build-to-rent projects that we do around the United States. We have about 12 right now that we're building, and I'm going to show some that we are in planning and building and some that we've already built in Arizona, Utah, and looking in Colorado and, obviously, here.

So the whole concept of build-to-rent is it's a new product. It's been around for maybe 10 to 15 years. It kind of originated in Arizona. And what it is in a nutshell is you take the concept -- all the good things you have from an apartment complex, which you have on-site amenities, you have management, that if you -- you have a leasing agent, you have a leasing office. You have all those nice things.

And then you take the single-family homes and townhomes that people would rent, and sometimes they're scattered or sometimes they're clustered, and we take both of those and we put them together, and that's how we got build-to-rents. So we take all the good things from an apartment complex and all the good things from a standard neighborhood, and we put them together.

So you can see right here, this is our -- this is our site here that we have in Riverton. So we have townhomes. This is in Utah. This is more desert. Obviously, what we'll do in Naples will be 10 times more lush. But we have townhomes over here. We have single-families over here. We have duplexes over here. We have little patio homes over here. We try to put our amenity center in the middle. And what you're -- what you're used to in an apartment complex are carports, a lot of parking, and a parking complex. By doing -- kind of taking that out, get rid of the carports, each unit will have its own driveway large enough to park its own car. Each unit will have its own garage. So you will have guest parking and a place to park their garage -- park their car, excuse me. So it's taking both worlds and putting it together.

This is some of the units that we're building in St. George. This is our patio homes. This

is our amenity center. Our amenity center is pretty much the same. We kind of use this same concept in all of our projects. We picked this one because it does have the palm trees, and we'll definitely be putting palm trees there.

So what you have here is on this side is our leasing office. This side is we have our gym. We have our workout area, yoga room, and things of that nature.

This is an aerial view of the amenity center. This is the front view. This is one that we do have built in Surprise, Arizona. And we just started leasing about two months ago.

Here's a view of inside. This is a three-bedroom horizontal apartment. You notice here that we have 10-foot ceilings. We have 8-foot doors. We have a very high spec level. And one of the reasons why we have a high spec level is that our company, we hold our projects. Some developers will build an apartment complex or community, stabilize it, and sell it in five years. All of our projects we keep in our portfolio for long term, so we feel like that we try to put our best foot forward on all of our projects.

Here is -- this is a view of what -- the duplexes with the little one-car garage. This right here, this is a one -- believe it or not, that's a one-bedroom. This is around 600 square feet. This right here is a three-bedroom. It's around 1100 square feet with a one-car garage. You can see that we purposely put an F-150 there to show that guest parking's available, and we made sure that our garages are deep enough that they can also park a garage -- a car in there.

One thing that's interesting to note is a lot of apartment complexes have dumpsters throughout, and that's just how they have to do their garbage. We make sure that our garages are large enough so that we can put a garbage can in each garage, and then we will have pickup services. So it makes it feel like a neighborhood more than an apartment complex.

CHAIRMAN FRYER: Vice Chairman.

COMMISSIONER SCHMITT: Oh, I'll wait till he's done because I have a --

CHAIRMAN FRYER: Okay.

MR. WHITNEY: And this is just the last one, and I'm done. So, Commissioner.

COMMISSIONER SCHMITT: Well, let me -- in regards to operation of this, are these short-term rentals? Like, a week? A month?

MR. WHITNEY: No, no.

COMMISSIONER SCHMITT: Or what --

MR. WHITNEY: Yeah, we prefer to get at least a year lease. And what we're finding out about BTR is that since we offer a lot of additional storage and additional room, is that they are more -- we call it sticky to renew their lease at the end of the year lease than an apartment complex. And so we're having very good retention in all our projects.

COMMISSIONER SCHMITT: And then can you describe the management concept? Will there be a manager on site 24/7 because of the -- this is a high density, and I understand it needs to be for affordable housing, because that's exactly what needs to be done. I don't argue that. But I just want to make sure, from a standpoint these are rentals, so the maintenance, the upkeep of the facilities, all those kind of things, what kind of management concept do you have on site?

MR. WHITNEY: So you're exactly right. We have full-time management there on site. We have a management team. We have some golf carts that they just drive around and fix things. Not only are they management of the units and 24/7 on-site management, but also they police -- a lot of times talking with different planning commissioners and whatnot, they're worried about the parking and about this is a home. What do they do if they, you know, put a couch on the front lawn or things of that nature. Well, we're there. We're there 24/7, so we're managing that; just like an apartment complex where if you had -- there's other companies that will just buy scattered homes and rent them. They don't know what's going on. They maybe drive by it once a month, twice a month. We're there every single day.

COMMISSIONER SCHMITT: Yeah. My concern is exactly what you stated. I don't want -- what I don't want is this to become a haven for continuous code enforcement calls because

of whatever, parking.

MR. WHITNEY: Right.

COMMISSIONER SCHMITT: As you just said, a couch out in front or other types of things.

MR. WHITNEY: Right.

COMMISSIONER SCHMITT: So the key here, because of the density, making sure that folks understand the rules, regulations, and that they are enforced.

MR. WHITNEY: Yeah.

COMMISSIONER SCHMITT: I'm not going to get into the rules and regs. That's something that you will do as an operational aspect of it. But I would state for the record, I mean, from the standpoint of operations, you're operating this certainly as a business, and in order to become a viable business, it has to maintain its pleasant living environment and it doesn't deteriorate into becoming a nuisance to the county.

MR. WHITNEY: You're absolutely correct, yep.

COMMISSIONER SCHMITT: Okay.

MR. WHITNEY: We're in agreement.

CHAIRMAN FRYER: Okay. Anything further, sir?

MR. WHITNEY: No. Any other questions?

CHAIRMAN FRYER: I have a comment or two. First of all, just to confirm for the record, staff and the applicant have reached a compromise on the Deviation Request No. 1 to come in at 100 feet. Could we confirm that on the record?

MR. YOVANOVICH: Yeah. That was going to be in some future slides, but yes, staff had objected to the deviation to go down to 60 feet. We have met with staff, and we've increased the -- we've increased the setback to 100 feet from 41.

CHAIRMAN FRYER: Okay. And with that, staff is withdrawing --
(Simultaneous crosstalk.)

MR. YOVANOVICH: Yeah, that's my understanding is staff is fine. And I can show you the slide that would show the change to that deviation.

COMMISSIONER SCHMITT: Just as a follow-up to that question -- and I did talk to Rich Yovanovich about this and staff -- my concern, of course, is this is a state road, U.S. 41, a U.S. road and a state road, and it may eventually be widened. I just wanted to make sure that this deviation would not impact any -- would it create an eminent domain requirement or whatever because of -- is there enough setback? Norm assured me -- Norm Trebilcock assured me that there would not be an encroachment or this was going to be sufficient. I just wanted to make sure because --

MR. YOVANOVICH: Right, and --

COMMISSIONER SCHMITT: -- at some time they may end up widening this all the way down to --

MR. YOVANOVICH: I believe there's an existing 200-foot right-of-way --

COMMISSIONER SCHMITT: Good.

MR. YOVANOVICH: -- and we've actually brought the sidewalk into our project to give DOT some more room on their road.

COMMISSIONER SCHMITT: Okay. Just for the record, I just wanted to have that on there. Thank you.

CHAIRMAN FRYER: Good. Thank you. Let's see. We have got Commissioner Vernon.

COMMISSIONER VERNON: Yeah. And your applicant may want to come back up.

I will say to both of you, I just -- I'm not even sure what my question is, but I'll tell you I really love this project. I was waiting -- in my mind, as you were describing it, I said, okay, you know, thinking about my experience in raising kids in a neighborhood, and about three-quarters in you said the word "neighborhood." That's what I'm getting from this.

You're taking -- the back office is run like an apartment complex, but the forward-facing, public-facing it's somewhere if somebody can't afford to buy a home, they can come and rent and feel like they can raise a family there and get to know their neighbors.

And I understand, you know, the commissioner -- other commissioner's question, you know, it's a good question, but I think if you're going to hold the properties, you're not going to want it to have -- get rough or anything like that.

But I always get worried when I get too excited about a project that I'm not asking the right questions. So I -- you know, I guess I want -- I guess I just want to repeat Robb's question up front about why you're going to the lower end, and I didn't fully understand Rich's answer. And I think what I'm trying to get at and maybe Robb's trying to get at, is there -- I think you guys are a faith-based organization; is that correct?

MR. WHITNEY: (Nods head.)

COMMISSIONER VERNON: So I'm really -- I guess my question is more for the future. You know, I see another project. Do you see this as -- are you going to make less -- do you think you're going -- and you've done this before. Is it less profitable than what we see from other applicants who aren't faith-based? Is there -- is there a component here that's not related to profitability, I guess, is the way I'd phrase the question?

MR. WHITNEY: There is. And what's helping us out is our land basis. Our land basis on the property is very, very low. And so what we're doing is taking that uplift, and we're putting it into the project.

COMMISSIONER VERNON: By land base, you mean you're getting the land cheaper than --

MR. WHITNEY: We've owned it for a long time, yes.

COMMISSIONER VERNON: Got it.

MR. WHITNEY: And so in our studies and things -- in talking to our competitors, we're building about 20 to 30 percent above the market, and we're okay with that because we're holding it for a long time, yes.

COMMISSIONER VERNON: And it is profitable because you -- it's an annuity you got, you keep it clean and you keep it nice, and you get the money rolling in --

MR. WHITNEY: That's exactly right.

COMMISSIONER VERNON: -- and hopefully get that stickiness from good tenants.

MR. WHITNEY: Yep.

COMMISSIONER VERNON: Okay.

MR. WHITNEY: And just to add, when you talked about the neighborhood -- and you'll see -- I didn't go over it in the slides. We make sure each one of these have a minimum of a 15-foot backyard, so it feels like a neighborhood. It feels like you have your own private backyard. We went and toured a lot of these up in Fort Myers, no backyards. And the ones that did have backyards, they didn't have the amenities. And so we're giving both items to make it really feel like a neighborhood.

COMMISSIONER VERNON: Okay. But there's no ownership; it's all rent?

MR. WHITNEY: Yep. It's all rent.

COMMISSIONER VERNON: Okay. Thank you very much, and thanks for doing this.

CHAIRMAN FRYER: Thank you.

Vice Chairman.

COMMISSIONER SCHMITT: Yeah, I have a question in regards to the -- of the staff review, and it primarily had to do with the review of the neighboring properties. My only question is, we included a lot of properties along U.S. 41, but we didn't include the Esplanade of the Islands, which is right across the street, and I really don't understand that, which is the closest proximity to this development. And that's the chart that was on -- in the staff report and the analysis that was done. I guess it's on my Packet 491, but on Page 14 of 24 of the -- of the staff report.

And I'm just puzzled as to why -- you know, we included Fiddler's Creek, Charlee Estates,

Paradise Pointe, Regal Acres, Walnut Lakes, Basik Drive, but right across the street is a pretty large development. Just curious.

And, obviously, I mean -- from what I've seen, there was no objections from anybody in that area. And I hate -- I'm hesitant, but I'm going to bring it up anyway. Many of the arguments for the next petition regarding Coastal High Hazard Area, all the other arguments that were raised in opposition to the affordable housing, not more than probably a mile away from here, but none of those came up in regards to this proposal.

MR. BOSI: None of those were present.

COMMISSIONER SCHMITT: Okay.

CHAIRMAN FRYER: Thank you.

Commissioner Klucik.

COMMISSIONER KLUCIK: Yes. Is there -- I guess, to just go back to the incentive for the -- or the motivation for the lower-income restriction, is that -- is there a higher density for -- if you go to a lower -- lower income?

MR. BOSI: Mike Bosi, Planning and Zoning director. That's exactly how our chart works. If -- the lower you go, the more density you get for the percentage that you're providing for.

So for 10 -- at 10 percent, they are eligible for seven additional units going to the very low. They haven't taken advantage of all of the density they would be entitled to. They're leaving density on the table. But that's exactly how it is. Because we know that the very low is the segment that really doesn't get a lot of attention from the projects that we have coming forward, we put the biggest bonus associated with that very-low category trying to spur more of those within the marketplace.

COMMISSIONER KLUCIK: And then I'm assuming, then, that the petitioner's -- this model of neighborhood, so to speak, is -- really doesn't -- isn't seeking a ridiculous -- well, a squeezed density. It wants to be spread out so it works out for the best for everybody. You can take advantage of the density bonus, but you don't -- that doesn't mean you have a really tight project.

MR. YOVANOVICH: It's a different -- it's a different product. If we were in with your standard four stories over -- four stories with surface parking, I guarantee you we could get a lot more units on this piece of property, and we would be asking for a higher -- higher bonus. It's just -- it's a different product. It's a different feel. It's a different goal than other -- than other projects.

COMMISSIONER KLUCIK: Do you expect the rents for the nonrestricted properties to be -- I mean, to me it seems like a much nicer product than a lot of rentals might be. Is the rent expected to be higher?

MR. YOVANOVICH: It's going to be a market -- whatever -- you know, whatever the market says is appropriate. Those will be market-rate rents.

CHAIRMAN FRYER: Vice Chairman.

COMMISSIONER SCHMITT: Yeah. With the change to Deviation 1, does that change the staff's position that this does not comply with the cluster development theory?

MR. BOSI: Correct, correct. Staff's original position was the cluster development provision of the Rural Fringe Mixed-Use District asked for a little bit more open space. We felt the unique design of this wasn't giving us quite that open space but sending it back to finding that 100-foot setback goes above the 50 percent open space minimum requirement and does satisfy the -- the rural-to-suburb/rural type of feel that we expect within the Rural Fringe Mixed-Use District. So staff is in support with the deviation reduced down to the 100-foot.

COMMISSIONER SCHMITT: The last statement in the recommendation, where it says, "Subject to denial of Deviation No. 1," that is no longer applicable?

MR. BOSI: Correct.

COMMISSIONER SCHMITT: Okay. Thank you.

CHAIRMAN FRYER: Thank you.

No one else is signaling, so I want to make a point or two. First of all, I join the others in complimenting the applicant for finding a way to capture this different demographic. And it may surprise someone to know -- and I'm leading somewhere with this that you may anticipate, that essential services personnel include individuals particularly who are starting up in that role who would find themselves unable to come in at 80 percent or 100 percent of AMI, and therefore, I would ask -- and this follows a conversation I had with Mr. Yovanovich who I think was favorably disposed to it in our conversation yesterday -- that we add a "first offer for essential services personnel" provision into the ordinance.

MR. YOVANOVICH: And I had a chance to talk to my client, and that's fine as long as we use kind of the adopted standard language we have as for how long a period of time before we initially rent to -- that unit and that it -- if we go with the standard adopted language that we've had with regard to who is essential service personnel and the length or period of time for that initial rental period, that's fine.

CHAIRMAN FRYER: Thank you. And just to be absolutely sure -- and I think we're of one mind on this because it was the standard language that I had in mind. But unless the Planning Commission wants to bring this back on consent, which I do not recommend, I would like leave from the Planning Commission to just take a quick look at that language to be sure that in my view it's standard and that Mr. Yovanovich and my -- our minds have met on this before it goes to the BCC.

MR. YOVANOVICH: And, honestly, I forget which project we recently did with that type of language, and I would imagine that's what we could model it after.

CHAIRMAN FRYER: Yeah. Any objections to me taking a look at that?

COMMISSIONER SCHMITT: I have no objection, and I would make that a -- as part of the motion. But I want to talk about, I also want to make sure the service workers -- and I look at, every day, the amount of people that go onto Marco Island, that go down Collier Boulevard every day down to service all the hotels and facilities. This is a perfect place for a lot of that income level, and I want to make sure that we don't deny them an opportunity as well for this product, because they -- many of them fall within this 50 percent category. So I just want to make sure that essential services personnel, they don't bump the opportunity for these service workers also.

CHAIRMAN FRYER: It may happen occasionally, but I think it's safe to say that there will be ample opportunity for service workers as opposed to essential service workers to have a shot at it, and I think this will probably help the marketing.

Any --

COMMISSIONER SCHMITT: I'm fine. We'll include the language.

CHAIRMAN FRYER: Okay. Commissioner Vernon.

COMMISSIONER VERNON: Yeah. I kind of, you know, think about the same things Joe thinks about. And we kind of went down this road before, and I think we were all in agreement on essential services, and then we started broadening it, and then it's kind of a slippery slope, so where do you cut it off? And so I kind of have the same concern Joe has, but I -- I'm fine with supporting the essential services and you and Mr. Yovanovich working out the details on that.

CHAIRMAN FRYER: Thank you.

And I think a case could be made for certainly expanding the definition of people who are going to get the preferred treatment, but one of the things that gets really difficult is defining that class. And we're starting to get to a point where we now know who we're talking about as essential services personnel, and it's going to be easier, I think, to articulate. It's a narrower group of people. They'll get the first shot the first time around, first rental, and then after it's going to be, we hope, word of mouth for essential services personnel.

Anything further?

(No response.)

CHAIRMAN FRYER: No one else is signaling at this point.

Anything further for Mr. Yovanovich?

(No response.)

CHAIRMAN FRYER: If not, then we'll hear from staff.

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

Again, as indicated, our staff report had indicated we weren't in support of the deviation. With the modification, staff has revised that position; we are in support of it. We think this is a unique product, one that would be very welcomed by the market. We appreciate the 50 percent and below of AMI. We think it's a -- you know, it's a much needed category.

So with that, staff is recommending that the Planning Commission offer a recommendation of approval to the Board of County Commissioners.

CHAIRMAN FRYER: Thank you, Mr. Bosi. Anything further from the county?

MR. BOSI: Nothing further.

CHAIRMAN FRYER: Thank you.

Registered speakers, do we have any?

MR. SABO: Mr. Chairman, there are no registered speakers for this item.

CHAIRMAN FRYER: Thank you.

Anyone in the room who has not registered, nonetheless would like to be heard, now would be the time to raise your hand and let me know.

Seeing no hands raised, we will -- ah, one. Go ahead, sir. Come on up.

MR. NOTEL: Good morning.

CHAIRMAN FRYER: Good morning. Have you been sworn in?

MR. NOTEL: I have not.

CHAIRMAN FRYER: We can take care of that for you. Come on up, approach the podium, and we'll get you sworn in, and we'll ask you to -- either one. Then state your name.

MR. NOTEL: Alfred Notel (phonetic).

CHAIRMAN FRYER: No, no, no. No, no, no. Go to the podium, and then the court reporter will swear you in. Then we'll ask you to state your name, and then we'll hear from you.

MR. NOTEL: My name is Alfred Notel. I'm a resident of Fiddler's Creek.

CHAIRMAN FRYER: All right. Let's get you sworn in.

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

MR. NOTEL: Absolutely, yes.

CHAIRMAN FRYER: Go ahead, sir.

MR. NOTEL: I'm just trying to visualize the location of this development. And if I may ask the gentleman to put up --

COMMISSIONER SCHMITT: Sir, you're speaking to us up here, please.

MR. NOTEL: Oh, I'm sorry -- to put up the -- one of the first two slides. Yes. So is that south of the 7-Eleven gas station? I can't really tell.

COMMISSIONER SCHMITT: Yeah. You're actually south of the -- of the gas station and the back entrance to Fiddler's Creek. It's almost right across the street from the Esplanade.

MR. NOTEL: Got it, okay. Thank you very much. That's all I needed. I couldn't really see the plot.

CHAIRMAN FRYER: Okay. Fair enough. Thank you for coming up, sir.

COMMISSIONER SCHMITT: You're familiar with the Esplanade development going in? Yeah, this is pretty much across the street from their main entrance.

MR. NOTEL: Yes, thank you.

CHAIRMAN FRYER: Thank you.

Anyone else want to be heard on this?

(No response.)

CHAIRMAN FRYER: If not, we will close the public comment segment of this hearing, and similarly to the previous one, EAC action is not required. So we will take action on the

RPUDZ. Any further discussion, first?

Vice Chairman.

COMMISSIONER SCHMITT: I will make a motion -- I want to make a motion subject to you having the ability and the approval from us to review the final language in regards to essential services personnel. So with that, I'd make a recommendation for approval subject to the change that was proffered by the applicant to reduce it to 100 feet deviation.

COMMISSIONER VERNON: Vernon seconds.

CHAIRMAN FRYER: Thank you.

It's been moved and seconded to approve with the compromise on the deviation, and also I'll have an opportunity to review it on behalf of the Planning Commission before it goes to the Board of County Commissioners.

Any further comment -- oh, let's see. Vice Chairman, you're finished?

COMMISSIONER SCHMITT: Yes.

CHAIRMAN FRYER: And, Commissioner Vernon, do you have anything further?

COMMISSIONER VERNON: Yeah. I was just going to say what I've been saying, not being a housing -- affordable housing expert, but you know, my big word, I like to use "creative housing." You know, to try to solve this problem, it's got to be creative, and I think this is very creative. And I love the fact that you're not only taking into account the financial needs of those who need affordable housing but other needs as well, and I think that's phenomenal. So kudos to you for doing that.

You guys seem to know what you're doing based on your past experience, so welcome to the neighborhood. I'm glad you're doing this, and I just would encourage other folks to be creative. I know there's a lot of people who don't like the creative idea because it's change, but I think that's what, really, we've got to do to deal with the affordable housing issue, so thank you.

CHAIRMAN FRYER: Thank you very much.

Anyone else up here want to be heard?

(No response.)

CHAIRMAN FRYER: If not, we have a motion and a second on the floor. All those in favor, please say aye.

COMMISSIONER VERNON: Aye.

COMMISSIONER SHEA: Aye.

CHAIRMAN FRYER: Aye.

COMMISSIONER SCHMITT: Aye.

COMMISSIONER KLUCIK: Aye.

CHAIRMAN FRYER: Opposed?

(No response.)

CHAIRMAN FRYER: It passes unanimously.

Thank you, applicant. Thank you staff and Planning Commission.

It's five minutes until 10. It's a little early ordinarily for our break, but I'm going to propose that we take our morning recess at this time, and we may take our midday recess a little earlier as well. And so without objection, we'll be in recess until 10 minutes after 10.

(A brief recess was had from 9:55 a.m. to 10:09 a.m.)

CHAIRMAN FRYER: Ladies and gentlemen, let's return to session, please.

***Our last matter is composed of three continued companion matters, and they are PL20210003111, the Fiddler's Creek Small-Scale Growth Management Plan amendment; PL20210003112, the Fiddler's Creek RPUDA; and PL20210003115, the Fiddler's Creek DOA.

All persons 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, please.

MS. LOCKHART: Staff materials only.

CHAIRMAN FRYER: Thank you.

COMMISSIONER VERNON: Meeting with staff. I did -- I was coming back from Chokoloskee, and I did -- it's been a couple months, but I drove down Auto Ranch Road, so I did take a look at that. That's it.

CHAIRMAN FRYER: Okay.

COMMISSIONER SHEA: Staff materials only.

CHAIRMAN FRYER: I should have mentioned that this is -- all we need is new disclosures.

And in my case, I was contacted by the County Attorney, and I've had communications with County Attorney staff and also with county staff, and also, I've spoken with the representative of the objecting neighbors and the applicant's counsel.

COMMISSIONER SCHMITT: As I stated in the past, I'm going to recuse myself from this. But I just want to sit up here just for the start of this in case any questions come up on procedures for environmental permitting since I'm the environmental chair, former commander in the Army Corps of Engineers. I fully understand the 404 process. So just in case there's any issues in regards to the permitting, I'm -- I would answer it for my colleagues, but that's -- and I will be leaving here probably no later than 11 o'clock.

CHAIRMAN FRYER: Okay.

COMMISSIONER KLUCIK: I'm not sure if it was after the last meeting or before the last time we heard this petition, but I did speak with the attorney who was representing some of the homeowners, and I did speak with the petitioner's attorney at some point, and I -- I think I asked for information from both of them, and I also had the public record, as well as the staff meeting.

CHAIRMAN FRYER: Thank you.

Commissioner Vernon, did you want to --

COMMISSIONER VERNON: Yeah. I just wanted to confirm something. I think the way Joe's doing it is exactly correct according to my reading of the statute. You recuse yourself from voting, but you're able to participate. But that is correct, right, in the discussion? That's what the statute says? I mean, I'm almost certain it is because I read it about a year ago.

MS. ASHTON-CICKO: So he abstains from voting, and he needs to state the reasons for the abstention, and it does allow him to participate, although, you know, he knows our recommendation from the County Attorney's office.

COMMISSIONER VERNON: And the statute allows him to do exactly what he's doing?

MS. ASHTON-CICKO: Correct.

COMMISSIONER KLUCIK: Do you need to fill out a form?

COMMISSIONER SCHMITT: That form has been filled out. It was filled out months ago. It was submitted to the County Attorney's Office.

CHAIRMAN FRYER: Thank you.

Anything else?

MS. ASHTON-CICKO: That's just the oral statement of a conflict.

CHAIRMAN FRYER: Thank you.

Now, before we proceed, I want to raise some concerns that arose during the last two installments of this hearing. First, it always bears repeating, the Planning Commission will not tolerate people speaking over one another. Neither the court reporter nor the Planning Commission can follow what is being said when that happens.

So only the person who's been recognized by the Chair has the floor and may speak at any particular time. Interruptions are not permitted except by a Planning Commissioner. I'm going to add an additional stricture on top of that just to assure full orderliness on our part; that if a commissioner does wish to interrupt a speaker, please do so exclusively through the Chair. Ask the Chair to be recognized, and then that -- once the interrupting Planning Commissioner's been

recognized, then he or she has the floor. But please go through me on that.

And if an objection calls for a ruling of some kind, the Chair will rule and, as always, when that happens, the Chair's rulings are subject to being reversed by a majority of the Planning Commission under Robert's Rules of Order, which we follow.

And offers of proof will be permitted where appropriate, but aside from these two situations, no other persons may interrupt the speaker who has the floor. And I'm going to use every appropriate means to assure order and proper decorum if that becomes necessary. I earnestly hope that it won't, but if it does, I will.

Finally, I want to give people a couple of -- just early warning informations. First, that if any presentations become unduly repetitive or unnecessarily long, we will place time constraints on them. But I'm going to wait and see how things develop before deciding whether that's necessary. My preference is that it's not. But if needs be, that's what we'll do, and that includes the time allowed for cross-examination, the time allowed for rebuttal, and public speakers.

Then I want to just be sure that everyone understands that at 3 p.m. today we basically are going to lose our quorum. So if we want to get done today, we need to proceed smartly to the objective of being finished by 3 p.m. Now -- and that's -- as you know, Vice Chairman has recused himself, so he'd be leaving for this matter after he makes any comments or observations that he said he reserves the rights to do and also, unfortunately, Commissioner Klucik has to leave for business reasons at that time.

COMMISSIONER KLUCIK: So we have a quorum even though we have someone recused?

CHAIRMAN FRYER: Well --

COMMISSIONER KLUCIK: Because we have four?

CHAIRMAN FRYER: We've got four, so we're set as long as -- as long as you're here. Okay.

And -- let's see. So the order of sequence today and tomorrow, if necessary -- and, of course, earnestly hope it won't be. But first, we're going to reopen public comment in a limited way. Objecting neighbors, or other members of the public for that matter, will be allowed to speak if they have not yet spoken on the matter or if they've not ceded time to a speaker -- and we'll -- they will have an opportunity to testify if they wish subject to the usual time constraints. And I've got myself out of order already.

Before that happens, counsel for the objecting neighbors, or certain of them, will have the opportunity to cross-examine the applicant and the applicant's experts. And then, finally, the applicant will have time for rebuttal.

So that's the order of sequence. And do the Planning Commissioners have any -- in a moment, sir. Planning commissioners have any objections or concerns about that?

(No response.)

CHAIRMAN FRYER: If not, the Chair recognizes Mr. Yovanovich for a preliminary report, I guess, or preliminary question.

MR. YOVANOVICH: Just to talk about the process today --

CHAIRMAN FRYER: Go ahead.

MR. YOVANOVICH: -- and just note an objection.

If you recall, when we finished the last hearing, it was clearly stated that public comment was over and that we were going to -- if Mr. Oldehoff wanted to do cross, he could do cross, and I was going to do my rebuttal. That's the process we have always followed. You finished the public comment, and it was over. These people wouldn't be -- if we finished a month ago, or whenever it was, they wouldn't be speaking here today anyway.

So I don't see how they're prejudiced or harmed and why we're going to vary from our adopted procedures that we've always had for conducting Planning Commission hearings.

They could come speak to the Board of County Commissioners, but I don't know how many there are -- maybe there's just one, and I don't really care. But if there's 10 or 20 or 30, all of

a sudden, I may get pushed to tomorrow. I may not have a quorum tomorrow.

We had a process. That was the process that was agreed to. Everybody who had signed up the first two days was given an opportunity to speak. I don't know why we're changing the procedures today. I want to note that objection for the record.

I think we should go as we previously agreed. Mr. Oldehoff does his cross-examination. I do my closing, rebuttal, and you-all make whatever recommendation you're going to make. I don't think it's fair. It's a change from your normal process. It's a due process change, and I don't think that that process should be changed.

CHAIRMAN FRYER: Thank you. Your point is noted for the record.

And I'm going to, first of all, say that there are some aspects of this new development that I'm not totally comfortable with, but I am -- I am very -- always inclined to follow recommendations of the County Attorney because that's what they're there for. And so with that, I'm going to turn it over to the County Attorney.

MS. ASHTON-CICKO: We're required to have public comment at the end of the meeting. So all of these speakers can speak during the public comment, so we might as well hear it during the item.

CHAIRMAN FRYER: And also to your point -- your questions, Mr. Yovanovich, I'm going to ask our staff in the back of the room, how many registered speakers do we have at this point?

MR. SABO: Mr. Chairman, there are three registered speakers who have not yet spoken.

CHAIRMAN FRYER: And that includes on Zoom?

MR. SABO: That includes on Zoom, correct.

CHAIRMAN FRYER: And have they not only not yet spoken, but have they not ceded their time as far as we know?

MR. SABO: They have not ceded time, correct.

CHAIRMAN FRYER: Okay. Mr. Yovanovich, anything further to say?

MR. YOVANOVICH: Can we identify who those three speakers are going to be and make sure it's just three? You know, you always say, "Is there anybody here who hasn't registered to speak that would also like to speak?" I just would like to know the total sum of speakers today. My objection is still there, but I would like to factor that into the 3 o'clock deadline.

CHAIRMAN FRYER: Understood. All right. That's a good question. So I'm going to ask, whether you've registered or haven't but nonetheless wish to speak, please raise your hand so that we can get an idea of who intends to speak at this time. And I see two hands. Is there one then -- is there somebody on the phone as well?

MR. SABO: No, there was no one on Zoom.

CHAIRMAN FRYER: Okay. So it looks like there are going to be two public speakers. All right.

COMMISSIONER KLUCIK: Mr. Chairman?

CHAIRMAN FRYER: Yes, Commissioner Klucik.

COMMISSIONER KLUCIK: Okay. So I'm sorry, Counsel, what was the reason for -- this is -- like, we have to have public comments on this matter, or we have to have public speakers at this meeting?

MS. ASHTON-CICKO: We have a county resolution that allows -- requires public comment at the end of the meeting. So you can stay here and listen to the public comment, or you can hear it during the item.

COMMISSIONER KLUCIK: Right. But I think that doesn't really speak to whatever we committed to previously. If we committed to say that there were no more speakers, then I -- and I think we could easily look at the record because it is in the minutes --

COMMISSIONER SCHMITT: Yes.

COMMISSIONER KLUCIK: -- that we made that commitment. Because if we did, I don't understand why we --

MS. ASHTON-CICKO: It's the pleasure -- oh I'm sorry. It's the pleasure of the Planning Commission. Should you choose as a group you want to proceed that way, that's certainly an option.

COMMISSIONER KLUCIK: I'll say to the Chairman that -- yeah, that we made that commitment, so I don't know why we would change it, because I think that's changing the rules in the middle of the -- you know, of the matter, and I don't know as I feel comfortable with it.

CHAIRMAN FRYER: Thank you.

Commissioner Vernon.

COMMISSIONER VERNON: Yeah. I would submit that what -- if I heard Rich Yovanovich correctly, what he objects to -- I mean, his objection's on the record, but his frustration is if 20 people want to walk up and speak when he thought it was going to be another way, and towards the tail end of his comments, he said if it's just a few of them, he still has his objection, but he doesn't have a huge problem with it.

And I would say the quickest way to go through this is to let three or four people speak rather than tie up a big argument --

COMMISSIONER KLUCIK: Well, what I saw --

COMMISSIONER VERNON: Let me finish -- rather than get tied up in a big argument about it. Because the applicant has said, if it's just a few of them, then let's just go. I think that's the fastest way to proceed.

COMMISSIONER KLUCIK: What I thought and, you know, what I've perceived is that he didn't think he was getting anywhere. He raised his objection, and since he wasn't going to get anywhere with that being ruled out, he wanted to know who was going to speak. So I don't think he conceded that it was okay. He still has the objection, and I think that's -- first of all, that's something that we need to be concerned about if this were to be litigated, if we're giving him room for that, because we did make that commitment.

And so if we change the procedural rules -- you know, as I recall, it was, yeah, we're going to have the rebuttal and then we're going to, you know, move forward, and we weren't going to have more public comment. I don't know why we would all of a sudden change that. I mean, if there's a reason, fine, but I don't know what the reason is. What's the reason for changing what we already committed to?

MR. YOVANOVICH: And, Mr. Vernon, my objection -- you know, we're going to spend more time arguing about this than two speakers, but the precedent you're setting for the next hearing, it may be 100 people that show up for round three, and I don't -- I don't -- I don't think that that's an appropriate process. The number of speakers is irrelevant. I just wanted to know how much longer this may take because I got the sense that I was going to lose my objection anyway, so that's all I was saying.

CHAIRMAN FRYER: Well, from my point of view, I am -- I am following the advice of both Ms. Ashton and Mr. Klatzkow, both of whom I have spoken with, because that's just what I do. I'm going to follow the advice of our counsel. But I am not attempting to set a precedent of any kind for other matters. I think we take each matter on its own merits and as it comes. And so if anyone thinks it's necessary for me to reserve the prerogative to object to reopening at a later time, I am reserving that prerogative. But in this case, I'm going to go with the advice of the County Attorney.

COMMISSIONER SHEA: Can I make a comment?

CHAIRMAN FRYER: Go ahead, Commissioner Shea.

COMMISSIONER SHEA: It's more of a question. I thought I heard the County Attorney say that the only reason to open it up is because they could speak again at the end of the meeting, but that would be after the vote.

MR. YOVANOVICH: Correct.

COMMISSIONER SHEA: I think that's a whole different scenario. I'm kind of laboring on which way to go with it because if they spoke -- nobody's going to speak after the vote is my

point.

COMMISSIONER KLUCIK: Right. My concern is we've already heard -- you know, the public had a right, and they did, and we gave them -- you know, we gave them lots of time to speak, and we heard them out, and we even, you know, agreed with them and encouraged them and were grateful to them. And then we committed that they weren't going to do any more public comment, and now we're changing that, and I don't think that's fair to an applicant.

COMMISSIONER SHEA: I'm agreeing with you. That's where I'm getting is I agree with that. And if they do want to speak, they can speak at the end of the meeting.

COMMISSIONER KLUCIK: Right, right. So I would move that we don't have speakers, public speakers.

CHAIRMAN FRYER: Is there a second?

COMMISSIONER SHEA: I second.

CHAIRMAN FRYER: All right. It's been moved and seconded that we not reopen public comment. Any further discussion on that?

COMMISSIONER VERNON: Yeah. I mean -- yeah, I mean, I don't mean I don't care, but I just want to get this thing done because I think the applicant wants to get it done. I think all the folks objecting want to get it done. This is the longest hearing I've been involved in. So whatever moves it along I'm fine with. I'll give my vote to the Chairman. I'm fine either way.

CHAIRMAN FRYER: Okay. Is this going to down four-four [sic]?

COMMISSIONER VERNON: Well, then I'll vote -- I'll vote -- I'll go with the -- it's 2-1 without me, so I'm going to go with the majority, and so I will vote in favor of Robb's motion.

COMMISSIONER SHEA: But I'm also -- I'm also worried about the precedent part about it, not just this case. Obviously, two speakers, three speakers don't make that much of a difference, but we've seen where we have hundreds of speakers, so I'm worried about that.

COMMISSIONER KLUCIK: So I think we have a motion and a second.

CHAIRMAN FRYER: We do.

COMMISSIONER SCHMITT: I'm just going to add a comment.

CHAIRMAN FRYER: Go ahead.

COMMISSIONER SCHMITT: My only concern is what are we going to hear different that we -- that you-all hadn't heard before? I mean, that's from a standpoint just procedurally. The community absolutely objects to it. I'm sure you're going to hear the same comments again, so that's just my thought.

COMMISSIONER VERNON: Yeah. And I think the votes now are to go exactly that way. It's going to be 3-1 is the way I'm reading it, if we vote on it.

CHAIRMAN FRYER: Any further comments?

(No response.)

CHAIRMAN FRYER: And I -- I'm not any more comfortable about this process than my colleagues, but I'm going to vote against the resolution because of the advice of the County Attorney's Office. Anybody else want to be heard before we take our vote?

(No response.)

CHAIRMAN FRYER: If not, all those in favor of the motion to exclude further comment from the public, please say aye.

COMMISSIONER VERNON: Aye.

COMMISSIONER SHEA: Aye.

COMMISSIONER KLUCIK: Aye.

CHAIRMAN FRYER: Those opposed?

Nay.

COMMISSIONER SCHMITT: And I abstain.

CHAIRMAN FRYER: Okay. So it passes 3-1.

All right. So that means that we're going to start off with counsel for the objecting neighbors, who has an opportunity to cross-examine the applicant and applicant's experts. The

Chair recognizes Mr. Oldehoff.

MR. OLDEHOFF: Thank you, Mr. Chair. Gary Oldehoff, for the record.

I'm going to try to cover some things right now, but --

COMMISSIONER KLUCIK: Could you get closer to the mic, please.

MR. OLDEHOFF: Sure. I'm going to try to cover the things that we've heard to this point from the applicant and cover those things on some cross-examination, but I don't know what the applicant is going to be talking about in rebuttal.

My understanding of the rebuttal from the last meeting was that it was necessary just to cover things that they thought were scandalous and spurious and were claiming that they had been either liars or had been unscrupulous.

And I don't know whether we're going to go beyond that. I don't think we should go beyond that, but if we do go beyond that and we get into hashing of matters that we haven't heard yet, then, just for the record, I'd like to have the ability to raise some questions with regard to just that new -- that new information, new material, and I'll raise that, I think, after the rebuttal, if that would help to simplify things, rather than have a decision on that right now.

CHAIRMAN FRYER: Yeah, that's my recommendation.

MR. OLDEHOFF: Okay.

CHAIRMAN FRYER: In any event, the applicant would have the last word, so there would be a surrebuttal.

MR. OLDEHOFF: Right.

CHAIRMAN FRYER: And I'd just remind everyone that we're going to lose our quorum at 3 p.m., so I think we should endeavor to get everything done that we can.

So, Mr. Oldehoff, please call your first cross-examination witness.

MR. OLDEHOFF: Yeah, thank you. I'd like to speak to the transportation engineer that did the report, Mr. Banks, please.

CHAIRMAN FRYER: Mr. Banks.

MR. BANKS: Good morning. Again, for the record, Jim Banks, here on behalf of the applicant.

MR. OLDEHOFF: Mr. Banks, according to the report, this 750-unit project will generate, 4,883 cars on the road?

MR. BANKS: Daily trips.

MR. OLDEHOFF: Daily trips. Each day 4,883 cars on the road. And those cars will be going up and down Auto Ranch Road --

MR. BANKS: Correct.

MR. OLDEHOFF: -- right? Okay.

The project is entirely residential.

MR. BANKS: Correct.

MR. OLDEHOFF: And so it is a -- it is a trip generator. It is not an attractor. An attractor, for instance, being a grocery store?

MR. BANKS: Right.

MR. OLDEHOFF: Right?

Homes generate traffic. And in this instance, it's -- this project is -- is determined to create 4,883 cars on Auto Ranch Road each day?

MR. BANKS: Correct.

MR. OLDEHOFF: Right?

And according to your caps for the a.m. peak hour, 255 cars on that road and at the p.m. peak hour, 343. What is the p.m. peak hour?

MR. BANKS: Four to 6 p.m.

MR. OLDEHOFF: Four to 6 p.m. but that's one hour. It's an hour, right?

MR. BANKS: It's the highest hour that would fall within the 4 to 6 p.m.

MR. OLDEHOFF: Okay. So within 4 to 6 p.m., the highest hour, there's going to be 343

trips, and that works out to one minute, right?

MR. BANKS: One minute?

MR. OLDEHOFF: One per minute.

MR. BANKS: Three hundred forty-three -- I'd have to run the math, but --

MR. OLDEHOFF: Okay.

MR. BANKS: Okay.

MR. OLDEHOFF: Okay. In the morning, 255 cars on Auto Ranch Road each day?

MR. BANKS: Right.

MR. OLDEHOFF: Okay. What is the current -- the actual number of cars with trips on Auto Ranch Road right now? Because I want to try to put this into perspective, this change in this 750-unit project into the perspective of what it's going to do to the neighborhood on Auto Ranch Road, right.

So what is the number of cars -- car trips that are on Auto Ranch Road today?

MR. BANKS: During the a.m. peak hour, it's going to be -- it is 46, and in the p.m. peak hour, it is 54.

MR. OLDEHOFF: And where is that in your report?

MR. BANKS: We did traffic counts on January of 2022. There's an exhibit on Page A4 that provides this information. We even adjusted that -- those traffic counts for future conditions. We applied a growth rate to it. So we're stating that there's actually a little bit -- there's more cars on the -- we're stating there's more vehicles on that road than what we actually counted. Two or three more.

MR. OLDEHOFF: Two or three?

MR. BANKS: Not substantially more.

MR. OLDEHOFF: How about the daily number?

MR. BANKS: We did not -- we did not obtain daily traffic counts.

MR. OLDEHOFF: So the only traffic count that you can have that would identify the magnitude of the change that's going to occur from the perspective of cars -- and that's even after you've completely rebuilt a road through here -- is that it's going to be 10 times more cars at the p.m. peak.

MR. BANKS: Not 10 times. It's five times more.

MR. OLDEHOFF: Five times?

MR. BANKS: Five times.

MR. OLDEHOFF: You said how many trips?

MR. BANKS: There's 54 on the road today.

MR. OLDEHOFF: Fifty-four trips.

MR. BANKS: And we're -- and we're going to generate -- this site will generate 343 trips.

MR. OLDEHOFF: Okay. So it's seven?

MR. BANKS: Seven times more.

MR. OLDEHOFF: Seven times, right?

MR. BANKS: Okay.

MR. OLDEHOFF: How many residences are there on -- are there on Auto Ranch Road?

MR. BANKS: There's approximately 100 homesites total.

MR. OLDEHOFF: Homesites, but I'm not talking homesites. I'm talking about the number of actual homes.

MR. BANKS: I think it's around 50 that's there today. There's some on the side streets. There's four -- there's four interconnecting side streets, and then there's some homes along Auto Ranch Road.

MR. OLDEHOFF: Okay. So if there's 50 homes on Auto Ranch Road in that area right now, then this is going to be 750 units?

MR. BANKS: Seven hundred fifty apartments, correct.

MR. OLDEHOFF: Okay. So do you want to do the math for me? Ten, 12, 14, 15 times

as many homes.

MR. BANKS: They're apartments. Single-family residences generate more trips than what apartment complexes do per unit.

MR. OLDEHOFF: How many?

MR. BANKS: About twice as much.

MR. OLDEHOFF: About twice? No, what's the actual number according to the ITE?

MR. BANKS: It's approximately --

MR. OLDEHOFF: No, no. What is the actual number?

MR. BANKS: I don't have the actual number for single-family right in front of me here. I'm just telling you it's about .9 trip per unit. So whatever that works out to, 50 homes.

MR. OLDEHOFF: Point nine. And this is .6, right?

MR. BANKS: The apartment complex?

MR. OLDEHOFF: Yeah, the generation factor.

MR. BANKS: Yeah. About .6, yeah.

MR. OLDEHOFF: Okay.

MR. BANKS: Yeah. It's actually closer to .5, but --

MR. OLDEHOFF: Okay. Thanks. That's all the questions.

MR. BANKS: Okay.

CHAIRMAN FRYER: Thank you.

MR. OLDEHOFF: I'd like to speak to Mr. Hall, please.

MR. HALL: For the record, Tim Hall with Turrell, Hall & Associates here on behalf of the applicant.

MR. OLDEHOFF: Thank you. Good morning, Mr. Hall.

MR. HALL: Good morning.

MR. OLDEHOFF: Were you the person that had the most interaction with the Army Corps and the Fish and Wildlife Service?

MR. HALL: Yes, sir.

MR. OLDEHOFF: And you were the person that was -- that worked on the 2016 permit application, right?

MR. HALL: Correct, yes, sir.

MR. OLDEHOFF: All right. And you're the one that prepared the report, and you're the one that prepared and submitted the panther mitigation --

MR. HALL: Yes, sir.

MR. OLDEHOFF: -- proposal, right?

MR. HALL: This is for the Estancia project?

MR. OLDEHOFF: For the Estancia project.

MR. HALL: Yes.

MR. OLDEHOFF: But with that application, you're the one that submitted, with the -- with the developer's concurrence, the plan for mitigating impacts on endangered species including the Florida panther that included all of this land going under a conservation easement and remaining in preserve, right?

MR. HALL: Yes, sir.

MR. OLDEHOFF: Now, you're aware that in October -- on October 28th, 2022, the Fish and Wildlife Service directed the Army Corps to issue a noncompliance notice --

MR. HALL: Yes, sir.

MR. OLDEHOFF: -- to the developer because the developer had failed, right, to record, submit the proper conservation easement, right?

MR. HALL: I know that Fish and Wildlife directed the Corps to do that. I don't know the exact dates.

MR. OLDEHOFF: Okay. Did you -- have you ever seen the letter that was sent from the Fish and Wildlife Service to the Army Corps dated October 28th, 2022, to Shawn Zinszer?

MR. HALL: I don't believe I ever saw that letter. I had a phone call -- a direct phone call with the Corps after they received that letter.

MR. OLDEHOFF: Okay. And they told you they had been directed to commence compliance proceedings against you -- against your client?

MR. HALL: I don't know that the Fish and Wildlife Service can direct the Corps to do that. The Fish and Wildlife Service can -- can enact proceedings against the Corps. But because it's the Corps' permit, the Corps would then pass that on to the applicant. I don't know if -- again, I don't know how -- how that procedure works with respect to the coordination between Fish and Wildlife and the Corps.

MR. OLDEHOFF: May I approach?

CHAIRMAN FRYER: Well --

MR. OLDEHOFF: May I give --

CHAIRMAN FRYER: Oh, to -- yeah, sure, go ahead.

MR. OLDEHOFF: I have some copies.

CHAIRMAN FRYER: Are there enough here?

MR. OLDEHOFF: I don't know if there's enough for everyone.

COMMISSIONER VERNON: I can share one.

MR. OLDEHOFF: I think I have one more copy.

CHAIRMAN FRYER: Okay. Okay. We've got --

MR. OLDEHOFF: Here's one more copy.

CHAIRMAN FRYER: We're good.

Ms. Lockhart, do you have one?

MS. LOCKHART: I'd like one, yes.

CHAIRMAN FRYER: I've got two, if any -- court reporter have one?

THE COURT REPORTER: No.

CHAIRMAN FRYER: Mr. Oldehoff, give the court reporter this one, please.

MR. OLDEHOFF: Okay.

CHAIRMAN FRYER: Thank you.

Mr. Hall, you recognize that letter, don't you?

MR. HALL: I don't believe I have seen this letter, no, sir --

MR. OLDEHOFF: Oh, okay.

MR. HALL: -- but I just read it, so...

MR. OLDEHOFF: Well, as you can see, it's a letter from the U.S. Fish and Wildlife Service to the Army Corps in Jacksonville, right?

MR. HALL: Yes, sir.

MR. OLDEHOFF: All right. And in that letter, this is a culmination of trying to get this property owner to comply with the permit condition that required them to hand in and record a conservation easement over this land way back in 2016, right?

MR. HALL: The conservation easement would have been required prior to the start of construction, which was in 2019.

MR. OLDEHOFF: Did it say prior to construction, or did it say before you could get any permits at all?

MR. HALL: It's prior to construction.

MR. OLDEHOFF: All right. So you're pushing it now from 2017 to 2019 at the latest, right?

MR. HALL: I'm not pushing anything. I'm just telling you that that's when it would have been required.

MR. OLDEHOFF: Okay. It was required, then, under your -- your testimony, it was required in 2019, right?

MR. HALL: Yes, sir. It would have been required in 2019.

MR. OLDEHOFF: It wasn't submitted in 2019, it wasn't submitted in 2020, it wasn't

submitted in 2021, and it wasn't submitted in 2022, right?

MR. HALL: Correct.

MR. OLDEHOFF: All right. Look at the second page of the letter because I want to just go -- the second paragraph -- let's do both, okay. It says, "Service believes" -- starts with, "The Service believes it is important that the originally agreed upon terms and conditions in the 2017 biological opinion be implemented, that a conservation easement be placed on this property, and that the property be managed to ensure it remains functional panther habitat."

The next paragraph, this is -- "The Service believes it is important that the Corps issue a notice of noncompliance to the permittee and that the original terms and conditions of the 2017 biological opinion are adhered to."

I've read that correctly, right?

MR. HALL: Yes, sir.

MR. OLDEHOFF: So they directed to the Army Corps, because they're the ones that do the enforcement, do the enforcement, right?

MR. HALL: I don't see this as a directive to the Corps. This is --

MR. OLDEHOFF: Okay.

MR. HALL: -- the Service's opinion that the Corps should do that.

MR. OLDEHOFF: Okay. Well, the Corps didn't have to do that, right, because the applicant recorded conservation easements just a few days later?

MR. HALL: Once the Corps directed us to record protective measures over the property, that's when it was done, yes, sir.

MR. OLDEHOFF: All right. And what was done was not a conservation easement; it was a conservation covenant?

MR. HALL: Yes, sir.

MR. OLDEHOFF: And it was a conservation covenant that was made to FCC Preserve, which is the applicant?

MR. HALL: Yes, sir.

MR. OLDEHOFF: Okay.

MR. HALL: Well, no, it wasn't made to -- I don't believe it was FCC Preserve. I think they have a different entity that it was made to, but again, I --

COMMISSIONER KLUCIK: Mr. Chairman?

MR. HALL: -- I don't have the covenant direct --

CHAIRMAN FRYER: Commissioner Klucik.

COMMISSIONER KLUCIK: To my recollection and my research -- because that was an important point to me -- that it's an entity controlled by and created by the applicant, if I recall; is that correct?

MR. OLDEHOFF: Right.

CHAIRMAN FRYER: Thank you.

MR. OLDEHOFF: But you'll also see that the applicant on this application is FCC Preserve, because FCC Preserve is the owner of that property anyway, right?

MR. HALL: Okay.

MR. OLDEHOFF: Okay. All right. Now, according to the PUD ordinance and the county code, the conservation easement required by the PUD over this land was required to be submitted before any permits for development could be issued, right?

MR. HALL: The PUD for which property?

MR. OLDEHOFF: The 1998 PUD --

MR. HALL: Did not include --

MR. OLDEHOFF: -- as it was amended.

MR. HALL: Did not include a conservation easement over the land that we're talking about.

MR. OLDEHOFF: Well, we saw this before. Your testimony is it didn't put a

conservation easement requirement over any of this land?

MR. HALL: Some of Section 29, it did, but not all of it. There was about 149 or 150 acres that was not included in that, as shown on the master plan for the PUD.

MR. OLDEHOFF: The PUD. Well, the master plan for the PUD we have, right?

MR. HALL: It showed it as a park or recreational facilities, not as a preserve.

MR. OLDEHOFF: It was required to be given -- the conservation easement was required to be given before any permits could be issued for Fiddler's Creek, right?

MR. HALL: You're getting out of my realm of expertise, but I --

MR. OLDEHOFF: Okay. But the fact is they never did. You don't know of any conservation easement that was ever given to the county to comply with that condition of the PUD?

MR. HALL: I'm not aware of any easement that was given to the county over any of the land in Fiddler's Creek. I'm not sure if -- if making an easement to the county was actually a requirement in 1998. It was required to be preserved, but I don't know that the easement to the county was a requirement in '98.

MR. OLDEHOFF: Have you read the PUD ordinance?

MR. HALL: I've read parts of it. I haven't read it cover to cover, no, sir.

MR. OLDEHOFF: Okay. Have you read the PUD ordinance as it pertains to areas that are designated either reserve or preserve?

MR. HALL: Yes, sir.

MR. OLDEHOFF: And doesn't it say that that -- that a conservation easement has to be placed over any land that is identified as either reserve or preserve on the master plan?

MR. HALL: Eventually, but not all of it gets done at the same time. There's different places that get under preserve as different components of an overall PUD is built.

MR. OLDEHOFF: Have you -- have you read the part of the PUD that says that these required conservation easements must be given to the county before any permits can be issued for developing any of Fiddler's Creek?

MR. HALL: I don't recall reading that, no, sir.

MR. OLDEHOFF: Okay. Okay. Did you ever tell the Fish and Wildlife Service or the Army Corps that Fiddler's Creek was not in compliance with its condition requiring the conservation easement over this land?

MR. HALL: I told them that the conservation easements had not been filed several times, yes, sir.

MR. OLDEHOFF: Okay. And when did you tell them that?

MR. HALL: I started -- the first time would have been in 2019.

MR. OLDEHOFF: 2019?

MR. HALL: I believe August of 2019.

MR. OLDEHOFF: Do you have any record at all of having told them in 2019 the property -- I mean, the permittee is not giving you the conservation easements?

MR. HALL: I have records showing that we were in discussions with them about removing property from that area and not putting conservation easements over that portion of it, yes, sir.

MR. OLDEHOFF: In 2020?

MR. HALL: No, sir. The first one was in, I believe, August of 2018. I have copies of the e-mails if you would like me to put them on the visualizer.

MR. OLDEHOFF: Were you communicating with the Fish and Wildlife Service --

MR. HALL: Yes, sir.

MR. OLDEHOFF: -- or were you communicating with the Army Corps?

MR. HALL: Both.

MR. OLDEHOFF: With both. And did they ever say, "We'll suspend the requirement to provide the conservation easements"?

MR. HALL: No, sir.

MR. OLDEHOFF: No. They never did, right?

MR. HALL: No, sir.

MR. OLDEHOFF: Okay. I'm going to read to you from an e-mail that Mr. Erario received from Russell Rouan at the Army Corps. Does the name ring a bell?

MR. HALL: He's the current compliance officer for this area for the Corps.

MR. OLDEHOFF: Okay. He was asked by Mr. Erario this question: "Did the Corps have an agreement with the permitholder to suspend or delay the U.S. Fish and Wildlife Service conditional requirement for the creation of a 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?"

And his answer is, "Based on the Corps record for Permit No. SAJ201500853, the Corps was not able to locate any records indicating a suspension of any special conditions with the permit."

MR. HALL: I would agree with that.

MR. OLDEHOFF: Okay.

MR. HALL: The conditions were never suspended, but the Corps and the compliance officers, you know, generally work on a case-by-case basis, and they were notified of it. If they decided not to pursue any compliance action at that time, then that's within their purview, with or without any kind of written agreement.

MR. OLDEHOFF: What is the status -- today's status of the Army Corps permit?

MR. HALL: The permit for the construction phase of the permit is expired.

MR. OLDEHOFF: It's closed, right?

MR. HALL: It's expired.

MR. OLDEHOFF: Well, the work under the permit has all been done?

MR. HALL: That's correct.

MR. OLDEHOFF: Right?

MR. HALL: But the -- but the --

MR. OLDEHOFF: So it's done, right?

MR. HALL: Yes, sir.

MR. OLDEHOFF: Okay. And it's final, right?

MR. HALL: It's final in terms of the work that was authorized under that permit.

MR. OLDEHOFF: As well as all the conditions that -- required for granting that permit, right?

THE WITNESS: Yes, sir.

MR. OLDEHOFF: All right. And that you saw in the letter from January the 31st of this year that has been placed before the members of the Commission, right?

MR. HALL: Is that the letter from Mr. Carey?

MR. OLDEHOFF: Yes.

MR. HALL: I never got that letter until -- I believe it was March 6th.

MR. OLDEHOFF: Okay.

MR. HALL: I know that it was dated in January, but he never sent it to me until March, and I did get him to verify that, that it was not.

MR. OLDEHOFF: Okay. That it's final?

MR. HALL: That their decision and whether the change that we requested is final, yes, sir.

MR. OLDEHOFF: Okay. All right. Thanks, Mr. Hall. That's all the questions. Mr. Arnold, please.

COMMISSIONER SCHMITT: Mr. Chairman, I just --

CHAIRMAN FRYER: Go ahead.

COMMISSIONER SCHMITT: For my colleagues --

MR. HALL: Can I keep this copy?

MR. OLDEHOFF: Sure.

COMMISSIONER SCHMITT: I want to make sure -- and I don't know if the counselor wants to ask me a question, but the 404 permit process, even though the permit is closed, anybody, anytime, at any time, if they're going to do a new development or an application for a new development, can start the process over again and resubmit under the Section 404 of the Clean Water Act. It's part of the Corps of Engineers process. That is now --

MR. OLDEHOFF: Right.

COMMISSIONER SCHMITT: For the State of Florida -- it's no longer a part of State of Florida anymore. It's now back in the Army Corps of Engineers' hands based on a recent legal ruling, which I'm sure you're aware of.

But just for clarity, this permit -- the permits are usually five years with a requirement for another five-year extension if, in fact, the work is not done. But an applicant can always come back in, and based on a new development, a change in rezoning or any other type of application, would go through the 404 process, possibly a Section 7 consultation, and it also has to go through an ERP process through the South Florida Water Management District, environmental resource permit, so...

MR. OLDEHOFF: But Mr. Schmitt --

COMMISSIONER SCHMITT: Yes.

MR. OLDEHOFF: -- you would have to concede that this particular permit that permitted works, permitted the project --

COMMISSIONER SCHMITT: Yes.

MR. OLDEHOFF: -- the project has been completely built. It's done.

COMMISSIONER SCHMITT: No, the --

MR. YOVANOVICH: I'm going to object. Hold on a second. I'm going to --

CHAIRMAN FRYER: Hang on one second, everyone.

Go ahead, Mr. Yovanovich.

MR. YOVANOVICH: Mr. Schmitt is not here as a fact witness.

COMMISSIONER SCHMITT: I'm not a fact witness.

MR. YOVANOVICH: He is only here to explain the process. He is not here to talk to specific facts, and Ms. Ashton made that very clear that he's not to talk about specific facts related to this project, only to talk about what the Corps permitting process is.

So he's now asking him to get into specifics about this permit, and I object to getting into that, because if he's going to make him a fact witness, I'm going to jump in here, and I'm going to make him a fact witness, and I don't think that's what he was intended to be. He's here to talk about a process.

MR. OLDEHOFF: Well, I just want to make sure that the rest of your colleagues are correctly informed with regard to the comment that you just made about a procedure --

COMMISSIONER KLUCIK: Yes.

MR. OLDEHOFF: -- the procedure.

If, for instance, as a hypothetical, someone sought an Army Corps permit to do a project, any project, and they went through the process and they got an Army Corps project -- permit, and they built in accordance with the Army Corps permit and were finished with it, that that permit would be considered -- just like a building permit, it would be considered closed.

COMMISSIONER SCHMITT: That's correct.

MR. OLDEHOFF: Okay.

COMMISSIONER SCHMITT: No argument, but that --

MR. OLDEHOFF: Thank you. That's all -- that's all I wanted to clarify.

COMMISSIONER SCHMITT: But an applicant has every right to come back and ask for a new permit under the 404 process for any change in a project scope or a re-owner or somebody else. You can always come back in and ask again for a subject permit under the 404 process.

MR. OLDEHOFF: But for the purpose of a particular permit, that permit is final. It's

done. It's closed. You would have to open and start anew, right?

CHAIRMAN FRYER: Mr. Yovanovich, your objection is noted as continuing. Did you want to say anything further?

MR. YOVANOVICH: I want to ask a follow-up question about process when Mr. Oldehoff's done making his point.

CHAIRMAN FRYER: Okay.

MR. OLDEHOFF: What I'm finding objectionable, with all due respect, Mr. Schmitt, is that the information that you're trying to provide and the way that you're providing it is not perfectly objective and perfectly objective as to these -- these two people.

COMMISSIONER SCHMITT: Yeah. I'm not getting into that, sir.

MR. OLDEHOFF: Yeah.

COMMISSIONER KLUCIK: I'm not getting into that.

MR. OLDEHOFF: Okay. And I just would caution you, because -- that's all I'm asking.

COMMISSIONER SCHMITT: You can do what you have to do legally, and I object to that accusation.

MR. OLDEHOFF: And I apologize for having made it.

COMMISSIONER SCHMITT: Well, I find it offensive, and I object to it because I was stating a matter of fact. And I'm not discussing the permit. I'm not discussing the application process. I'm just advising you on the 404 process, all right.

MR. OLDEHOFF: It's just that your comment came --

COMMISSIONER SCHMITT: I'm done, sir. I'm done.

MR. OLDEHOFF: -- at the conclusion of my comment that this permit was considered a closed matter, and that it was final, which is relevant, legally, to this matter.

COMMISSIONER SCHMITT: Well --

MR. OLDEHOFF: And I -- again, I --

COMMISSIONER SCHMITT: I'm not going to get into discussion.

MR. OLDEHOFF: -- don't normally -- typically when I have commissioners that have a conflict, they conflict out completely.

COMMISSIONER SCHMITT: Okay. Thank you.

MR. OLDEHOFF: All right.

CHAIRMAN FRYER: Thank you.

MR. OLDEHOFF: Okay.

CHAIRMAN FRYER: Mr. Arnold, is that who you want?

MR. OLDEHOFF: Yeah.

CHAIRMAN FRYER: Oh, go ahead.

MR. YOVANOVICH: I only had one clarifying hypothetical. And, Mr. Schmitt, just tell me if I understand what you just said correctly.

A developer can initiate a totally new permit for another portion of the project and request that a prior commitment in another permit be modified and changed.

COMMISSIONER SCHMITT: Absolutely.

MR. YOVANOVICH: That's what I thought I heard you say.

COMMISSIONER SCHMITT: Absolutely. And with that, I'm leaving because I don't think you need anything more from me.

MR. OLDEHOFF: Mr. Arnold, good morning.

MR. ARNOLD: Good morning.

MR. OLDEHOFF: Mr. Arnold, when did you leave the county?

MR. ARNOLD: When did I leave employment with Collier County --

MR. OLDEHOFF: Yeah.

MR. ARNOLD: -- is that the question?

MR. OLDEHOFF: Yeah.

MR. ARNOLD: Sometime in 1998.

MR. OLDEHOFF: 1998, which I take it would have been shortly after this 1998 PUD and DRI and amendment that we've been talking about that made the requirement for the conservation easements on all of the preserve-identified land; is that right?

MR. ARNOLD: I don't know if I would say "shortly after" because I don't remember my date of termination with Collier County.

MR. OLDEHOFF: Okay. It was within the same year --

MR. ARNOLD: It was after, yes.

MR. OLDEHOFF: -- right?

Okay. And when did you first start performing work for the developers of this overall project? And I take it it has several different names, but this particular developer.

MR. ARNOLD: I don't recall the specific date, but it was after I became employed with Grady Minor & Associates.

MR. OLDEHOFF: Okay. And you became employed with Grady Minor right out of the County Attorney -- the county?

MR. ARNOLD: No, sir.

MR. OLDEHOFF: Okay. When did you go to work with Grady Minor?

MR. ARNOLD: Sometime in the year 2000.

MR. OLDEHOFF: 2000, okay.

And at that time was Grady Minor the planner -- the planning firm that did the work for this developer's project?

MR. ARNOLD: I believe they probably were clients of Grady Minor.

MR. OLDEHOFF: Okay. And have you tended to this particular client since you came on board in 2000?

MR. ARNOLD: I don't recall exactly when I first started getting involved in Fiddler's Creek matters, but I don't believe it was immediately.

MR. OLDEHOFF: Okay. On the matter of compatibility of this 15-unit-per-acre project kind of in the middle of this land that's under conservation easement in panther habitat and all, you addressed compatibility and said, well, this 15-unit-an-acre island here is compatible with its surrounding area because there may be something that's going to happen on the other side of Highway 41, right; do you remember that testimony?

MR. ARNOLD: Something to that effect, yes.

MR. OLDEHOFF: Okay, okay. But you couched it in terms of this larger area of perhaps a couple of miles, looking at a couple of miles, and part of which wasn't even developed, right?

MR. ARNOLD: Yes.

MR. OLDEHOFF: Okay. And I'm wondering, where is the closest place to this proposed island of 15-unit-an-acre development? Because that's what it is. It's an island. It's surrounded. It's 15 units an acre. Where is the closest place that you can find something with that density outside of this particular spot?

MR. ARNOLD: Well, I disagree with your contention it's a 15-unit-per-acre --

MR. OLDEHOFF: Well, it's 50 acres, and it's 750 units, and that, in my math, is 15 units an acre.

MR. ARNOLD: Yes. And part of my testimony was that that's not how we measure density in Collier County. You look at the overall PUD boundary, so we're at 2.25 units per acre.

MR. OLDEHOFF: Well -- but for the purpose of compatibility, we're talking about dropping this right into the middle of this undeveloped spot.

So I want you to take a look at this and talk to me from the perspective of this particular spot, because you're dropping 15 units an acre. It's not connected to the project. It's not in the middle of Fiddler's Creek. It's actually off on land that is out beyond there. It's actually out beyond the growth boundary. It's actually into the lands that are part of state parks/federal parks preserve, right?

MR. ARNOLD: No, sir. It's not part of the state and federal park.

MR. OLDEHOFF: It's not, but it is right there. It is right adjacent to the state park, right?

MR. ARNOLD: Yes, not unlike other projects in Collier County.

MR. OLDEHOFF: And if you drew a line across there, and that's -- I'd submit that's why this developer said, you know, "We're going to preserve all of that land, we're going to stop the line right there," that it's because it's -- it's functionally and practically and spatially in the park, right?

MR. ARNOLD: No, sir.

MR. OLDEHOFF: Okay. Okay. Now, in his -- you remember in his comments that were made back in 1998 from Dr. Nelson, who was working with this applicant with this application where they committed to preserving this land, he said -- he said -- mmm -- "There's not a clear separation between urban and rural land uses presently. Now, in the future, because of the amendment, the northern tier of the subject site will be filled in. So you'll basically have development from the currently approved DRI/PUD moving eastward abutting practically the easternmost large-scale development that's already been approved and is now being built out. So that portion -- that northern tier area's being filled in; however, at the southern end of that, you'll have a system of roughly the bottom third of the -- of Section 19, and all of Section 29 will be preserved, thereby providing a buffer between urban development and the state-owned wetlands beyond. So I think to some extent maybe the issue of separation between urban and rural land use is not a primary issue here, but, in fact, when you look at it carefully, we're improving the situation through the amendment." You remember that, right?

MR. ARNOLD: Generally speaking.

MR. OLDEHOFF: Okay. And you were there, and you presented this application --

MR. ARNOLD: I was a staff --

MR. OLDEHOFF: -- on that day?

MR. ARNOLD: -- representative presenting the application, yes.

MR. OLDEHOFF: Well, I mean, you're quoted. I mean, in the transcript, you're -- you testified?

MR. ARNOLD: I worked for Collier County Government. I did not work for the applicant.

MR. OLDEHOFF: Okay. Okay. In your experience, whose responsibility is it to comply with the requirements of the PUD?

COMMISSIONER KLUCIK: Mr. Chairman?

CHAIRMAN FRYER: Go ahead, Commissioner Klucik.

COMMISSIONER KLUCIK: I'm just curious, so when Fiddler's Creek was presented, you worked on staff and on Fiddler's Creek itself?

MR. ARNOLD: I was the Mr. Bosi of the day, yes, sir.

COMMISSIONER KLUCIK: Right, okay.

So what is the -- you know, is there any -- any sort of conflict there that -- you know, or is this -- you know, I'm assuming it must be -- the rules are being followed. But what -- is there any sort of restriction on moving into the different -- now you're an advocate on the same project for the applicant; how do -- what are the restrictions, if any?

CHAIRMAN FRYER: I'm going to call on the County Attorney to respond, please.

MS. ASHTON-CICKO: Can you repeat the question.

COMMISSIONER KLUCIK: Okay. So, you know, obviously I'm an attorney, so I'm thinking like a lawyer. And I realize this is a unique situation, and I don't know what the rules are.

You have the applicant's advocate here, who's our witness, and he was the government's -- presented the government's position when this Fiddler's Creek was before us in the beginning, and we're actually looking at that matter now, and now he's on the other side as the petitioner's advocate and witness.

So I'm just confused as to what the restrictions would be, because it seems like

there's -- you know, it -- my first thought is, oh, that looks like a conflict of interest, but, you know, maybe there is none, and, you know -- and whether I think it looks like one, it's kosher, but I just want to know what the rule is, if any.

MS. ASHTON-CICKO: There is a two- or three-year limit of when you can appear before the boards that -- our county boards, the Board of County Commissioners or any of the advisory boards. There are some exemptions, but I don't recall the rule exactly. But I think by virtue of Mr. Arnold being here with counsel of Richard Yovanovich, I think they've made the determination that it is appropriate for him to appear in the capacity he's here today.

COMMISSIONER KLUCIK: Okay. And so then as a -- as a commissioner, then, I can decide to weigh his -- you know, his input accordingly if I think that -- in my own mind it's very hard to straddle both sides of the issue. It would be hard for me to straddle both sides of the issue, which is why -- why you have the two- or three-year restriction, apparently. But I don't think it disappears when the same matter is presented before us to have recollections. It's real easy to recollect the way your current boss wants you to recollect, and that's not impugning anyone's -- you know, it's not a moral impugning. It's just talking about we're human, and it's much easier to remember things the way that make life easier for you. And that's all I'm saying, and I think we are allowed to weigh that as commissioners.

MS. ASHTON-CICKO: Absolutely. In any quasi-judicial proceeding --

CHAIRMAN FRYER: I agree.

MS. ASHTON-CICKO: -- that's what you're to do.

MR. YOVANOVICH: Just real briefly, if you don't mind.

CHAIRMAN FRYER: Go ahead. Go ahead.

MR. YOVANOVICH: First of all, unlike lawyers, there is no legal conflict of interest.

COMMISSIONER KLUCIK: Right, and that's why I asked the question. And --

MR. YOVANOVICH: Second of all --

COMMISSIONER KLUCIK: Excuse me. And I actually explained my ignorance and that I might be off, and then I conceded that I was off, and then I clarified what my concern was nevertheless, and our counsel agreed that my conclusion is actually -- is actually accurate, that we're allowed to factor that in. So that's all. And I just wanted to clarify that, so please make your point.

MR. YOVANOVICH: Second of all, if you look at your record, you actually have the transcript from the 1998 hearing.

MR. OLDEHOFF: Well, this is rebuttal.

MR. YOVANOVICH: No, I'm talking about the credib- -- he's talking about the credibility question right now, and I just want to respond to what's in your record. You have in your record exactly what Mr. Arnold said with regard to the project and what was being presented to the Board of County Commissioners. That was Mr. Arnold's role at that time was to say, "The petitioner is asking for X." He was not advocating on behalf of the county or on behalf of the petitioner at the time. He was simply reporting what the petitioner -- what the petition was in front of the County Commission at the time. That's all he was --

CHAIRMAN FRYER: I think where we are at this point is we've decided that we, as planning commissioners, have the prerogative, as we always do --

MR. YOVANOVICH: Of course.

CHAIRMAN FRYER: -- to measure the credibility of witnesses, and we will always do that. I'm not sure that anything further needs to say about that.

COMMISSIONER SHEA: Thank you.

CHAIRMAN FRYER: Go ahead, sir.

MR. OLDEHOFF: Yeah. My question was, whose responsibility is it to comply with applicant or permittee -- permittee requirements that are placed upon the permittee or the applicant?

MR. ARNOLD: That would be Collier County's responsibility.

MR. OLDEHOFF: It's Collier County's responsibility?

MR. ARNOLD: Yes, sir.

MR. OLDEHOFF: It's not the applicant's responsibility?

MR. ARNOLD: Ultimately, it's Collier County that enforces those requirements.

MR. OLDEHOFF: Okay. So then what you're testifying -- and I've never heard of this before -- you're testifying is that it's okay for a permitholder, like this one, not to comply with PUD conditions like this one if they are not demanded by the county?

CHAIRMAN FRYER: Commissioner Klucik?

MR. OLDEHOFF: Is that your testimony --

COMMISSIONER KLUCIK: Yeah.

MR. OLDEHOFF: -- and that's why this was never complied with?

CHAIRMAN FRYER: Sir? Sir? Commissioner Klucik has the floor.

COMMISSIONER KLUCIK: Yeah, I think this is a really important question because what we have, depending on the answer, is "As long as you don't get caught, there's no reason to comply, and they're probably not going to catch us." That could be an easy take if the answer is -- if the answer to his question is, yeah, there's -- you know, there's no obligation to comply if you're the person who was the applicant and got it approved.

So I just say that before you give your answer. And what was your question again?

MR. OLDEHOFF: I asked my question.

CHAIRMAN FRYER: He can answer.

MR. ARNOLD: The answer is it obviously is up to the applicant to comply, but it's -- the enforcement authority would be with Collier County for that condition.

MR. OLDEHOFF: That's all the questions I've got. I think that explains everything.

CHAIRMAN FRYER: Thank you.

All right. So the witness is excused?

MR. OLDEHOFF: That's all the questions I've got. Thanks.

CHAIRMAN FRYER: All right. Thank you.

MR. OLDEHOFF: Again, I'd like to just reserve right if there's new information that is presented and, of course, giving Mr. Yovanovich the last word for his redirect.

CHAIRMAN FRYER: Yeah. Well, we'll cross that bridge if we need to. Thank you.

Mr. Yovanovich, how much rebuttal do you have at this point?

MR. YOVANOVICH: Thirty minutes.

CHAIRMAN FRYER: Okay. I'm going to, then, say that we take a five-minute break and come back, and we'll have the rebuttal. We're in recess until 11:17.

(A brief recess was had from 11:12 a.m. to 11:17 a.m.)

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

CHAIRMAN FRYER: Thank you, Mr. Bosi.

Ladies and gentlemen, let's return, reconvene, please. Where we are is the applicant is now going to present rebuttal.

Mr. Yovanovich, you're recognized.

MR. YOVANOVICH: All right. Thank you.

For the record, Rich Yovanovich on behalf of the applicant.

I want to start off by saying that, you know, I normally don't address what public speakers say directly. I don't -- by name, but in this particular case I'm going to, not by name each comment, but I am going to address comments made by Mr. Erario, Mr. Hanba, and Ms. Caglioti at the last meeting with regard to their public comments because what they're trying to do, in my opinion, is somehow paint my client as doing something either illegal or immoral in attempting to change what was previously committed on Section 29. If you remember when I first got up here two hearings ago, I said in 1998 the intention was not to develop any of Section 29 with residential development. And I also said a portion of Section 29 -- and I'll put that up again in a minute -- was going to be developed as an active recreational amenity for the residents of Fiddler's

Creek.

We are here to ask for a change for what was previously intended to happen under a roughly 50-acre parcel in Section 29. Instead of it being an active recreational parcel, have it be an affordable housing -- a project that includes affordable housing in it. It is a change. It was a change that my client decided to make in approximately 2019 in response to the affordable housing crisis that all employers, including my client, are experiencing in finding housing for employees that he has and others have. And he elected to go through this public-hearing process to change what was previously stated in 1998.

There are two separate, I'll call them, preserve permit issues that we're talking about today. I think what the opposition is trying to do is lump them into one. It's not one. There are two separate things. There's what was the obligation to place a portion of Section 29 into preserve that was committed to in 1998 -- I'll call that the county conservation easement -- and then later on, in 2018, when the Estancia project was approved --

CHAIRMAN FRYER: Excuse me, sir. Commissioner Klucik.

COMMISSIONER KLUCIK: When you say "a portion of Section 29," how many acres?

MR. YOVANOVICH: I was less -- let me show you in an exhibit in a minute, if you can hold onto that question.

COMMISSIONER KLUCIK: Well, no. It's important for me to -- if you want me to process what you're saying, you'd let me see what those acreage is now and how much it is. But that's fine; you can do whatever you want.

MR. YOVANOVICH: I'll show you right now. That was going to be the next portion of my presentation anyway.

If you look at Section 29, that is -- where you see my -- and I think it's actually good handwriting for me -- what is Section 29.

COMMISSIONER KLUCIK: My question was, "How many acres?"

MR. YOVANOVICH: It's about 150 was in preserve and about 150 was not in preserve.

COMMISSIONER KLUCIK: It was 693 acres.

MR. YOVANOVICH: No, that included other lands other than Section 29.

COMMISSIONER KLUCIK: Okay.

MR. YOVANOVICH: Okay.

COMMISSIONER KLUCIK: And so the whole rectangle there was --

MR. YOVANOVICH: Roughly 300 acres.

COMMISSIONER KLUCIK: But it's the whole rectangle?

MR. YOVANOVICH: It's the whole rectangle, yes, sir.

COMMISSIONER KLUCIK: So where it says "Section 29," that whole box? All right.

MR. YOVANOVICH: That is -- that's what was in front of the County Commission in 1998.

COMMISSIONER KLUCIK: To be preserved?

MR. YOVANOVICH: No. No, no, no. The darker portion was going to be the active recreational area. The lighter portion was going to be preserve.

COMMISSIONER KLUCIK: And the active recreation area was preserve?

MR. YOVANOVICH: No. It was never part of the preserve.

COMMISSIONER KLUCIK: And that's where I --

MR. YOVANOVICH: And I will show you another document to show you that, okay.

The PUD also included a table of acreages. You will see that the park acreage increased by roughly 103 acres. And then if you scroll down --

COMMISSIONER KLUCIK: I can't really make out those --

MR. YOVANOVICH: I'll read the numbers to you. The numbers are -- previously it was 23.09 acres of parks, and it went up to 126.85 acres of park. Do you see the highlight?

COMMISSIONER KLUCIK: Which line -- you're on the first line.

MR. YOVANOVICH: Highlighted parks. The top line says 126.85, and the bottom line

says 23.89. Are you with me?

MR. OLDEHOFF: Which one?

CHAIRMAN FRYER: Sir, please.

MR. YOVANOVICH: It was pertaining to Unit 30, which is Fiddler's Creek.

COMMISSIONER KLUCIK: And this was when the commitment was made; this was the chart, the --

MR. YOVANOVICH: This is the chart in 1998 --

COMMISSIONER KLUCIK: That was adopted when the commitment was made?

MR. YOVANOVICH: Correct.

COMMISSIONER KLUCIK: Okay.

MR. YOVANOVICH: So you'll see that. Then you'll see in a footnote -- it's the bottom footnote. And I'm sorry, I went to the Clerk's website, and that's actually how it looks. It's already highlighted. And it says, "100 plus/minus acres -- plus/minus acre of park with lake in Section 29 will originally contain nursery, and park uses will be developed later in the project." So the 100 acres -- this is the footnote referenced above for park.

COMMISSIONER KLUCIK: Okay. Just --

MR. YOVANOVICH: You'll see that below the number 126.85 --

COMMISSIONER KLUCIK: Can you go back down?

MR. YOVANOVICH: Sure.

COMMISSIONER KLUCIK: No. I want to see the first -- the first highlight there.

MR. YOVANOVICH: I was going to get to that next.

COMMISSIONER KLUCIK: Okay. So 693 acres of preserve. That's apparently an important footnote.

MR. YOVANOVICH: And it's different from the 100 acres that's the park, and that's accounted for under the section that says "recreation and open space" with the double asterisk at the footnote, and that's the double asterisk footnote. So it was very clear that the 693 acres preserve you were mentioning --

COMMISSIONER KLUCIK: I don't think the record is -- agrees with what you're stating. I think the record shows -- and I gave explicit -- I gave a very, very long statement that's on the record where I walked through what it all said, and I pointed to the charts, and I disagree with your -- what you're presenting now.

MR. YOVANOVICH: And that's fine; you're allowed to disagree. And, obviously, I disagree with what you presented before and what the commitment was with regard to what was agreed to be a preserve in 1998 for the county, and that is exactly what was agreed to be in a preserve.

Thank you, Mike.

The lighter portion was identified as reserve in 1998. They called it a reserve back then; it's now a preserve.

But there's no -- nothing -- there's nothing more clear than the PUD itself and how it was identified and designated. It was identified as a reserve. The park was identified as the darker area with the lake in 1998. That was the commitment. That's our position. We believe that's what the record says.

So with regard to what needed to be put in a preserve at some point in time, it was the lighter portion on what's before you. There was an LDC provision that was referred to as to when the preserve requirement was to be made. And Ms. Ashton and staff said the commitment to provide the conservation easement is when you get to this portion of the project for development.

So timing-wise, we're not there yet. But even if we were supposed to hypothetically do it in 1998, it wasn't the portion of the property that we're talking to you today about converting from a park to residential under the PUD. I'll deal with the Corps permit separately, but I want to focus on the county permit requirement right now.

We told the county we were going to preserve/reserve the light area in 1998. We have not

swayed from that one iota. We are going to do that. And that's what we committed to, and that is what we've done. In our opinion, providing the conservation easement over the lighter area isn't required yet. You heard from Ms. Cook, Mr. Bosi, and Heidi regarding when that needs to occur.

Now, there was some quotes of Mr. Varnadoe, my predecessor on this project. What Mr. Varnadoe was talking about when asked the question by Commissioner MacKie where he said, we will put -- we want the State to take this land -- if you read the transcript, he was referring to a peninsula.

In 1996, the area I'm identifying for you is the peninsula, and it was slated for residential development. One of the benefits of the proposed project and what the Conservancy liked and what Ms. MacKie was asking about was this peninsula piece was being converted from residential to preserve.

So when Mr. Varnadoe was asked the question "Who's going to get the land?" he said, "I want the State to have the land." That's the piece.

And you will see -- you will see that what was in November 1996 that was going to be developed is now a preserve in 1998. That's that discussion that Mr. Varnadoe had with regard to what was the State going to own.

Mr. Varnadoe went through a detailed discussion about what was being added, and in reference to Section 29, he did reference the recreational facilities.

Now we go over to the Army Corps of Engineers' permit. That's associated with the Estancia project. Where's the Estancia project? The Estancia project fronts U.S. 41. It was lands acquired by Taylor Morrison and was being developed by Taylor Morrison. Taylor Morrison, as part of the permitting process for that, the developer agreed that all of Section 29 would now be in preserve instead of buying panther credits. And Mr. Hall testified at the last -- two hearings ago that the permit originally gave us the option of either buying a certain number of panther credits and not using any of Section 29 as mitigation, or we could buy less panther credits and use Section 29 as mitigation. No question in 2018 the developer said, "I will use Section 29 and not buy panther credits." That's what happened in 2018.

And that's when in, basically, 2019 -- and I'm going to walk you through all of these e-mails -- Tim reached out to U.S. Fish and Wildlife and said, "Wait a minute. We were premature. We shouldn't have put the farm field into mitigation. We want to take that out, and we want to develop a residential project."

So in 2019, Tim reaches out to a woman named Connie Cassler, and that was -- in 2019, he reaches out to Connie Cassler, Connie, and says, "We would like to see if some of the offsite property offered for PHU compensation could be switched out for other property also associated with the overall DRI that's about 150 acres."

So in 2019, Tim reaches out and says, "You know what, we want to talk about removing some of the lands we previously put in mitigation." 2019. That's what he testified to before, that's what he's testifying to today, and that's what this e-mail says.

Almost immediately, U.S. Fish and Wildlife says, "Hey, can you provide us some more details?" And Tim is off to the races talking to U.S. Fish and Wildlife Service about modifying the biological opinion to remove that 150 acres.

In April 26, 2020 -- let me take a step back.

MR. OLDEHOFF: That's the park. That's the state park.

MR. YOVANOVICH: You know, please be quiet.

CHAIRMAN FRYER: Please, sir.

MR. YOVANOVICH: That's not the state park.

MR. HALL: That is the state park.

MR. YOVANOVICH: Oh, it is? Oh, to take it?

Sorry. Mr. Oldehoff was right.

What we were talking to U.S. Fish and Wildlife was about other options, either other lands or buying more credits. We did such a good job of hiding that we commenced construction that

Taylor Morrison, on July 19th, 2019, said, "Here's our notice of construction. We're starting our work."

We put them on notice that we've started working on the project while Tim is talking to U.S. Fish and Wildlife Service about modifying the permit condition that all of Section 29 be placed in a preserve.

So we didn't hide anything. We even went so far as to let Robert Tewis from the Army Corps know that, oh, guess what, originally we were getting -- in my biological opinion, I said, "We're going to give the lands to the State." The State doesn't want the land. What do we do now? Do we need to modify our permit given that Taylor Morrison has started work on the north portion of the site? What do we do now?

And the Corps says, "I'll need to pass this along to compliance. We'll let you know what they say." So we've kept the big secret from the Corps. We didn't tell them we started work, and we didn't tell them, that, you know, "Well, guess what? We are not doing what we originally thought we were going to do, giving the land to the State. What do we do?"

Tim told you he had many conversations about trying to remove the 150 acres. It got reduced to the acreage in front of you today. He follows up with Connie in 2028 [sic]. September 20th, 2020, Tim writes to Connie and says, "Hey, you know, my client's putting some pressure on me. Where are we in this process of amending the biological opinion?"

He says exactly what Tim testified a few minutes ago. "We look at these on a case-by-case basis. It would be useful to have a call, and I can explain more."

U.S. Fish and Wildlife Service, Connie Cassler, knows exactly what's going on, as we previously said. We didn't play hide the ball. We had conversations with both the Corps and U.S. Fish and Wildlife Service. We get COVID. We're having -- trying to get ahold of people. We're having conversations. Tim follows up again.

Thank you, Mike.

This e-mail is in 2022 saying, I don't know if you remember, but a couple years ago I asked you about removing the 150 acres. Where are we?

And then it says, Please submit the request to this certain person because she's moved on. She's no longer the person to deal with when talking about making changes to the biological opinion.

Mr. Carey from U.S. Fish and Wildlife Service, on August 12, 2022, acknowledges that the Corps is going to reinitiate consultation with U.S. Fish and Wildlife Service to talk about reopening the biological opinion to address this 50-acre piece. We're talking to them about removing this 50-acre piece.

You don't have a single e-mail on the record from the Corps or U.S. Fish and Wildlife Service until we saw today where the Corps said, "You know what, you're not in compliance. Get into compliance. We don't want to talk to you." That's not in the record, because that's not how they behaved. They were talking to Mr. Hall about modifying the permit to take this 50 acres out.

Mr. Rouan, who sent you the e-mail they sent, confirms to Tim on September 7th, 2022, the letter's going -- the letter went out yesterday, the re-initiation letter, September 7, 2022.

It doesn't say anything about, "You're bad actors. You better get into compliance." No. They're talking about modifying the permit through this entire time frame starting in 2019.

Now, yes, I saw for the first time a letter from Mr. Carey who just said they were reinitiating. He's aware we're going to reinitiate consultation for the biological opinion, who then says, for the first time, "We want the Corps to make you record the covenants first." That's about a month later. "We want you to record the covenants -- record the covenants." We record the covenants almost immediately after receiving that letter.

Those covenants were recorded on November 3rd, 2022. We're such bad actors that probably, you know, less than two weeks later we did what we were asked to do, record the covenants and continue to discuss revising the biological opinion, and we have confirmation from Mr. Rouan. Tim sends him the documents on November 3rd. November 3rd, 2022, we send him

the documents. He responds in February of 2023 saying, "You're in compliance. You did what you were supposed to do."

They accepted the documents that we provided to you, including the document that says we want to talk to you about potentially modifying it on 57 acres. Not only -- so we didn't play hide the ball. We had communications. We did everything we were asked to.

In February of 2023, after allegedly the final decision was made in October of 2022, we get the e-mail from Mr. Shidle -- or Shindle who works with Mr. Carey, because we kept meeting with Mr. Carey and his staff about where are we. "Where are we on either giving you more credits or finding another parcel of land?"

And I said at the last meeting, if you remember, we got a letter that says, "Buy a farm in another county that cost a million-six, and we'll modify the permit."

So in -- February 3rd of 2023, they were willing to modify the permit if we paid the price that Mr. Shindle wanted us to pay on behalf of the U.S. Fish and Wildlife Service to modify the permit.

And I got up and said, "We refuse to pay that amount of money, and we're not buying the property." Somebody said I said we're still talking about that piece of property. Go read the -- go read the transcript. I said, "We said no to that piece of property." The price to buy that piece of property was probably eight to 10 times more than the panther credits we could have originally purchased to not include this property in the -- in the area for mitigation in the first place.

Then we get, you know, the 2024 letter saying that "The process you're in right now, we can't modify the existing permit because it's closed. You got to start all over." And that's what he said we were going to do. We're going to start all over and modify the permit. And maybe the Corps says no to modifying the permit, but we're going to go back to them, and we're going to ask them to modify the permit to take this 50 acres out.

We've followed every legal avenue, every legal requirement to both modify the PUD and modify the original permit for Estancia. We have done nothing wrong. We have not hidden the ball from anybody. We have clean hands. You may not like the project, that is fine, but to accuse Mr. Hall of not telling the truth, accusing my client of somehow being a bad actor, accusing Mr. Arnold and accusing me of not telling the truth is inappropriate; it was wrong, and it's not supported by the facts.

What did Mr. Hall testify to? Because it's been almost two months. I just want to remind people about what he actually said when he spoke and was cross-examined. He testified to everything I just told you about with his conversations with the Corps and the Water Management District. He testified that we were given such a low credit for that additional mitigation land as an offset to the panther credits that, in his professional opinion, it is not this pristine environmentally sensitive piece of property that the opponents have made it out to be. That's a fact. If it was such an environmentally pristine piece of property, we would have never been given the option to buy credits in the first place.

There is not a single environmental consultant -- and Mr. Oldehoff is not an expert in environmental consulting. He's a lawyer. He's an advocate. You don't have a single environmental consultant to support what they're saying, that this is pristine environmentally sensitive land. And with all due respect to Mr. Carey, he was originally willing to allow that to be purchased with panther credits.

I stand by Tim's testimony. He's the only expert in the record who's been in front of you subject to cross-examination and testified to the value of the park portion.

Here is an exhibit that shows us what was committed in the 1998 PUD to be placed in preserve.

CHAIRMAN FRYER: Commissioner Klucik.

MR. YOVANOVICH: You will note that --

CHAIRMAN FRYER: Mr. Yovanovich.

Commissioner Klucik.

COMMISSIONER KLUCIK: In the lower right-hand corner, that's Section 29, right?

MR. YOVANOVICH: I was just going to get to that, yes. If I can get the cursor to move.

COMMISSIONER KLUCIK: I understand I frustrate you when I interrupt you --

MR. YOVANOVICH: It's okay.

COMMISSIONER KLUCIK: -- but the commentary, reminding everybody that you're frustrated that I interrupted you, doesn't serve you well, but...

The yellow portion there, in Section 29, what is the acreage?

MR. YOVANOVICH: Roughly 150 acres.

COMMISSIONER KLUCIK: That's 150 acres. And where's the -- the other half -- the other half is about the same size?

MR. YOVANOVICH: It's right here.

COMMISSIONER KLUCIK: Right. That's about the same size. It's -- the total is around 300 acres?

MR. YOVANOVICH: Yes.

COMMISSIONER KLUCIK: Okay. And I know I'm deviating, and that's fine, but it's important for me to follow because now you're talking to something I have very specific questions about.

So when you -- when we go back to the original 1998 document and the chart that you showed, as well as the resolution that it's part of, it mentioned 690 acres, and then it also mentioned 693 acres, or it shows 993, roughly, acres.

So where -- I want to know the makeup of the 690 acres that is in the verbiage, and I want to know the makeup of the 693 acres, because, you know, that might help me, you know, confirm what the references are in the actual resolution.

MR. YOVANOVICH: I've got to go check the 690. The 693 --

COMMISSIONER KLUCIK: The 690 is explicitly stated, 690 acres, blah, blah, blah, and that's in the verbiage, and I can give you the citation -- excuse me. That's in 1.7.

MR. YOVANOVICH: Okay. I'm getting there. Give me a second, please.

COMMISSIONER KLUCIK: Which says Page 2.

MR. YOVANOVICH: Bear with me, please. Okay.

COMMISSIONER KLUCIK: So I want to know where is -- you know, is that little portions here and there? And I'd like to know which portions they are. Or is it one big section, and then the same with the 693, and the same with the -- I guess the 126 is the part on the right.

MR. YOVANOVICH: Okay.

COMMISSIONER KLUCIK: Right? The 126, the parks, that is the part on the right of Section 29 there on the map?

MR. YOVANOVICH: Yes, sir.

COMMISSIONER KLUCIK: Okay. So I want to know the recreation and open space on the chart that you showed previously. It shows 1483.98, 1484, and previously it was 790, so that's a 693 increase.

MR. YOVANOVICH: Okay. I'm with you.

COMMISSIONER KLUCIK: And I want to know where is that 693? Because then that tells us what land actually was being contemplated --

MR. YOVANOVICH: Are you ready?

COMMISSIONER KLUCIK: Yeah.

MR. YOVANOVICH: I didn't want to interrupt you.

COMMISSIONER KLUCIK: Thank you.

MR. YOVANOVICH: You see the yellow?

COMMISSIONER KLUCIK: If you add all the yellow together, that's the 693?

MR. HALL: The 693 was -- included the stuff that was in there from the '96.

COMMISSIONER KLUCIK: Well, no. There was an increase. We had 798.

MR. YOVANOVICH: In 1996, 690 acres was added to the PUD. So what you're referring to on Page 2 I'm assuming is the whereas paragraph.

COMMISSIONER KLUCIK: Right, so --

MR. YOVANOVICH: So previous -- there was a previous addition to Fiddler's Creek in 1996 adding 690.

COMMISSIONER KLUCIK: And that's the 690. Okay. So then we have -- then we have the recreation and open space, and we see an increase of roughly 693-point-something acres.

MR. YOVANOVICH: And that happens in 1998 --

COMMISSIONER KLUCIK: Which is the --

MR. YOVANOVICH: -- when we bring in the 1385 --

COMMISSIONER KLUCIK: Right. And I want to know where is that -- where is that 693 acres?

MR. HALL: It's all of the yellow together.

COMMISSIONER KLUCIK: Adds up to 693?

MR. HALL: It actually adds up to a little bit more than that. When you add the red, which was in there before, and the yellow together, we're at about 800 acres.

COMMISSIONER KLUCIK: No, I want to know the 693. I want to know --

MR. HALL: So the -- okay, so the bottom right-hand yellow in Section 29, that's about 160 acres there. The yellow -- the big two squares of yellow that are in Section 19, that's about 320 acres. The little preserves inside there are additional. I don't know the -- I didn't add up those individually, but that's probably about 50 acres, 40 or 50 acres, and then the other two yellow areas that were given up for development make up the remainder of it.

COMMISSIONER KLUCIK: So the 1998 added all that yellow to this recreation and open space?

MR. YOVANOVICH: Yes, sir. That's the 693.

COMMISSIONER KLUCIK: Okay. Right.

And then we have -- let's see here. Then we have the permitted uses. Is that Section 8.5 of the same 1998?

MR. YOVANOVICH: Yes, sir.

COMMISSIONER KLUCIK: And then -- so this -- these permitted uses aren't really -- are you saying that they're not -- they do restrict all of Section 29, right?

MR. YOVANOVICH: They apply to all of Section 29.

COMMISSIONER KLUCIK: Well, they restrict all of Section 29?

MR. YOVANOVICH: Well, they do, and part of it deals with the park portion and part of it deals with --

COMMISSIONER KLUCIK: Right. So that is not -- that list -- that 8.51 is not exclusive to preservation or conservation; that is simply exclusive to 29?

MR. YOVANOVICH: Section 8.5 --

COMMISSIONER KLUCIK: 8.5, permitted uses.

MR. YOVANOVICH: -- are exclusive to what can occur on Section 29.

COMMISSIONER KLUCIK: Section 29, and it doesn't -- and it doesn't distinguish whether that's preserve or park.

MR. YOVANOVICH: Well, it does. It talks about -- if you could see, the Letter E allows for active recreational activities, and that would correspond to the master plan designation of park. I could not put --

COMMISSIONER KLUCIK: I guess that's what I'm saying is that's a list of uses, some of which are reserve or preserve or conservation --

MR. YOVANOVICH: Right.

COMMISSIONER KLUCIK: -- and some of which are park?

MR. YOVANOVICH: Correct, correct.

COMMISSIONER KLUCIK: All right. Thank you.

MR. YOVANOVICH: Okay. I'm trying to make sure I don't talk over anybody.

So Mr. Minor, at Pages 37 through 44 of the original hearing, discussed two major topics. He discussed water management for our property and the benefit that our project would have to water management to the golf course community to our north, and you can see it on this map. It's this area right here.

And if you recall, what Mr. Minor testified to is there's currently -- and you can see it. There's that lighter area that bisects the yellow. That's a road. I think he referred to it as a dam when he was being asked questions from members of the Planning Commission. And that when we build our road to the project, to the apartment complex, the dam will go away. You'll have a road that has culverts that will accommodate the sheet flow from the golf course community.

So there will be an enhancement to what's there today for drainage for the golf course community. That's what Mr. Minor testified to when asked questions about water management, keeping in mind that we've got to go through a Water Management District permitting process to address water management.

Your staff's not objecting -- if you read the staff report, they're not objecting to our proposed project based upon any water management criteria. And, again, the only expert testimony you have in the record besides your staff report is Mark Minor, a civil engineer familiar with water management, familiar with water management permitting, and an extensive knowledge of Fiddler's Creek and an extensive knowledge of our proposed project. You don't have anybody with any credentials saying anything to the contrary. You have some people trying to play engineer, but they're not engineers.

Let's talk about Auto Ranch Road. Mr. Minor went through a detailed list of the improvements we are making to Auto Ranch Road. Widening the lanes, taking care of the shoulders, adding a sidewalk, raising the elevation of the road so it no longer floods, installing culverts, improving the drainage. He went through all of that in his testimony.

And Mr. Banks got up and said, when Auto Ranch Road is improved -- and it will be improved as part of this project -- Auto Ranch Road will be safe, it will be better than it is today, and it will have plenty of carrying capacity for what's there today on Auto Ranch Road and what we're proposing to put on this project. It was less than half the capacity on that road. That's what Mr. Banks testified to.

Auto Ranch Road will be an asset to those people who live on Auto Ranch. And if you remember, there was a very nice woman who got up there and said, you know -- you want to talk about affordable housing; we are affordable housing. Those of us who live on Auto Ranch Road moved out here because it was affordable housing. So for someone to get up there you say and this is not an appropriate area for affordable housing, that's contrary by the people who live there today saying they moved there for that. And for anybody to get up there and say somehow that nobody's going to want to live at this very nice apartment complex, that it's too far for them to drive to services and too far for them to drive to jobs.

I can't even believe that they said that out of their mouth because their own expert who lived in Cape Coral couldn't even tell you how long it takes him to get from Cape Coral to -- whether it would be a shorter drive for him to come to Cape Coral to work in Collier County versus living in Section 29, but there's no doubt that living on this piece of property is a much shorter drive to address the affordable housing crisis we have in Collier County.

Here are some of the employers in the near vicinity of our proposed project. The Publix shopping center at Fiddler's Creek is a -- I guess it would be a four-and-a-half-mile drive for people who live there in Section 29. That's eight minutes.

Physicians Regional where, you know, maybe they'll work, is 10 miles, 17-minute drive time.

Marco Island Marriott is 16 -- 16.4 miles, 27 minutes to drive there.

The county complex, 13.7 miles, 24-minute drive.

Lely High School, 10.6 miles, 18-minute drive.

Downtown NCH hospital, 15.7 miles, 27-minute drive.

I guarantee you people would rather live in Section 29 than commute from Cape Coral, Lee County, and Lehigh Acres.

This project is in the right location, it will serve employers, and people will want to live here and not want to drive much greater distances. Every one of us has seen I-75 in the morning coming south. I think Mike said there's 50-plus-thousand people coming to work in Collier County from Lee County and other parts north.

I guarantee you people will want to live here, and it will especially lease up quickly with the essential service personnel we were proposing with the income-restricted units.

Any testimony from no expert -- that was, I believe, the testimony from the attorney for the opposition -- making the judgment that nobody will want to live there, I think that that statement is unsupported and is not credible.

You have in front of you a whole host of changes to the PUD. Remember, I talked to you about -- or Wayne Arnold talked to you about -- we talked to you about modifications to the entrance off of 951 related to reallocating the business uses and the senior housing uses and several other minor revisions to the PUD. Those are not issues that anybody has raised concerns with.

I want to focus that on when you're doing your deliberations and what portions of -- we're asking from -- you might like and you may not like. The whole focus on what people don't like so far has been Section 29. There was one person who says he doesn't like the change to the master plan, but, you know, as I went through the details and your staff has confirmed, this is just reconciling previously approved plats. We went through the proper process for modifications to the master plan.

So when you do your deliberations and you discuss what you like or don't like about what's before you today, I ask that you be, you know, careful in your deliberations and your discussions in any motion you may make.

CHAIRMAN FRYER: Commissioner Klucik.

COMMISSIONER KLUCIK: I can wait till he's done.

MR. YOVANOVICH: Thanks.

CHAIRMAN FRYER: Go ahead, sir.

MR. YOVANOVICH: We have followed all of the legal requirements and all the legal process to make changes to documents that were approved as part of this process. We're not apologizing for being in front of you today to ask for an affordable housing project. My client has the legal right to change his mind. That's not illegal. That's not immoral. I want you to focus on the merits of what we're asking you to do today.

A lot of the focus from the opposition is basically painting us as bad people, doublespeakers, liars. All those words were used against our team. They're not true. They're not correct.

Focus on the merits. Make your decision on the merits. That's all I'm asking you to do. Make your recommendation to the Board of County Commissioners however you want to make your recommendation to the Board of County Commissioners. Your staff is recommending approval.

It's a good project, it's a needed project, and we're asking your recommendation of approval for the changes to the PUD and the DRI and to the Growth Management Plan amendment.

I'm happy to answer any further questions you may have regarding the project. We appreciate your time and your consideration, and I'm hoping we'll be out of here by 3.

CHAIRMAN FRYER: Commissioner Klucik.

COMMISSIONER KLUCIK: Thank you, Mr. Chairman.

Okay. Mr. Yovanovich, a couple real specific questions.

MR. YOVANOVICH: Sure.

COMMISSIONER KLUCIK: So the 1998 conservation easement requirement pertained to which land? Just 29? Well, as far as what we're talking about today --

MR. YOVANOVICH: It pertained to -- I think that's the western half --

COMMISSIONER KLUCIK: The west half.

MR. YOVANOVICH: -- of Section 29.

COMMISSIONER KLUCIK: Okay. And so there was an obligation.

MR. YOVANOVICH: There is an obligation to put that western half into a preserve --

COMMISSIONER KLUCIK: And that was -- since 1998, there's been an obligation?

MR. YOVANOVICH: But the timing of the obligation --

COMMISSIONER KLUCIK: No, no.

MR. YOVANOVICH: -- has not been triggered.

COMMISSIONER KLUCIK: Just -- just yes or no. Since 1998? I'm sorry.

MR. YOVANOVICH: Since 1998, there was an obligation to put that western half into a preserve.

COMMISSIONER KLUCIK: Right. And to date, it hasn't been?

MR. YOVANOVICH: No.

COMMISSIONER KLUCIK: Okay. And does -- is your proposal before us putting it into reserve or conservation easement?

MR. YOVANOVICH: It's remaining the same. It will be a preserve. It will be a county conservation easement.

COMMISSIONER KLUCIK: When?

MR. YOVANOVICH: Well, when -- if you're saying to me you want to accelerate when that occurs --

COMMISSIONER KLUCIK: No. I'm asking you, when does it have to occur, in your mind?

MR. YOVANOVICH: When we plat that property.

COMMISSIONER KLUCIK: Pardon?

MR. YOVANOVICH: When we plat the park area property, we will put that in preserve.

COMMISSIONER KLUCIK: So when you plat the other half?

MR. YOVANOVICH: Yes, that's what the code requires.

COMMISSIONER KLUCIK: Well, why does it require it when you plat the other half?

MR. YOVANOVICH: Because that's what the LDC section says. We went through this with staff. That's the timing. And I think you and I even talked about maybe it's the most -- not most artfully written --

COMMISSIONER KLUCIK: Right, right, right.

MR. YOVANOVICH: -- piece of property, but for decades that's how the code's been applied.

COMMISSIONER KLUCIK: So what you're doing is you're asking for a change so that you can do this -- develop this rectangle?

MR. YOVANOVICH: Uh-huh.

COMMISSIONER KLUCIK: What do we call that? Section 29 --

MR. YOVANOVICH: Section 29.

COMMISSIONER KLUCIK: -- is the rectangle?

MR. YOVANOVICH: Well, it's -- close enough.

COMMISSIONER KLUCIK: We'll call it that, okay.

MR. YOVANOVICH: Yeah. Let's call it the orange area.

COMMISSIONER KLUCIK: Right, okay. But then that's not the area that needs a conservation easement.

MR. YOVANOVICH: No, the green area on this map would go into a conservation easement.

COMMISSIONER KLUCIK: Right. When?

MR. YOVANOVICH: Are you asking us to do it sooner --

COMMISSIONER KLUCIK: No, I'm asking you --

MR. YOVANOVICH: -- as a condition?

COMMISSIONER KLUCIK: -- when does it have to?

MR. YOVANOVICH: When we plat Section 29.

COMMISSIONER KLUCIK: When you plat Section 29, or when you plat the green section?

MR. YOVANOVICH: When we plat Section 29, it will include the green area.

COMMISSIONER KLUCIK: When you plat any of Section 29 or all of Section 29?

MR. YOVANOVICH: Section 29 will include the entirety in the plat.

COMMISSIONER KLUCIK: Do you have to do it all at once, or could you just plat the area that you want to develop?

MR. YOVANOVICH: I guess we could try to do that, but it wouldn't make any sense to do that, because we have to make it clear through the plat who's responsible for maintaining those different areas. So that's a typical thing to do would be to plat it.

COMMISSIONER KLUCIK: Okay. Right. And so my concern is -- so first of all, I'm a lawyer.

MR. YOVANOVICH: Yes, you are.

COMMISSIONER KLUCIK: You're a lawyer.

MR. YOVANOVICH: I am.

COMMISSIONER KLUCIK: And I know lots of developers, and I've watched them. And we do -- in my profession and the developer profession, there's lots of double-talk, lots of hiding the ball. That is the art of what you do, sir.

So I understand. It's not -- I'm not even saying it's immoral. I'm just saying to deny that this whole project is -- a lot of it is to make people don't really know exactly what's going on, you know, and -- you know -- because a lot of people thought after that hearing in 1998 -- I bet a lot of people who, you know, were in the audience thought, "Oh, that's going to be put in preserve soon," and here it is -- you can roll your eyes all you want. I'm talking very practically.

MR. YOVANOVICH: I understand.

COMMISSIONER KLUCIK: As a practical matter, that's what people would assume, that this is going to be preserved. It's locked in. And it isn't, and that's double speak in most people's minds.

And I'm not even saying -- I'm not making a moral judgment. You can't really knock people for being frustrated by the bullshit that lawyers and developers put in front of people. It's what our professions do, and to deny that is silly in my view. You can deny it, and you can defend your honor, and I understand all of that.

But I'm going to defend the honor of the people who see monkeyshines and call it out. So that's that.

But -- and that's just -- that's just my opinion, and it's not -- not -- you know, you'll be surprised how I'm probably going to vote.

But my concern is that we're doing the same thing again. You're basically asking us to approve something with an open end -- an open end, and I don't feel comfortable with that at all.

In my view, if we're going to make -- and, you know -- I don't know how long I'll be on the Planning Commission, but when anything is going to involve a commitment to a conservation easement, I'm not going to -- I'm always going to speak up and insist that we have a date certain that it happens by.

MR. YOVANOVICH: May I respond?

COMMISSIONER KLUCIK: Sure.

MR. YOVANOVICH: I accept everything you just said other than some of the stuff you said about me personally.

COMMISSIONER KLUCIK: Well, no. I was besmirching what we do.

MR. YOVANOVICH: I don't think we do that. I disagree.

COMMISSIONER KLUCIK: Well, no.

MR. YOVANOVICH: Let's --

COMMISSIONER KLUCIK: No, no. Let me clarify. It's easy for the world to perceive it as that.

MR. YOVANOVICH: Of course, that's --

COMMISSIONER KLUCIK: And I said -- I said I'm not impugning the morality of it. I'm saying it's easy for observers to see that we're slick.

MR. YOVANOVICH: That's why there's so many lawyer jokes. I get it.

COMMISSIONER KLUCIK: Right. Ninety-nine percent of the lawyers make the rest of us look bad. That's my joke.

MR. YOVANOVICH: Okay. So I agree with the time-certain, and we're happy to give you a time-certain for that green area in Section 29. If you don't want to wait till we plat it, let's come up with a reasonable period of time, and we'll put it in a, quote, county -- because it's a county conservation easement, where then -- let's pick a time. Because I don't -- you know, I don't want to be perceived as we're not -- that's the master plan.

COMMISSIONER KLUCIK: I agree with your defense of your client insofar as the perception isn't necessarily the reality, but the perception -- I think it's wrong to impugn the people that perceive it that way. And so I get it. I'm kind of double talking right now, even. I'm trying to split -- split the issue.

But my whole point is, I think we need to -- in my view, I would support approving this if there was a date-certain on any conservation easement related to this project.

MR. YOVANOVICH: Happy to do it. And if you'll give me --

COMMISSIONER KLUCIK: And what I want to say is -- and here I speak to staff, and I speak to my fellow planning commissioners. I am a lawyer, and I tried my best to figure out what the heck this says, and I even -- I think I shared with everybody, you know, my interpretation of it, and I see now that it actually is clear as mud that the -- what was passed in 1998 was not very clear, and so it's very easy to misinterpret and misunderstand, and I believe I did misinterpret it and misunderstand it. And that's pretty bad when a lawyer who is on the Planning Commission can't figure out what the heck the documents say, and then we have a crappy, you know, copy of it as well.

MR. YOVANOVICH: I know.

COMMISSIONER KLUCIK: That makes it even -- and that's not anyone's fault. I'm just saying that is -- that makes it difficult to make good decisions efficiently. And, obviously, had I understood it better, I would have not asked as many questions or made as many points, because I don't think I was right.

MR. YOVANOVICH: I would propose that within 90 days of the adoption of the PUD we get the conservation easement on the green portion of Section 29.

COMMISSIONER KLUCIK: That would be something that I would be, you know, supportive of if my colleagues are -- you know, would entertain that. So we'll discuss among ourselves.

MR. YOVANOVICH: I know you will.

CHAIRMAN FRYER: All right. Anything further, sir?

COMMISSIONER KLUCIK: (Shakes head.)

CHAIRMAN FRYER: Okay. Commissioner Vernon.

COMMISSIONER VERNON: Yeah, I'll just -- I guess I'll start by saying I'm not sure the 90-day -- that doesn't change my analysis at all.

MR. YOVANOVICH: I understand.

COMMISSIONER VERNON: I mean, I'm glad -- it was good of you to address it with that one commissioner, but I didn't -- and I'm sorry he walked away, but hopefully --

COMMISSIONER KLUCIK: I was just --

COMMISSIONER VERNON: I wildly disagree with everything you said about the law profession. I can't even -- I can't even believe you said that. That's just --

COMMISSIONER KLUCIK: I'm talking about the perception.

COMMISSIONER VERNON: No, don't interrupt me. I -- no, no. I think what you said is totally inappropriate. I'm very proud of the fact that I'm a lawyer. I've been a lawyer for 30 years. I think we -- the American system is phenomenal in that we don't have government dealing with these issues. We have lawyers.

And in the private -- in the public -- or the system of justice we have is phenomenal compared to other countries.

I know that personal injury lawyers who advertise on TV do not help our profession, but I just wildly disagree with that. And I don't want to waste a lot of time on it, but I wanted that on the record.

That being said, if you don't mind, Mr. Chairman, I just have a number of questions. Probably mostly for Mr. Yovanovich but --

CHAIRMAN FRYER: Please go ahead.

COMMISSIONER VERNON: -- maybe for somebody else. They're just clarification questions.

I wildly disagree with Mr. Klucik on his comments about lawyers, but I did buy into his analysis -- and he is a real estate lawyer -- and the perception I got -- you've already -- he's already asked you. I'm going to ask you the same question again, but I'm going to tell you where I'm coming from. It seems to me, based on not only Mr. Klucik's analysis last time but everybody's analysis -- not everybody's analysis, but other analysis, that really the trigger for the platting issue -- and I know -- I know I've talked to -- I talked to staff about this. They don't necessarily agree with me.

But it seems to me the platting issue was triggered with the Taylor Morrison and not when you plat Section 29. That was sort of my read on it. And I know Mr. Klucik just asked you that. But -- and I want to ask you again, because I think that's -- that is a material issue. So if you could just give me your best shot at why I'm wrong.

MR. YOYANOVICH: Well, you -- because -- because the way it has always been applied, for decades, rightly or wrongly, is when you get to the actual area of the land where you're going to develop adjacent to those preserves, you plat them and put them into preserve.

COMMISSIONER VERNON: You what?

MR. YOYANOVICH: You plat them and you put them in the preserve on the plat. That's the way it's always been done. If it needs to change, then we need to change the code. But that's the way it's always been applied since I was a young assistant county attorney to now that I'm an old, you know, private-sector land-use lawyer. That's the way it's been approved.

The important thing to take away from this, Mr. Vernon, is it's still a preserve in the PUD, and there are only certain things you can do in a preserve in the PUD whether it's in the conservation easement or not. So there's no harm in delaying when the actual conservation easement goes over that green piece of property, because you're only allowed to do certain things in a preserve, and those things could be done in the preserve even with the conservation easement.

So it's a timing, but it's not a substance and what can happen in the preserve area because it's zoned preserve. So if the county wants to change when we have to actually give the easement, fine.

COMMISSIONER VERNON: I guess -- I guess my perception, based on everything I've heard, is -- and, again, it goes back to what Mr. Klucik was saying, is that I understand you're citing the rule. I think what he and I are citing, if I understand his comments, is the perception was given in a public meeting that when Taylor Morrison started, that was platted, which would have been 2018/2019, that would trigger this conservation easement instead of Tim's going to talk to him and say "Where are we?" when they've already said no. So it was more of a -- and this goes to the representation issue.

MR. YOYANOVICH: Let's talk about that for a second. The county PUD we're talking about, right? The county PUD.

Even if we had put a conservation easement for the county PUD, it would only be on the green area. That's all we were legally obligated to give to the county was the green area in the PUD.

So let's say you're right, we should have done it when Estancia was developed. It would be the same green area I'm telling you I'm willing to give you in 90 days. It wouldn't be from the county PUD. It wouldn't be the yellow and the orange units. It wouldn't be that area. It would be -- sorry. It would have been the lighter area you can see in Section 29.

So let's say you're right. Under the PUD, what should I have given the county as part of Estancia? A conservation easement over the lighter area, not all of Section 29. That's what --

Can you ask him --

COMMISSIONER VERNON: Yeah, if I can just --

CHAIRMAN FRYER: If you don't mind, sir.

MR. OLDEHOFF: I apologize.

MR. YOVANOVICH: That's the area that the PUD was addressing. Those are different permits. There's the Corps permit, which nobody in this room could say they knew anything about the Corps permit. It's not a public-hearing process.

That Section 29 area, if I had to do it in 1998, would have been the light area. It wouldn't be the area I'm talking to you about today.

COMMISSIONER VERNON: Okay.

CHAIRMAN FRYER: Commissioner Klucik.

COMMISSIONER KLUCIK: I just want to address --

COMMISSIONER VERNON: I'd like to --

CHAIRMAN FRYER: Oh, I'm sorry. You have more?

COMMISSIONER VERNON: Yeah. I'd like to finish. That's what I asked to do.

CHAIRMAN FRYER: Let Commissioner Vernon go.

Go ahead, sir.

COMMISSIONER VERNON: What is -- and you may not be able to answer this, but somebody in this room probably can. What is the speed limit on Auto Ranch Road, and what will the speed limit be after the -- after the improvements?

MR. BANKS: The posted speed limit on Auto Ranch Road is 30 miles per hour, and with these improvements, when they're completed, we will ensure that that posted speed limit remains, and if we need to post additional speed limit signs, we will do that as directed by staff.

COMMISSIONER VERNON: So it's not going to go up?

MR. BANKS: No. It's going to remain 30 miles per hour.

COMMISSIONER VERNON: Okay. And then when -- that's it, Mr. Banks. Thank you.

Rich, when you did file something -- I think you talked about November of '22, within two weeks you filed something when it was required. Was it a conservation easement or a conservation covenant that you filed?

MR. YOVANOVICH: We filed a conservation covenant because that's the only document we could file because nobody wanted to accept the easement.

COMMISSIONER VERNON: What is the difference between a conservation covenant and a conservation easement?

MR. YOVANOVICH: Practically, nothing. Same restrictions on the land.

COMMISSIONER VERNON: Why did you not just file -- I understand nobody wanted it, but --

MR. YOVANOVICH: I can't -- I've got to have a grantee, Commissioner Vernon. Unless --

COMMISSIONER VERNON: You've got to have a recipient?

MR. YOVANOVICH: Yeah, somebody's got to say, "I want it."

COMMISSIONER VERNON: You couldn't give it to the State?

CHAIRMAN FRYER: They didn't want it.

COMMISSIONER VERNON: You've got to have a recipient.

MR. YOvanovich: Otherwise it's an invalid easement. I could have given it to you.

COMMISSIONER VERNON: So that's why you gave it to a related entity?

MR. YOvanovich: With the limited restrictions, yes. Yes.

COMMISSIONER KLUCIK: Commissioner Vernon, you're talking about the -- you're talking about that conservation easement that was to satisfy the wildlife or the nature people?

COMMISSIONER VERNON: Yeah.

MR. YOvanovich: Can I finish the response to Mr. Vernon?

COMMISSIONER VERNON: Yeah. Go ahead. Go ahead.

MR. YOvanovich: If you see the little circular yellow areas --

COMMISSIONER VERNON: The circular?

MR. YOvanovich: Right here. These three small areas.

COMMISSIONER VERNON: Oh, yes, I see them.

MR. YOvanovich: Actually, the District -- I think it was the District, right?

MR. HALL: The Water Management District.

MR. YOvanovich: The Water Management District wanted those, so they got the easements. Nobody else wanted the other area that we're talking about. So we -- we had to do a conservation covenant.

COMMISSIONER VERNON: Why didn't the State want the easement?

MR. YOvanovich: I couldn't tell you. You know, it becomes -- it comes with responsibilities.

COMMISSIONER VERNON: Did they explain why?

MR. YOvanovich: You know, it comes with responsibilities. They didn't see the benefit of owning it, so...

COMMISSIONER VERNON: Is that normal? Have you seen that?

MR. YOvanovich: Yeah, it happens. You know, I can't tell you how many times I've asked the county to take, you know, conservation easements. They don't want it. They don't want the responsibility for it.

And we're happy if you could convince the State to take it. It's theirs.

COMMISSIONER VERNON: Mr. Chairman, that's all the questions I have. Thank you for that.

CHAIRMAN FRYER: Thank you.

Commissioner Klucik.

COMMISSIONER KLUCIK: Oh, what was my question? Oh, I guess I wanted to clarify. Because I'm the one who raised the issue, Commissioner Vernon, it -- I changed my mind because I think I misread the statute in my lengthy articulation of it.

COMMISSIONER VERNON: You mean on the issue I agree with you on, you're saying you might have been wrong?

COMMISSIONER KLUCIK: Well, right. So what I -- I agree -- I agree with --

COMMISSIONER VERNON: I'm not a real estate lawyer; he is, so I'm deferring to him.

COMMISSIONER KLUCIK: Yeah. No. I think now my -- I agree -- my conclusion is that the yellow left half, whatever -- the left half of Section 29 was required to have the easement, and the other part was park. And so -- and the park wasn't an easement. That was -- that was not easement designated and wasn't required. It was only the left half of that Section 29, the west half.

And so that's -- I just wanted to clarify for you that that -- I ended up -- I did state otherwise. I said it was all of Section 29, and I did it very matter-of-factly and, you know, in writing and with a very long explanation, and I think I got it wrong.

COMMISSIONER VERNON: Well, just to make sure I understand what you've said, what I said was my perception is that the easements should have gone in when the platting occurred on Estancia.

COMMISSIONER KLUCIK: Now that I'm --

COMMISSIONER VERNON: That's the question.

COMMISSIONER KLUCIK: That -- yeah -- no. That -- I think there's an argument for that, which is why -- which is why I'm saying that I think going forward, in my view, if I'm going to be on the Planning Commission, whenever we talk about a conservation easement, I'm going to want to have a real long discussion about when that has to be put in place, because I just -- I understand that the way business as usual has been was that it was delayed, and so, you know -- but I don't think that serves the county's, you know, benefit very well, to make an agreement and then have the agreement be on hold until the other side decides to comply with it. Because they get something. They got something in exchange for this commitment to do a conservation easement, and then they say, "Oh, we don't really have to give that yet."

COMMISSIONER VERNON: So for whatever your reasoning is, your perception is consistent with mine that you believe the conservation easement should have been transferred or occurred when they -- when Taylor Morrison started Estancia in 2019?

COMMISSIONER KLUCIK: Well, in my view, when they made the commitment, it should have been some reasonable period of time back in 1998. It should have been -- certainly, you know, a year later they should have had it in place, in my view. That's not how the business has been conducted in the county, and I understand that, but I don't think that serves the county very well.

MR. YOVANOVICH: And if I just -- could just point out again, even if we had done it in 1998, it wouldn't have applied to the area today.

COMMISSIONER KLUCIK: And on that I agree with you.

MR. YOVANOVICH: So we'd still be here asking you to say, "You know what, instead of recreation, we want residential."

CHAIRMAN FRYER: All right. Anything further?

(No response.)

CHAIRMAN FRYER: Anything further, Mr. Yovanovich, on rebuttal?

MR. YOVANOVICH: No, sir.

CHAIRMAN FRYER: All right. I assume it's the sentiment of the Planning Commission --

COMMISSIONER KLUCIK: Could I just say something real quick?

CHAIRMAN FRYER: Go ahead.

COMMISSIONER KLUCIK: So, Mr. Vernon, I do want to say, my intent was not to impugn my whole profession. My intent was to commiserate with an attorney, Mr. Yovanovich, and to not really accuse him of being any -- doing anything untoward. But it's all about the perception. People perceive what we do as being jui jitsu that's very hard to follow. And that was what -- that's what he was objecting to is that people impugned his character because -- and I think it's very easy. I think it's wrong to impugn the character of people who say that's jui jitsu and it looks like a shell game, because that's what it looks like, because people don't know what we're doing. People just see that we're using our professional skills to advocate to get what we want. And it doesn't look pretty sometimes, and that's all. And so it was all about perception.

And to the extent I seemed to impugn the entire profession, the legal profession, I certainly realize you could perceive it that way, and I apologize, speaking of perception.

COMMISSIONER VERNON: Apology accepted. I don't take things personally. But I will restate, just respectfully, I totally disagree with you.

CHAIRMAN FRYER: Okay. Mr. Yovanovich.

MR. YOVANOVICH: No, we have -- we have rested our case, if you will.

CHAIRMAN FRYER: Okay. Thank you.

It's -- I assume that the Planning Commission would like to plow forward rather than break for lunch and come back. Is that a fair --

COMMISSIONER KLUCIK: Yes.

CHAIRMAN FRYER: -- assessment of where the Planning Commission is?

COMMISSIONER KLUCIK: That's my view.

CHAIRMAN FRYER: All right. And that's fine with me, although I'm going to need a short break because I need a sugar kick in order to keep going, which I can get in just a few minutes.

So I'll propose a 10-minute recess at this point to 12:35, and we'll return at that time. We're in recess until 12:35.

(A brief recess was had from 12:24 p.m. to 12:35 p.m.)

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

CHAIRMAN FRYER: Thank you, Mr. Bosi.

Let's return to our seats and see if we can proceed to a finish of this matter.

And the applicant has finished its rebuttal.

Mr. Oldehoff wants to have an opportunity to deal with the material that was brought out in rebuttal, and the form that that needs to take is to cross-examine witnesses. We're not looking for a final statement. And the things that were brought out, Mr. Hall's testimony and, to some degree Mr. Yovanovich, who introduced some e-mails, I think, has perhaps exposed himself to cross-examination.

But you're encouraged to keep it brief, but go ahead, sir.

MR. OLDEHOFF: Oh, yes. Yes, I will. Thank you.

Question for -- I'm going to pose this to Mr. Yovanovich because it's pertaining to this.

CHAIRMAN FRYER: Go ahead.

MR. OLDEHOFF: I want to show you the master plan dated April 2018, okay.

Mr. Yovanovich, you talked about the master plan dated 1998, but the master plan as it exists today shows the preserve as shown on that map, that graphic, right?

MR. YOVANOVICH: Yeah. You want me to explain?

MR. OLDEHOFF: Okay. No, it's -- and if you want to juxtapose it with what you put up from 1998, you'll see that the acreages are significantly different.

MR. YOVANOVICH: Yeah, I will. I'll put it up for you in a second. Where is it?

COMMISSIONER SHEA: No, big difference.

MR. OLDEHOFF: Right?

COMMISSIONER KLUCIK: Can you show the two corners together? So overlap them. Yeah, there you go.

MR. OLDEHOFF: Right? And the reason why it's different like that is because in the years after 1998 and up until 2018, the most recent PUD amendments and all, the developer got development entitlements that he wanted in return for making a larger area that was promised to be in preserve under conservation easement, right?

MR. YOVANOVICH: Is that a question? No, it's not. You're wrong.

MR. OLDEHOFF: Okay.

MR. YOVANOVICH: Can I explain?

MR. OLDEHOFF: Well, no.

COMMISSIONER KLUCIK: Mr. Chairman?

MR. OLDEHOFF: That's fine.

MR. YOVANOVICH: I'm going to ask myself questions on --

COMMISSIONER KLUCIK: Mr. Chairman?

CHAIRMAN FRYER: Go ahead, Commissioner Klucik.

COMMISSIONER KLUCIK: Just for clarification, the black-and-white map is what year?

MR. OLDEHOFF: 1998.

COMMISSIONER KLUCIK: And the other map is when?

MR. OLDEHOFF: 2018, and that's going to give you the Oyster -- Oyster Harbor. That's when the -- if you -- if you slide that 1998 map up, you'll see that's where -- no, no, just take

it off. Go ahead and take the first one off. That's where you see Oyster Harbor in that one. When that one came in and it got approved -- and there's the master plan. And there were other modifications that were made to the master plan. Among those changes was to increase the acreage promised to be preserved, right?

MR. YOVANOVICH: May I respond?

CHAIRMAN FRYER: Go ahead, please.

MR. YOVANOVICH: That's actually what -- not true. When you look at the math in the two PUDs, the numbers that Mr. Klucik and I went through were all the same. Those numbers didn't change. There was no increase in preserve. What happened was the black portion you can see on the lower hand, that got cut off. We didn't increase the preserve. What ended up happening is when we were going through the process, the area here -- and you can get your staff up here to verify --

MR. OLDEHOFF: The developer --

MR. YOVANOVICH: -- was inadvertently cut off from the master plan. All the acreage numbers for preserve and park remained the same. The master plan got cut off. We did not increase the green preserve area as claimed by Mr. Oldehoff.

MR. OLDEHOFF: Okay. Well, here's the --

CHAIRMAN FRYER: I'm going to interrupt, sir, if I may.

Commissioner Klucik.

COMMISSIONER KLUCIK: Thank you, Mr. Chairman.

So are you saying, Mr. Yovanovich, that that's the equivalent of a typo or a scrivener's error?

MR. YOVANOVICH: That was a scrivener's error.

COMMISSIONER KLUCIK: Okay. Thank you.

MR. OLDEHOFF: Here's the 2018 -- 2016.

MR. YOVANOVICH: I don't know what 2016 -- do you have an ordinance that goes with that?

MR. OLDEHOFF: This is 3.1 from the materials I believe that's from the materials that were part of this packet.

MR. YOVANOVICH: I don't know. Do you recognize this? You're going to show me something that I have no idea what it is.

MR. OLDEHOFF: All right. Just put it down.

MR. YOVANOVICH: Put it down?

MR. OLDEHOFF: Yeah. Just put it on the Elmo, please. Please. Okay.

Now, you see that's the master plan. It's dated 2016, all right. The year 2016 is on there.

MR. YOVANOVICH: Can I ask you a question? Does that go with any PUD that was approved?

MR. OLDEHOFF: This is -- this is in the packet.

MR. YOVANOVICH: Okay. It's in the packet. I don't know what page it's in, but I'm telling you that's not an officially adopted document.

MR. OLDEHOFF: Okay. Okay. Well, this is a document that's been prepared, and it's dated 2016, and it shows the different layout of the preserve area.

MR. YOVANOVICH: Okay.

MR. OLDEHOFF: Different from the 1998. And all I'm trying to elicit from you is an acknowledgment that the area -- the configuration of the area changed such that there is more preserve than in 1998.

MR. YOVANOVICH: That's not true.

MR. OLDEHOFF: All right.

MR. YOVANOVICH: You can ask me to acknowledge it, but it's not true.

MR. OLDEHOFF: Well, you can -- you can say "I deny that."

MR. YOVANOVICH: I deny that.

MR. OLDEHOFF: Okay. Doesn't the PUD say that the -- that the conservation easements were required before the first development permit would be issued for the PUD --

MR. YOVANOVICH: No.

MR. OLDEHOFF: -- in 1998?

MR. YOVANOVICH: No.

MR. OLDEHOFF: Doesn't it say that today?

MR. YOVANOVICH: No. It refers to an LDC section.

MR. OLDEHOFF: And the LDC section says you've got to do it before you can get the first permit --

MR. YOVANOVICH: It does not.

MR. OLDEHOFF: -- not that you can do it some later date down the road, right?

MR. YOVANOVICH: Mr. Oldehoff, you've heard the testimony from the county staff that says you do it when you plat the area. We went through this discussion. That's what the LDC section says. That's how it's been interpreted for several decades. It doesn't say what you want to claim it says.

MR. OLDEHOFF: Okay.

CHAIRMAN FRYER: Chair recognizes Commissioner Klucik, please.

MR. OLDEHOFF: We'll let it speak for itself. You can look at it, and you can --

CHAIRMAN FRYER: Chair recognizes Commissioner Klucik.

MR. OLDEHOFF: Thank you.

COMMISSIONER KLUCIK: Yes. I would just ask staff, if I might, if you're aware, if you can clarify, has Section 29 -- has the -- have any of the amendments or changes to the PUD or the code pertaining to Section 29 increased the requirement -- the acreage in Section 29 that needs to be conservation easement since 1998?

MR. BOSI: Mike Bosi, Planning and Zoning director. Since 1998, the PUD has been amended twice, in 2000 and 2018. To our knowledge, we don't believe that the amount of preservation dedicated within Section 29 has increased.

COMMISSIONER KLUCIK: Thank you.

MR. YOVANOVICH: If I may, that's the Development Standards Table that was in the 2018 ordinance. You'll see the park was 128 acres; the preserve, 767. And the update to the 767 was the additional areas outside of Section 29 that were placed into preserve. So you can see, mathematically, Section 29 park area did not shrink and become preserve.

MR. OLDEHOFF: Well, what happened to the lake?

MR. YOVANOVICH: What's that?

MR. OLDEHOFF: What happened to the lake?

MR. YOVANOVICH: Part of that same area. The lake was part of the park.

MR. OLDEHOFF: Where would the lake fit in the 2018 graphic?

MR. YOVANOVICH: It's right here. You can see it. This is the part that got inadvertently dropped off. It's right there. I mean --

MR. OLDEHOFF: But that's not -- that part that got dropped off, that's not the adopted PUD. That's something that you've drawn on later, right?

MR. YOVANOVICH: No. I'm telling you that's exactly what got dropped off in 2018. The area to the right in white got dropped off in 2018.

COMMISSIONER KLUCIK: As a scrivener's error?

MR. YOVANOVICH: Yes. Ask staff. They know. That acknowledge that that was an error. It didn't include the entirety of Section 29.

MR. OLDEHOFF: Okay. In 2016, the PUD was amended for the Section 29 area to accommodate active recreation, right? Prior to that date it -- Section 29 park did not allow active recreation?

MR. YOVANOVICH: I'm going to ask you to show me an ordinance that was adopted in 2016.

MR. OLDEHOFF: Okay. Well, again --

MR. YOVANOVICH: No, no. Show it to me, please.

MR. OLDEHOFF: We'll just go ahead, and we'll let the document speak for itself.

MR. YOVANOVICH: I know, and I'm asking you to show me the document. There's no ordinance that was adopted in 2016. So if you're going to let it speak for yourself [sic], put it in the record and let me see it.

MR. OLDEHOFF: All right. It's in the record. I'm going to move on.

MR. YOVANOVICH: Show me.

MR. OLDEHOFF: I'm asking the questions.

COMMISSIONER KLUCIK: Mr. Chairman?

CHAIRMAN FRYER: Yes. Go ahead, Commissioner.

COMMISSIONER KLUCIK: What point did you just assert?

MR. OLDEHOFF: The point that I asserted is that in 1998 when the PUD was approved, Section 29 had a reference to a park, but the park was a passive park. It was only in 2016, afterwards, that the PUD was amended so that the park designation in -- on Section 29 would be capable of being used for -- for active recreation, but the nature of the recreation at the time was golf course, something along that line.

COMMISSIONER KLUCIK: Mr. Chairman, if I might, I'm going to just go to 1998, 8.5 uses permitted. I already referenced this. The uses are limited to use as a reserve area, passive recreation, nature trails, picnic facilities, gazebo, and other similar uses: Biking, hiking, nature trails, launching and storage facilities for watercraft, active recreational activities, agriculture, including nursery, and any other conservation, recreation, or related open-space activity or use compatible in nature with the foregoing uses. So it states right there "active recreational activities," just --

MR. YOVANOVICH: And if I may, I think what he's referring to is a 2018 ordinance.

MR. OLDEHOFF: Yeah.

MR. YOVANOVICH: And in 2018, you'll see what was added to the preserve area: Active recreational, comma, including golf course uses.

MR. OLDEHOFF: Yeah.

MR. YOVANOVICH: So it always said active recreational activities. We added golf course to that same area.

COMMISSIONER KLUCIK: So is your point -- you think your point stands, sir?

MR. OLDEHOFF: Yes. Yeah, my point stands in that in 1998 --

COMMISSIONER KLUCIK: You said it only allowed passive recreation activities, and we just read you the 1998 code, or PUD, whatever this is, the ordinance, the -- what is this called?

MR. OLDEHOFF: 98-26?

COMMISSIONER KLUCIK: Yeah. So it's a resolution or ordinance. That actually states very specifically that active recreational uses are allowed.

MR. OLDEHOFF: Well, I will go by what the document says. And if that's what the document says, then I would stand corrected on that accord.

When you referenced the actual amount of acreage, there were other yellow areas that were shown when Mr. Hall was talking that were included within that open-space number, right?

MR. YOVANOVICH: No.

MR. OLDEHOFF: The yellow areas, right?

MR. YOVANOVICH: Yeah. It was in response to a question, where did this 693 acres come from that was added to the open space table. And the yellow is the area of the 693 acres. That was added to the table in 1998.

MR. OLDEHOFF: All right. Now, with regard to the communications with the Army Corps, you have one from 2019, and there's no response. And this is after the project's been commenced, right?

MR. YOVANOVICH: No, we do have a response. We have a response from the woman

we addressed the e-mail to.

MR. OLDEHOFF: Okay. But at that point, nobody is saying there that the conservation easement has been recorded, right?

MR. YOVANOVICH: No.

MR. OLDEHOFF: Okay.

MR. YOVANOVICH: They knew we had --

MR. OLDEHOFF: So we have another one from 2020, and it's the same thing. It's another e-mail out there, and it says something, and there isn't a response.

MR. YOVANOVICH: Mr. Oldehoff, I'm willing to stipulate that there was no covenant recorded until November 3rd, 2022.

MR. OLDEHOFF: Okay.

MR. YOVANOVICH: Okay?

MR. OLDEHOFF: And you also identified an e-mail that you said was sent when -- something about that the State wouldn't take the land, and we didn't know what to do?

MR. YOVANOVICH: Yeah.

MR. OLDEHOFF: Okay. Well -- but I want to refer you to the plan that's part of the covenants, and it's part of the plan that was submitted to the Army Corps -- I mean, the Fish and Wildlife Service and the Army Corps, and what it says right there about this.

MR. YOVANOVICH: Okay.

MR. OLDEHOFF: Under Section 5, November 2016, this is the plan, it says, "Conservation easement, long-term management in the event the state does not accept the land," it says "once the exotic eradication activities are" -- "then a conservation easement will be placed over the preserve within 60 days of the State's notification not to accept the property."

It says right there.

MR. YOVANOVICH: Who does it say the grantee is? I have the document.

MR. OLDEHOFF: Well, but -- it says right there, so I don't understand --

COMMISSIONER KLUCIK: Can we see the document?

MR. OLDEHOFF: -- where you're having the question that says --

MR. YOVANOVICH: Here's --

MR. OLDEHOFF: Here. I'll put it on the overhead.

MR. YOVANOVICH: Here's the answer. Here's -- you know, let's talk about Real Estate Law 101.

MR. OLDEHOFF: No. Just answer my question.

MR. YOVANOVICH: I'm going to answer the question. We didn't know who to give it to because we couldn't get anybody to accept they were the grantee. I can't give an easement to Mr. Vernon and now say to Mr. Vernon, "Guess what, I gave it to you. You're obligated to fulfill all the -- all the covenants in this easement." They wouldn't accept it. We asked what to do. The Army Corps rules also allow for a covenant to be placed on the property. And guess what? Here's the e-mail from the Corps which I showed you before. Happy Valentine's Day. "You're in compliance. We accept the covenants."

MR. OLDEHOFF: That's November of 2022.

MR. YOVANOVICH: That is February 14th, 2023. We gave them in November, and we finally got a response Valentine's Day 2023. "You are good to go."

MR. OLDEHOFF: All right. Go back. Go back.

Pick up that sheet, please, Mr. Bosi.

On that sheet, that says -- and that was something that you gave to the Army Corps and the Fish and Wildlife, and it says right there that in the event that the State won't take it, we will record the easement within 60 days.

MR. YOVANOVICH: Okay.

MR. OLDEHOFF: And -- but it never happened. Now, there's nothing in the e-mail that you have shown us that reflects that anybody at the Army Corps knew or didn't know that the

conservation easement had actually not been recorded or anybody at the Fish and Wildlife Service knew that it hadn't been recorded. So but that says -- if the State says no, then here's the clock. By hell or high water, it's going to be recorded within 60 days, right?

MR. YOVANOVICH: And you know what? We couldn't record something when you don't have a grantee. And guess what?

MR. OLDEHOFF: But wait.

MR. YOVANOVICH: Hold on a second.

MR. OLDEHOFF: Read on.

MR. YOVANOVICH: You asked me the question. I'm going to answer the question.

MR. OLDEHOFF: I know, but read on.

MR. YOVANOVICH: No. I'm going to answer the question.

CHAIRMAN FRYER: Let's all take a pause here for a moment, and I'm going to call on -- you don't want to be heard?

COMMISSIONER KLUCIK: I think they're getting to it.

CHAIRMAN FRYER: Okay. Well, during this --

MR. OLDEHOFF: Read the next sentence.

MR. YOVANOVICH: I know what the next sentence says.

CHAIRMAN FRYER: Gentlemen.

MR. YOVANOVICH: Let me answer the question, please.

COMMISSIONER VERNON: May I comment, Mr. Chairman?

CHAIRMAN FRYER: Go ahead, Commissioner Vernon.

COMMISSIONER VERNON: Yeah. And I know it's quasi-judicial, but typically, this is cross-examination. He's allowed to ask leading questions. I think the witness needs to answer the question, and then I think the witness should have an opportunity to explain.

MR. OLDEHOFF: Thank you.

MR. YOVANOVICH: If I haven't answered the question --

MR. OLDEHOFF: Please answer the question.

MR. YOVANOVICH: -- clearly, we did not do a conservation easement within 60 days.

MR. OLDEHOFF: All right. And then if you read the next sentence of what you gave and promised and committed to, your client, it says, the conservation easement will be to Collier County, right?

MR. YOVANOVICH: Okay.

MR. OLDEHOFF: Okay. It didn't go to Collier County, right?

MR. YOVANOVICH: No.

MR. OLDEHOFF: And isn't that exactly what the PUD said was supposed to be done with the preserve areas?

MR. YOVANOVICH: No.

MR. OLDEHOFF: They were supposed to be under -- if you look at the section on preserve or reserve in the PUD, it says it shall be in the -- in a conservation easement to Collier County.

MR. YOVANOVICH: And, again, may I say -- no, it doesn't say what you just said. May I clarify?

CHAIRMAN FRYER: Go ahead.

MR. YOVANOVICH: Thank you.

MR. OLDEHOFF: It's the LDR, and it's the PUD section.

CHAIRMAN FRYER: Let him clarify.

MR. OLDEHOFF: Please clarify.

MR. YOVANOVICH: First of all, you're trying to conflate the Army Corps of Engineers' permit with the PUD condition. Totally separate documents.

The PUD says that the area in green will be given to the county as a conservation easement. That's what the PUD says.

2018, when the Corps of Engineers' permit was finally approved, there was a biological opinion. And we went and spoke to the Corps -- Tim Hall did, spoke to the Corps and said, "Guess what, we want to take a portion of what was previously included in this biological opinion out of preserve." That's what we said. I showed you the correspondence.

If you're accusing Mr. Hall of lying about his conversations with the Corps of Engineers and U.S. Fish and Wildlife Service, discussions about wanting to modify the permit -- I got this -- then you call him a liar and put it on the record, because it ain't the truth. He had these conversations. I showed you the easements.

And it wasn't until 2022 that the Corps said, because -- the Corps forwarded to us, apparently, a letter that we have not seen -- "You're not into compliance." We recorded the covenants.

We have not -- I've never said we're totally -- that we had met the requirements of the biological opinion, because we were trying to amend it. That's what we were doing.

MR. OLDEHOFF: My question was -- my question was very simple. Doesn't the PUD require a conservation easement be given to the county over all areas that are identified as preserve on the master plan?

MR. YOVANOVICH: Absolutely. You see the yellow area? We were obligated to give the county a conservation easement at the time required under the Land Development Code. That is exactly what the PUD says.

MR. OLDEHOFF: But doesn't that say -- doesn't your commitment in the permit say we're going to give the county that conservation easement within 60 days of the State telling us that they won't take it?

MR. YOVANOVICH: You know what? Okay. Hang on.

I'm going to -- let's assume you're right, which you're not. What we needed to give the county 60 days after that is the yellow. If you want -- if you want to now somehow impose the permit -- the Corps permit into the PUD, the PUD talked about the yellow. It didn't talk about the area to the right.

MR. OLDEHOFF: You certainly could have killed two stones [sic]. You would have killed the stones in 1998 if you had given the conservation easements --

(Simultaneous crosstalk.)

MR. YOVANOVICH: You're right. And you know what I'd be doing today? I'd be saying, "Guess what, guys. I don't want to do recreation that's identified on the master plan. I want to do residential," because I wouldn't have a county conservation easement on the area in Section 29 that's not yellow.

MR. OLDEHOFF: But wouldn't that put this in a much, much different light that -- you're coming here saying I want to -- I want to get back the conservation easement that I gave to everybody, that I promised every resident of this county I was going to give them --

MR. YOVANOVICH: Well, first of all --

MR. OLDEHOFF: -- I want to do that now and do this in return?

MR. YOVANOVICH: In 2008 -- I'm sorry, in 1998, my predecessor never promised that any area other than yellow was going to be in a conservation easement.

So I wouldn't be here today saying "I want to change the PUD condition to change the yellow area." That's not what I'm asking today. I'm not asking to change the yellow area. I'm asking to change the use on the area that's not yellow. That's what I'm here doing today. I'm not taking back the preserve commitment that was identified in the master plan in 1998.

CHAIRMAN FRYER: Mr. Oldehoff, about how much more do you have?

MR. OLDEHOFF: No further questions.

CHAIRMAN FRYER: Okay. Thank you.

I am hearing crosstalk in the room, and I find it distracting, so I'll ask people to refrain from doing it.

Mr. Yovanovich, I told you you'd have the last word if you wanted it.

MR. YOVANOVICH: Okay. The reality is we were in discussions with Fish and Wildlife Service and the Corps to modify the biological opinion identified in the permit issued by the Corps in 1998. We've been in those discussions since 2019. Tim has testified that he told them we haven't recorded the easement. They knew we hadn't recorded the easement.

What you don't have in the record between 2019 and this letter that we saw today anything from the Corps saying, "Record it now," because they were talking to us. They have enforcement discretion. They were exercising that discretion. When they forwarded us the U.S. Fish and Wildlife Service letter, within days we recorded a declaration that's authorized under the Army Corps of Engineers' rules. We did what we said we would do.

He's conflating two different permits. Simple as that. We are not in violation of either the county PUD or the Army Corps of Engineers' permit, thus saith the Corps of Engineers. Not me, not Tim, but the Corps says we're not in violation. End of story.

CHAIRMAN FRYER: Thank you.

That puts the matter in our hands, Planning Commission.

I'm going to want to make a statement about what I believe to be the case and what has caused me to reach a point of voting how I'm going to vote when there's a motion. I don't know whether others are going to do that or not. We can -- it doesn't matter to me whether we have a motion and a second first, then I can outline my reasons for vote or not. It's entirely up to what the Planning Commission wants to do.

But right now we've got two commissioners signaling, so we will hear from them starting with Commissioner Shea.

COMMISSIONER SHEA: Wow. A lot of history, a lot of controversy. Think about what it's like up here. We have this diverse group of people. By the way, I'm the only nonlawyer up here, so I'm much less complex.

What we're asked to do is to vote on these -- this -- three versions of the same petition, and they're asking to change an in-place plan that the county has. My goal as a planning commissioner is, if there's not a benefit to the public as a whole, we shouldn't be making the change to the plan.

The benefit -- the hook is affordable housing, and we do want affordable housing. I sit on the affordable housing planning -- or affordable housing commission, so I believe strongly in this, but appropriately sited.

And when I look at this, I'm simplifying it as the only reason we're thinking it and talking about the change is the affordable housing hook, and I don't believe -- when you look at things that are important when you site an affordable housing, access to the site, access to public transportation, coastal high hazard -- I can go down the list -- environmental, there's nothing about this that checks a box that this is an appropriate place for affordable housing.

So I don't care about all this other history and the legal, all this and that. I just think this is the wrong place for this development. And I do believe in affordable housing, and I commend you for it, but I'm going to vote against it because I don't think it's a good place for affordable housing.

CHAIRMAN FRYER: Thank you.

Commissioner Vernon.

COMMISSIONER VERNON: I think that what Paul said, 100 percent I agree. I don't think I need to say anything else, but I will only -- only -- and I'm not going to say because I'm a lawyer -- I am going to say more because this is just a recommendation, and there's a whole next level that both sides are aware of, and I think saying my thoughts might be helpful to the County Commissioners but I think certainly will be helpful to both sides. So I'm going to ramble although, at the end of the day, I think you just said it perfectly how I feel.

I'll say this, too -- and I would have said this regardless of the back and forth with me and Mr. Klucik -- but, you know, I'm a litigator for a living. I go to trials. You know, I just went to trial a month ago, and it's like every other profession; this is hard stuff. It is not easy to do.

And I would submit that to be a land-use lawyer and stand up here where there's really no

rules -- everybody's just all over the place how they feel, and you're dealing with people in the audience, you're dealing with in-house lawyers, you're dealing with staff, you're dealing with seven different people with varying opinions and varying backgrounds -- is hard to do.

And I know -- and, Joe, you know the quality of the lawyer you have in Rich. You know, he's the premier land-use guy in town. I think everybody in the room knows this. But I will submit that whoever retained you made a good choice. You did an excellent job, and it is -- it's a very difficult thing to do. So this is high -- for those of you who haven't been around lawyers, this is high-quality lawyering.

I'll start with the cross-examine with Mr. Banks. I came into this having driven on Auto Ranch Road, as I mentioned in my disclosures, and I'm thinking, road improvements will be phenomenal. That was one of the pluses. And now that I see the road trips and I start thinking it through and I'm thinking back, you know, seeing who lives there and how many houses are there and them saying they don't want it, I see there's a ying and yang. There's a downside to this in creating all these trips on that road that I drove on. And I grew up in Plant City, so I know rural roads. But that is what I call a -- grew up calling a country road. That's a country road with not many residents. So I kind of backed off on that component of really liking it, although I think the road improvements are a plus.

On the cross-examination of Tim, I guess it goes back -- and I think maybe because I brought it up in previous hearings, it's less important than maybe people think it is in my mind, but I -- it did bother me a little bit that the conservation -- and this is what came out of the cross, I thought. The conservation easement, it sort of said do it as of, let's say, 2019, and Tim said, "Wait, we want to change our mind." I'm not saying there was anything nefarious about it, but I'm saying they said, "Do it," and Tim said, "Wait a minute. We kind of changed our mind. We want to do it a little bit different." And they never said, "Okay, do it different."

So, you know, you kind of got your answer. And said -- you're using the reasoning that, "Well, we were trying to change it," and it just -- I never got the sense overall that they were going to change their mind, and they didn't change their mind, I think, at the end of the day.

On the cross of Mr. Arnold, it was only significant to me is the point that Mr. Oldehoff said, I think Mr. Arnold's 100 percent technically correct on every bit of his testimony. But before I heard any testimony, before I showed up at the first hearing for this, I looked at the materials, and it clearly stuck out to me -- and I think Paul sort of said it in a lot less words -- it looks like it's part of the Everglades.

So I understand that Mr. Arnold is right, but it just looks like it's part of the Everglades. It doesn't look -- I mean, as far as the fish and the deer and the panther are concerned, it's part of the Everglades. That's maybe the best way to say it. So in that -- that theme is -- although I haven't articulated it, that theme has continued in mind throughout this.

Now, I understand why you didn't go buy this \$1.6 million property that was worth 2- or 300,000, but it doesn't change the fact that they told you -- and I understand you're saying that may disclose something about how they felt and that it's maybe not that environmentally sensitive. I understand what your point is, but the fact is, you could have bought that, and we -- I don't think we'd be dealing with this the way we're dealing with it. So you had an out. It's just that you felt like it was a -- they were trying to take advantage of your client, for lack of a better way to say it, but it would have solved this problem.

And I'm not really that -- I don't feel that -- I don't find it that compelling that it's not that environmentally sensitive. I understand what you're saying, but it just -- it's environmentally sensitive, and it may be the lower end of the spectrum but, again, that's what -- I view it as environmentally sensitive.

Affordable housing is a huge issue to me. You know, Mr. Yovanovich, your prior applicant earlier today, I just -- you know, I love affordable housing, and that's the biggest plus. And going back to how you said it so quickly and articulately, you know, it's hard for me to vote against an affordable housing project.

One thing that I think has been downplayed in this -- and maybe I'm the only one who cares and maybe I'm wrong, because I think staff disagrees with me. But, you know, the changes to the master plan which only one individual came up and talked about last time, but I thought he was well prepared -- they seem like more than the minimal changes. And, again, I know staff doesn't agree with me, but -- and I'm deferential to staff, but I don't always agree with them. They just look, to my perception, probably more changes than there should have been.

So I would request that we vote on them separately, the two applications, and start with the GMP.

CHAIRMAN FRYER: Well, there are three.

COMMISSIONER VERNON: Three, excuse me. If we could just separate them and start with the GMPA, because I think most of everything I said falls within my legislative authority, and I may have to look at this differently if I look at the other two components and may be more constrained in how I vote. So I feel like if we vote against the GMPA, that's the end of it. So I'd like to separate them out, if that's okay with the Chairman.

CHAIRMAN FRYER: We will do that.

MR. YOVANOVICH: Mr. Chair, may I? Just a clarification when you're done.

COMMISSIONER VERNON: Let me -- yeah, I'm almost done. Let me just --

COMMISSIONER KLUCIK: No, I'm hearing -- I keep -- for the last 15 minutes I've been hearing some electronic broadcast.

CHAIRMAN FRYER: Me, too. I thought that was coming from over in your direction.

COMMISSIONER KLUCIK: So there's something -- I'm hearing people talk, and it's not us.

MR. YOVANOVICH: I was hearing sleigh bells.

COMMISSIONER VERNON: I heard -- I know. You're not crazy. I was hearing sleigh bells throughout the day. Yeah.

CHAIRMAN FRYER: Well, I -- for what it's worth, I've been wondering about that, and I found it somewhat off-putting and distracting.

COMMISSIONER KLUCIK: I reached my breaking point. I'm sorry, Chris.

COMMISSIONER VERNON: No worries.

CHAIRMAN FRYER: Okay. Commissioner Vernon, go ahead, sir.

COMMISSIONER VERNON: All right. So just -- I think it was actually good because this is just my wrap-up.

From the GMPA, I struggle with the compatibility with respect to the road and the traffic and the environmental issues and, you know, I understand that -- and I think I may have said this earlier, but the Auto Ranch Road at initial first blush is -- I love the improvements, but the people who live there, I know they came up here and said, "We don't want that."

So that's -- I'm going to vote against it on the GMPA component, and I do give a lot of deference to the staff, but I just happen to disagree on this point.

So that's where I stand, and hopefully that's helpful to everybody in the room as well as the County Commissioners as well as my fellow members on the dais.

MR. YOVANOVICH: Mr. Chair, if I am. I don't want to respond. I just want to talk about the process we're going through.

CHAIRMAN FRYER: Go ahead.

MR. YOVANOVICH: And the reason I want to talk about this is the GMPA really only applies legislatively to Section 29. All the other changes are quasi-judicial under the PUD analysis. So when you said --

COMMISSIONER VERNON: Master plan?

MR. YOVANOVICH: Yeah. When you say "Section 29, if I vote against the GMPA, everything else goes away," that's not true. Only the Section 29 will go away.

CHAIRMAN FRYER: The stuff on Collier Boulevard remains.

MR. YOVANOVICH: Everything else stays. You've got to decide whether or not --

CHAIRMAN FRYER: And that's why I think --

MR. YOVANOVICH: That's why I wanted -- that's all I wanted to clarify.

CHAIRMAN FRYER: Yeah. It's most appropriate, I think, for us to bifurcate those and vote on them separately because there are some pieces in the PUD that are not in the GMPA. And I'm going to ask Commissioner Klucik -- he'll have another bite at the apple, if you wish.

COMMISSIONER KLUCIK: Sure.

CHAIRMAN FRYER: But I'm going to make a statement and indicate how I plan to vote, and I can do that now, or I can do it after.

COMMISSIONER KLUCIK: No, I'd like to benefit, because I'm not quite sure.

CHAIRMAN FRYER: Okay. All right. I will do that, then.

First of all -- and I hope I'm not premature in saying this, but I want to compliment both counsel and all the other people in the room for -- for the most part -- almost to a level of perfection conducting yourselves in the most appropriate fashion with decorum that could possibly have been expected. And so I compliment everyone who's here for doing exactly that. So thank you.

Then the next point I want to make is is that the state of the record, in my view, is fuzzy. There are certain things that are certain, such as transcripts of what happened in 1998 from the Board of County Commissioners, and there are other things that we've been asked to consider advocacy points of view as to what was intended, what was meant back in those days.

And when I analyze this, I'm not willing to try to imagine what people's thoughts and motives were. I'm going to -- I'm sticking to the transcript even though it limits the record that I have decided to put in front of myself for action. And that's no one's fault. Records are what they are, but we -- the records here have been incomplete, and frankly, I'm just not willing to listen to explanations that are either not supported by evidence or supported by little, at best, evidence. I'm going to -- I'm going to go with what is actually before us.

Now, having said that -- and I'm also at the end going to comment a little bit upon the conservation question, although that is of secondary importance to me, but it's consumed so much of our time that I'd like to make a bit of a record on it.

And I'll begin by saying I also agree 100 percent with Commissioner Shea and Commissioner Vernon, and especially going back to -- perhaps, the most incisive question I heard asked from anybody in this room in the last two, three hearings was Commissioner Shea's question about if this weren't -- if this didn't have an affordable housing piece, what would staff have done?

And the record's pretty clear, not only in the first hearing but in the second hearing when I tried to dig a little deeper, that in all probability, staff would not have approved these applications but for the existence of affordable housing, and that brings me to the essence of my concern, which is -- which is not what happened in 1998.

But right now what's before us, I think, is affordable housing above all else, and I reject that. And I, like Commissioner Shea and like everybody else up here, we all understand and appreciate acutely the significance of affordable or what I prefer to call workforce housing. It's essential to the future of this county. And whenever I can reasonably do so, I'm going to tilt in favor of affordable housing, but I've to have a reasonable path set out for me, and I don't think there was one set out here.

And when it comes to -- well, I'll say, in addition to the good point that Commissioner Shea mentioned that this is not the right place, I would add on, it's also not the right time, and I'll explain that in a moment.

But when we're talking about a Growth Management Plan amendment -- and I hope that in time, the county, we recommenders, and the Board of County Commissioners as decision-makers, we can all somehow get back to a point where we recognize -- I don't know if this is a word -- the sacrosanctity of the Growth Management Plan, certainly in relation to the Land Development Code in relation to resolutions of various bodies.

And I think before we go authorizing amendments to the Growth Management Plan, we have our work cut out for us not only under our local ordinances but also under -- under the statute,

163.3177, which tells us the things that we need to think about before we authorize or recommend a Growth Management Plan amendment.

And affordable housing is not in that statute, but it's given -- it's given a very important position in our county, thanks to resolutions and decisions of the Board of County Commissioners.

So as far as I'm concerned, it's right up there along with the statutory considerations, but it's not by itself. There are these others. And let's look quickly at what they are. And, again, this is 163.3177, Florida Statutes. And these are the things that we're supposed to think about when we authorize or refuse to authorize or recommend an amendment to the Growth Management Plan.

First of all, the character of the undeveloped land. Second, the need for redevelopment, including renewal of blighted areas, et cetera. Third, the discouragement of urban sprawl. Fourth, the need for job creation and economic development. Fifth, ensure the protection of natural resources. Sixth, consideration of the suitability of the plan amendment for its proposed use considering the character of the undeveloped land and natural resources.

Next, whether it adequately protects and conserves natural resources such as wetlands, floodplains, native vegetation, environmentally sensitive areas; whether it results in poor accessibility among linked or related land uses; whether it results in the loss of significant amounts of functional open space; whether it locates land development in geographical areas of the community in a manner that has an adverse impact on or failure to protect natural resources and, finally, to limit development in Coastal High Hazard Areas and protect human life against the effects of natural disasters.

And I'm just calling out a few. There are probably at least as many other considerations, but those are the ones that I thought were especially relevant to the discussion. So that is what I want to say primarily about the right place.

And now on the subject of the right time, which I think is also essential, because we have to operate in the present. We -- it's not fair for anyone to expect us to have a crystal ball or predict what's going to happen in the future.

And let's look at Section 29. It happens to be in an area where towns are not going to ever be permitted in this area of the county, presumably. Now, villages may, indeed, some day be proposed in this area, but nothing has yet been suggested. There are no village applications in front of staff and, really, all the talk about what -- you know, build it and they will come, all the talk about what might come along if villages do come to pass is pure speculation on our part, and I think to -- I think we have to view the situation as it stands today and whether today the requested applications make sense or they don't make sense.

And so from my point of view, it's too uncertain, too speculative a time for the Growth Management Plan amendment that's being requested, which I think does, indeed, allow for an island of affordable housing that may never sufficiently be supported by employment opportunities. It may, but it may not. And right now we don't have anything substantial or competent in the way of evidence to indicate, you know, what the near term or intermediate term future is likely to bring as far as that happens. So I just don't think we can -- we can imagine what developers in the future might do.

And so my view is that we should wait for applications that come along with a fully integrated village that has commercial aspects, that measures up to smart growth initiatives, and that would have affordable housing sufficient to go along with the density that would be introduced to this area. So that's what I mean when I say, "It's not the right time."

You know, right now you've got an island that connects to I-41 [sic] east via about a 2-mile stretch. So for most people, it would not be walkable, bikeable, or drivable and, typically, in affordable housing situations, we want to find -- under the heading, I guess, of smart growth or avoidance of urban sprawl, we want -- we want things to be readily reachable.

And in other documents, both at the state and county level, I see that they talk about, I don't know if it's a half-a-mile or a quarter-mile walk is most that we would be inclined to expect in the case of a village in order to fulfill what I would call smart growth, and that's clearly not here.

You've got five buses that run along 41 every day. And I'm not sure what time of day they are, how they line up with work start time or work quitting time. There's going to be a bike rack, I suppose. But I wouldn't want to go with affordable housing simply on the assumption that all these people are going to have their own cars and be able to drive, because I don't think that's the case.

I think that we need to -- again, for the sake of our own roadways in the county, we need to identify ways of keeping as many people as possible off our major roadways, and that's why we would have smart growth. And so that's why I don't think that this -- these applications are coming to us at the right time.

Now, finally, I'm going to say some words about the unfulfilled conservation covenants. And I'm not -- I'm not going to use any -- I'm going to try not to use any words that characterize what people's intentions might have been, whether they were false, misleading, honest, negligent. I'm not -- I'm going to try not to do that because I don't think it's relevant. I'm just going to stick with what the appearances may be and let people, if they wish, make their own assumptions as what the motivations behind those appearances were.

So first of all, 1990, you know, we had -- we had the transcript, and in the transcript the lawyer, Varnadoe or Vornado, basically said that the property was to be safeguarded in perpetuity. Now we find ourselves arguing about what was meant by "the property" and points of view offered by one side or by the other, but it's not part of the record. The record is the transcript. And as I read that transcript, it seems to me as though the Board of County Commissioners thought it was all of 29. Maybe they did, maybe they didn't, but that's what the record looks like to me. And so, that's -- that's my comment on 1998.

Now, 2017, this was another situation where the facts maybe are not fully supported by the record in question, but there are some very revealing comments that were made in testimony before this Planning Commission. And some maybe have argued that Mr. Hall was not being truthful. But I think in a very important area he was being quite truthful, and I commend him for that.

But the conversation or the questions with respect to the 2017 development for Estancia and Oyster Harbor had to do with the concessions and commitments that were being made by the developer in exchange for -- as a quid pro quo to get the Estancia and Oyster Harbor developments completed, which they were. They got those benefits.

Now, I'll paraphrase here just to try to come at brevity a little bit. But when I inquired of Mr. Hall when he, as a key player in this process -- and he acknowledged again today he was a key player. He was on the ground, and so we have to credit the things he says as one of the few people here who was really on the ground, and he acknowledged that as early as 2017 there was discussion among the developer's agents to overturn the commitments that had been made in that year. And I pressed him on that. And he said, "If that's what I said, then that's what I said." So I credit him for his integrity in not trying to change things.

But for -- you know, for concessions to have been made in 2017, of which the Army Corps of Engineers was certainly a party, but from the perspective of those of us here in Collier County, the -- it just -- it doesn't sit well with me that concessions were being made and representations were being made at the very same time, according to this witness, that plans were afoot on the side of the developer to put residential in that area and to overturn the commitments that had been made.

Now, that's how I heard the testimony, and I was the one who was making the inquiries. And people can read as they wish, and maybe they come up with a different interpretation, but that's what I heard Mr. Hall say.

And that was -- then in 2022 -- and all along I realize there have been efforts on the part of hardworking people, presumably people who were operating with integrity, to get the Corps of Engineers to either reverse itself or reopen or have a new permit or somehow -- somehow reverse itself or contradict what had been done by the Corps on the recommendation of Fish and Wildlife. So that was going on.

I think, from 2017, if you believe Mr. Hall's testimony, up to 2022, nothing was being filed in that time. Then the developer was told that something needs to be filed, and they put in a whereas clause, which -- you know, again, lawyers are good advocates, and I -- and I commend Mr. Yovanovich, if it was he who put it in, or whoever -- whoever wanted to put that in. It was an opportunity for advocacy on the part of the lawyers. But this whereas clause, it says, "Subject to the approval by U.S. ACE and U.S. FWS of the request to modify the biological opinion." So subject to them overturning what they've already done, the property use may be modified in the future for additional housing.

Well, I mean, that was, obviously, a very self-serving whereas clause. And I don't -- I don't fault the person who put it in for putting it in. I see what [sic] it was done, and it set up an opportunity for advocacy, and we heard an enormous amount of that advocacy.

But let's remember that that whereas clause begins with the words "subject to approval." That's the key. That's the key language. And so far, that approval has not been forthcoming.

So those are the reasons why I am going to vote against approval of these applications. And I also -- not that anyone needs to reserve the right to do this, but it is my present intent to file a brief memorandum with the Board of County Commissioners stating my reason for my vote, and others are free to do the same. So that's what I have.

And now, Commissioner Klucik, did you want to make a final statement?

COMMISSIONER KLUCIK: Thank you, Mr. Chairman, yes.

I really appreciate my colleagues, my fellow commissioners. I, obviously, have withdrawn or, you know, changed my mind regarding my initial concerns about the -- which land had to have the easement and my concerns about that.

So my concerns are really more to what the three of you have voiced now, and so I will be voting -- on the legislative change, I will be voting against it.

CHAIRMAN FRYER: Okay. Anything further you want to say, sir?

COMMISSIONER KLUCIK: No.

CHAIRMAN FRYER: Okay. Thank you.

So if anyone else wants to make a closing closing, this would be the time, or I'd entertain a motion. And we're going to go one at a time. We'll start with the GMPA.

COMMISSIONER VERNON: Vernon moves we deny the application.

COMMISSIONER SHEA: Second.

CHAIRMAN FRYER: Second. It's been moved and seconded that we issue a recommendation of denial on the GMPA application. Any further discussion from the Planning Commission?

(No response.)

CHAIRMAN FRYER: If not, all those in favor of the motion of rejection, please say aye.

COMMISSIONER VERNON: Aye.

COMMISSIONER SHEA: Aye.

CHAIRMAN FRYER: Aye.

COMMISSIONER KLUCIK: Aye.

CHAIRMAN FRYER: Opposed?

(No response.)

CHAIRMAN FRYER: It passes unanimously.

I'd entertain a motion now on the PUD. And keep in mind Mr. Yovanovich correctly said that parts of the PUD do not pertain to Section 29 such as some shifting around of commercial and residential around Collier Boulevard.

COMMISSIONER SHEA: But by combining them, they really made it difficult for us to vote on it. If we --

CHAIRMAN FRYER: Well, we can bifurcate.

COMMISSIONER SHEA: Can we disaggregate it?

CHAIRMAN FRYER: We can absolutely disaggregate it.

COMMISSIONER SHEA: But --

COMMISSIONER KLUCIK: Well, Mr. Chairman, if I could, I'd like to know, like, the impact of doing -- like, of not -- what's the impact if we approve everything else? I'd like to hear staff, you know, give us their kind of summary of what -- you know, whether there's a downside to doing it that way.

CHAIRMAN FRYER: Ask away, sir.

COMMISSIONER KLUCIK: Yeah, yeah. You understand my concern. It's fine, so we're not changing the -- so 29 is off the table, but are we -- you know, are we doing something stupid or ill-advised by approving the rest of it, or do we even have a choice because we're sitting quasi-judicially, and they've met the requirements?

MR. BOSI: I will answer your question, but I'll defer to Heidi first. She looks like she wants to throw something out.

MS. ASHTON-CICKO: Unless the petitioner wants to go another route, you need to vote on the application as it is before you now.

MR. YOVANOVICH: May I ask a question?

CHAIRMAN FRYER: Go ahead.

MR. YOVANOVICH: Why could you not recommend approval on everything but the change to the PUD dealing with Section 29?

CHAIRMAN FRYER: Well, I think we can. And Ms. Ashton and I may not agree on that, but I think what comes before us is we can divide that and take --

MR. YOVANOVICH: Obviously, I'm not going to withdraw it, but I mean, if the Board wants to approve some but not all, you should be allowed to.

MS. ASHTON-CICKO: I mean, if Rich wants to go that route, he's the petitioner. And if he wants to amend it on the floor, so to speak, as to the CCPC recommendation --

MR. YOVANOVICH: No. What I'm asking the CCPC to do is to make a recommendation to the Board of the things that -- you've done it before. You've said, "We recommend approval, but we don't agree with X," so -- you know, like a deviation or something. What I'm suggesting is you can make a motion to approve the PUD amendment other than the changes in the PUD pertaining to Section 29.

CHAIRMAN FRYER: I'll ask you to quickly summarize what those are. I understand the commercial swap on Collier, but I --

MR. YOVANOVICH: I need to grab my binder.

CHAIRMAN FRYER: That's fine.

MR. YOVANOVICH: Thank you.

COMMISSIONER SHEA: We've spent no time on those other issues. We've only spent time on --

CHAIRMAN FRYER: Well, you can vote against it.

COMMISSIONER SHEA: I probably will, just out of ignorance.

CHAIRMAN FRYER: Yeah.

MR. YOVANOVICH: And I'm going to direct you to your staff report in the PUD, and it's Page 7 of 25. Obviously, the first one was to increase the number of dwelling units from 6,000 to 6 --

COMMISSIONER VERNON: Hold on. I put that away. Give me a second.

MR. YOVANOVICH: I'm sorry.

CHAIRMAN FRYER: County Attorney, you're signaling. Should I turn this off?

MS. ASHTON-CICKO: Well, I just wanted to point out that since the GMP did not go through, any PUD provisions that relate to that section have to come out.

MR. YOVANOVICH: I agree, and I was going to walk you through what the requests were and -- the ones that I think are related to the GMP and which ones are not.

CHAIRMAN FRYER: Go ahead.

MR. YOVANOVICH: The first one was to increase the number of dwelling units. That's

clearly related to the GMP.

COMMISSIONER VERNON: Say that again.

MR. YOVANOVICH: We wanted to increase the number of dwelling units from 6,000 to 6,750. Obviously, you would vote against that if you voted against the GMP. Increasing the residential development area from 1,280 acres to 1,230 [sic], you would vote against that change.

We wanted to provide a conversion factor for multifamily and single-family dwelling units excluding Section 29. So, yes, you -- I would think you could vote in favor of that because it has nothing to do with Section 29.

Change the intensity of group housing from 26 units per acre to a floor area ratio of .6. That has nothing to do with the GMP.

Add adult congregate living facilities land use to the residential district and the business district. That's the 951 provision. It has nothing to do with Section 29.

The improvements to Auto Ranch Road come out. The CAT stop comes out. The contribution of cots, that comes out. Removing lakes and reconfigure the residential and business tracts along Collier Boulevard, that would stay in; it has nothing to do with Section 29. And then we would -- we would update the master plan to do all those things other than Section 29.

CHAIRMAN FRYER: Does everybody understand that?

COMMISSIONER SHEA: Yeah. I guess I really -- I haven't had enough time to really digest it, but I would rely on -- I'd like to hear from staff on all those other things. Because we talked for three days, and we never talked about anything but Section 29.

CHAIRMAN FRYER: Yeah. And I -- I'm inclined to agree, and we should hear from staff and will. I haven't insisted upon a lot more evidence supporting those points because I felt that they were self-supporting in the written documents we had, but it's still probably a good idea to have staff comment on those.

Anybody else want to be heard before -- Commissioner Vernon.

COMMISSIONER VERNON: Yeah, I just didn't -- I focused on the big picture and did not focus on these at all. The only thing that -- just in listening to Mr. Yovanovich run through those, the only thing that comes to mind to me is -- and I did touch on it on my previous comments -- that the changes to the master plan looked more significant than things that can be dealt with the way they were trying to deal with them. And I know I disagree with staff on that. They felt like they were minor enough -- and I don't remember the language as used what constitutes a major versus minor change -- are things that you can deal with at the staff level.

Other than that, I don't -- yeah, I haven't really focused on any of this.

MR. YOVANOVICH: If I can, Mr. Vernon. The only thing that you're talking about was the interconnecting road, the way it was connected instead of it being -- it didn't used to be a loop road was the issue raised by that gentleman. He didn't raise any issues regarding what we were trying to do on 951 or adding a multifamily conversion or any of those things. He was just upset about the fact that what he perceived was a dead-end road was now going to be a connecting road.

COMMISSIONER VERNON: Yeah, and I may have more thoughts or questions, but I think I'll just listen and see where we are when everybody's done.

CHAIRMAN FRYER: Okay. Commissioner Klucik.

COMMISSIONER KLUCIK: Yeah. My whole concern when I voiced about this bifurcation part, that -- is that I just don't feel comfortable saying yes because I don't think I was paying enough attention to the rest of it.

CHAIRMAN FRYER: So is it the Planning Commission's wish to hear from staff and to try to educate ourselves now, or do we want to just vote on the record as it stands?

MR. OLDEHOFF: Have you closed the public hearing?

COMMISSIONER SHEA: I'd like to hear from staff, because if Rich is right, many of these are innocuous, and if staff can reassure us of which ones are, I'm okay going with staff's recommendation.

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

There are a number of things -- anything related to Section 29, obviously, would not be consistent because of the GMP implications.

The provision of a conversion factor from multifamily to single-family dwelling units, excluding Section 29, would be allowed without the GMP amendment. That could be -- that could be approved by the Board of County Commissioners without the GMP.

COMMISSIONER SHEA: Are you okay with that?

MR. BOSI: Staff is recommending approval on the entire petition. So anything that you guys are going to -- anything related to Section 29, the other stuff, that staff recommendation of approval covers those as well. So all of these -- all these we will be comfortable with that Mr. Yovanovich has indicated.

COMMISSIONER VERNON: And that -- does that one increase density?

MR. YOVANOVICH: No.

MR. OLDEHOFF: Yeah, I was going to say.

MR. YOVANOVICH: No.

MR. OLDEHOFF: I think that there was something about the number for the density overall.

MR. YOVANOVICH: There's 6,000; still a cap.

COMMISSIONER KLUCIK: But the density isn't changing?

MR. YOVANOVICH: It's not. It's we could do either -- we just want to convert single-family to multifamily and multifamily to single-family with the 6,000 being the same maximum number.

MR. OLDEHOFF: Or is that in the DRI where it mentions that there's a difference to the number for the overall density of the overall project?

MR. YOVANOVICH: Well, if the DRI amendment's not approved, then the 750 comes out and stays the --

MR. OLDEHOFF: Yeah. I'm just --

COMMISSIONER KLUCIK: Mr. Chairman?

MR. OLDEHOFF: -- trying to help you to --

COMMISSIONER KLUCIK: I think one of the witnesses is out of order.

CHAIRMAN FRYER: Yeah, I agree with you. Mr. Oldehoff, it's just too tempting to be standing up there by the microphone, so I'm going to ask you to sit down, sir.

MR. OLDEHOFF: I'm sorry. I was just trying to help.

CHAIRMAN FRYER: Thank you. Thank you.

MR. BOSI: The change of intensity of group housing from 26 units per acre for floor area ratio -- to a floor area ratio of .6, staff is supporting that, and that could be approved without the Growth Management Plan amendment.

To add adult congregation living facilities as a land use within the residential zoning district and business zoning district, those -- that could be accomplished without the Growth Management Plan amendment. The staff has recommended approval.

To remove lakes and reconfigure business and business tracts along north side of Collier Boulevard entrance, once again, could be approved without the --

COMMISSIONER KLUCIK: You said to remove lakes?

MR. BOSI: Yes.

MR. YOVANOVICH: It was to reconfigure lakes along 951.

CHAIRMAN FRYER: Are you going to lose any square feet of lake?

MR. BOSI: There were none proposed. There's none proposed changed -- there's no proposed change to any of the lake acreages or preserve acreages --

CHAIRMAN FRYER: Okay.

MR. BOSI: -- as we talked about.

And that would be -- those are the -- that's the other changes that were being requested

within the PUD amendment that aren't dependent upon the GMP amendment that the Planning Commission could vote on and make a recommendation to the Board of County Commissioners segmented out with the denial of the GMP amendment.

CHAIRMAN FRYER: Okay. Planning Commission, what would you like to do?

COMMISSIONER VERNON: Based on what I've heard, I -- I don't -- I mean, everything seems fine to me. Again, it's kind of like I was with the previous applicant, I don't want to go so fast I walk out the door and get in my car and go, "Holy crap. I didn't think of that." But right now I don't really have any concerns. I don't know -- I mean.

CHAIRMAN FRYER: For what it's -- for what it's worth, I mean, I looked pretty carefully at all of these -- and I didn't make this point in my summary, but with respect, again, to 29, which is now -- we've already acted upon that; that's not interconnected with the rest of Fiddler's. And I've looked at those two as separate all along and continue to do so, and from my reading of the materials having to do with what's proposed on -- along Collier, I don't have a problem with it.

COMMISSIONER SHEA: Me neither.

COMMISSIONER VERNON: Yeah. And I'll just -- you know, I trust the staff, and I know how much time, Mr. Chairman, you spend with everything. And I heard from Rich, and so I would vote in favor -- I'm ready to vote in favor of it.

COMMISSIONER SHEA: I mean, I think what we're voting on is anything that is not impacted by Section 29, which was --

COMMISSIONER KLUCIK: Yeah, or the GMP change.

COMMISSIONER SHEA: -- the GMP change.

CHAIRMAN FRYER: I'm going to ask Mr. Bosi to, once again, tell us what the -- what the non-Section 29 pieces are. I think you -- I think there were three.

COMMISSIONER KLUCIK: Can you point to it so we can look at it while you're reading or no, which -- where it is?

MR. BOSI: It's in the -- if you look to the title of the agenda --

CHAIRMAN FRYER: Yeah, the title, okay.

COMMISSIONER KLUCIK: For which item? For the second item?

MR. BOSI: For the PUDA.

COMMISSIONER KLUCIK: Okay.

MR. BOSI: And it would start with, on the sixth line down, Provide for a conversion factor for multifamily and single-family dwelling units, excluding Section 29; change intensity of group housing from 26 units per acre to floor area ratio of .6; to add adult congregate living facilities as a land use to the residential district and business district; to remove lakes and reconfigure residential and business tracts along the north side of the Collier Boulevard entrance; and to amend the master plan providing for such conflict and severability.

CHAIRMAN FRYER: Thank you.

COMMISSIONER KLUCIK: So the removal of lakes, Mr. Chairman, that doesn't sound like reconfiguring the lakes. It sounds like eliminating the requirement for the existing lakes. So I'd like more clarification on that.

CHAIRMAN FRYER: Mr. Yovanovich.

MR. YOVANOVICH: Mr. Klucik, if you look at the master plan I'm showing you, right here.

COMMISSIONER KLUCIK: Any scrivener's errors on this one? No, I'm kidding. I'm kidding.

All right. So those are the three lakes we're talking about?

MR. YOVANOVICH: Those are the lakes that will remain.

COMMISSIONER KLUCIK: Okay.

MR. YOVANOVICH: So what we've reconfigured is you can see the orange R and the red -- I think that's B for business.

COMMISSIONER KLUCIK: I can't.

MR. YOVANOVICH: I think that's B, right?

CHAIRMAN FRYER: Do you want to point to it on the --

MR. YOVANOVICH: Yeah. Right here.

COMMISSIONER KLUCIK: Okay. So there's an orange R.

MR. YOVANOVICH: Yeah. So we reconfigured the red and the orange, and that's for the senior housing discussion we talked about.

COMMISSIONER KLUCIK: And that's -- this is -- this is how it would be reconfigured?

MR. YOVANOVICH: This is how it will be reconfigured.

COMMISSIONER KLUCIK: And how is it now? It's the same except for --

MR. YOVANOVICH: Except that the orange area, or whatever that color is, and the red area, that's what's changed. The lakes are pretty much the same.

COMMISSIONER KLUCIK: Okay. So when it says "remove lakes," there's really negligible actual removal?

MR. YOVANOVICH: Correct.

COMMISSIONER KLUCIK: Okay. So there's a little bit but --

MR. YOVANOVICH: Yes.

COMMISSIONER KLUCIK: -- no one would notice much?

MR. YOVANOVICH: If you go out there, you'll see a big, huge lake out there now. So we're not filling that in.

COMMISSIONER KLUCIK: Okay.

CHAIRMAN FRYER: Okay. Thank you. So I -- I think, Commissioner Vernon, you did make a motion, did you not, sir, or --

COMMISSIONER VERNON: No, but I will unless, before I do, should we change the language for "removal" since that's not --

CHAIRMAN FRYER: Well, here's what I propose based upon what I think is the sense of where we want to go. I asked Mr. Bosi to identify the -- I think there were three non-Section 29 aspects of the PUD, and those are the things that we're voting -- that we're going to vote on, and then we'll probably also have to vote on the Section 29 pieces. Actually, we don't, because they would follow the GMP recommendation.

So we're basically splitting out the three non-Section 29 items and voting on those under -- as a PUD amendment.

COMMISSIONER KLUCIK: And we're expressly not approving the Section 29 items?

CHAIRMAN FRYER: Expressly so, correct.

COMMISSIONER VERNON: Then my question was, he's saying it's not going to be any -- it's going to be negligible lake removal. Can we just -- that's not what it says.

MR. YOVANOVICH: Can we change the word to "reconfigure"? Will that make you feel better?

COMMISSIONER VERNON: Yes, it will make me feel better.

MR. YOVANOVICH: I'm not trying to --

COMMISSIONER VERNON: I don't think you are, but that's -- I want it to say what you're saying.

CHAIRMAN FRYER: Better word. Better word. Good.

So is that your motion, sir?

COMMISSIONER VERNON: Yes. With that one change, that is my motion.

CHAIRMAN FRYER: Okay. Is there a second?

COMMISSIONER SHEA: Second.

CHAIRMAN FRYER: Any further discussion?

(No response.)

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

COMMISSIONER VERNON: Aye.

COMMISSIONER SHEA: Aye.

CHAIRMAN FRYER: Aye.

COMMISSIONER KLUCIK: Aye.

CHAIRMAN FRYER: Opposed?

(No response.)

CHAIRMAN FRYER: It passes unanimously.

Then we come to the third piece, which is the DRIA. And is there anything remaining of that after the GMP, or does it pretty much track the GMP?

MR. YOVANOVICH: The only change that I could see that would still stay in the DRI -- and I'm reading this quickly -- it's on Page 4 of 6, and I'll just read you the whole sentence.

COMMISSIONER KLUCIK: Is that the far west piece?

MR. YOVANOVICH: Yes.

COMMISSIONER KLUCIK: If you look on -- if you look on our Page 1982 of the 2500-page agenda, Packet Page 1982, it has the map, and I think it's -- there's two parcels; one is 29, and the tiny one is --

MR. YOVANOVICH: The only change to Section 29 that needs to stay is -- it says under Section 4.E. -- and let me just put it up -- .2.E of the document, and this is consistent with --

CHAIRMAN FRYER: Mr. Oldehoff, unless you're rising to make an objection of some kind --

MR. OLDEHOFF: No, I'm not. I just want to see it.

CHAIRMAN FRYER: Oh, okay. Well, you'll get to see it.

MR. OLDEHOFF: If I can help, I'll help.

CHAIRMAN FRYER: Thank you.

MR. OLDEHOFF: I'll raise my hand.

CHAIRMAN FRYER: Thank you. Thank you.

MR. YOVANOVICH: Everything else would go away because it refers to increasing units in Section 29. The only thing that stays is that we could build a golf course on Section 29 to serve the golf club members and residents, and that's consistent with what the PUD currently reads. So all we were doing was updating the DRI to recognize that Section 29 can, in fact, have a golf course.

COMMISSIONER KLUCIK: Is that due to Section 8.4 that I was reciting previously?

MR. YOVANOVICH: Yes. That's where that was. We added that. Remember? If you remember, in 2018 we added a golf course could be in Section 29.

COMMISSIONER KLUCIK: So that's already in the listed authorized uses?

MR. YOVANOVICH: In the PUD, but it didn't get added to the DRI, and we needed to add it to the DRI. All the other changes that we requested dealt with adding density to Section 29.

COMMISSIONER KLUCIK: Is there a reason it wasn't added to the DRI at that time?

MR. YOVANOVICH: Other than we missed it, no.

COMMISSIONER KLUCIK: Okay. I want to hear from staff about the impact of that.

CHAIRMAN FRYER: Go ahead, Mr. Bosi.

MR. BOSI: Related to the impact of adding a golf course to the DRI order?

COMMISSIONER SHEA: Yes, yes.

MR. BOSI: It's inconsequential. The DRI order is a State order. It's for the State's housekeeping purposes. For our purposes, the LDC -- or the PUD has already --
(Simultaneous crosstalk.)

MR. BOSI: -- added golf course to it, and you would not -- we would not need to reference anything within the DRI for our own permitting purposes. It's for the State's purposes.

COMMISSIONER KLUCIK: So we can make the motion to delete everything except amendment to Exhibit FCA1 master development plan to increase residential development area? No, that's not it.

MR. YOVANOVICH: No, just the golf course. Just to add the golf course.

COMMISSIONER KLUCIK: Where is the golf course part?

MR. YOVANOVICH: It's new section -- it's in Section 4.E.2.A.

COMMISSIONER KLUCIK: Oh, it's not in the summary, okay.

MR. YOVANOVICH: It's not in the development order, so that's the change that we're making to that section. All the other would go away based upon your prior action on the Growth Management Plan amendment.

COMMISSIONER SHEA: But just -- Mike, it is in the PUD already?

MR. YOVANOVICH: Yes.

MR. BOSI: Yes.

COMMISSIONER SHEA: Okay.

CHAIRMAN FRYER: All right. We have a motion?

COMMISSIONER KLUCIK: Well, I'm confused as to what we're moving, what we're --

CHAIRMAN FRYER: We're on the D --

COMMISSIONER KLUCIK: DRI.

CHAIRMAN FRYER: -- DRIA, we are going to approve the conforming change on the golf course to conform --

COMMISSIONER KLUCIK: And nothing else.

CHAIRMAN FRYER: -- with the PUD and nothing else.

COMMISSIONER KLUCIK: I'll make that motion.

CHAIRMAN FRYER: Is there a second?

COMMISSIONER KLUCIK: Or did someone already make the motion?

CHAIRMAN FRYER: County Attorney, go ahead. You've got it.

MR. PERRY: The DRI also has the conversion matrix as part of the amendment proposed, but unrelated to Section 29.

COMMISSIONER KLUCIK: For multifamily and --

CHAIRMAN FRYER: Oh, okay. So that would need --

COMMISSIONER KLUCIK: Okay. So I'll amend my motion. So my motion is to approve it, only the section about that matrix and only the section about the golf course to make it consistent with --

CHAIRMAN FRYER: The PUD.

COMMISSIONER KLUCIK: -- the PUD.

CHAIRMAN FRYER: Thank you. Is there a second?

COMMISSIONER SHEA: Second.

CHAIRMAN FRYER: Any further discussion?

(No response.)

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

COMMISSIONER VERNON: Aye.

COMMISSIONER SHEA: Aye.

CHAIRMAN FRYER: Aye.

COMMISSIONER KLUCIK: Aye.

CHAIRMAN FRYER: Opposed?

(No response.)

CHAIRMAN FRYER: It passes unanimously.

My sincere thanks to both counsel and to the members of the public who were here and staff and the Planning Commission. I think we all put in a good day's work, and everyone is to be commended.

And with that, we will finish out a very quick end to our agenda.

Is there any old business to come before the Planning Commission?

(No response.)

CHAIRMAN FRYER: Is there any new business?

COMMISSIONER VERNON: I'll say one thing.

CHAIRMAN FRYER: Please.

COMMISSIONER VERNON: Great job, Mr. Chairman, and I thought it was pretty cool the way --

CHAIRMAN FRYER: Thank you.

COMMISSIONER VERNON: -- that we had -- we came at this four different ways, if you listen to what the Chairman said versus what Paul said versus what I said, Mr. Klucik. It was -- it was all great analysis, but we all came at it from our provision to -- our own way per Paul's comments.

The other thing is, I'm going to be leaving in October. I won't be re-upping, and so my term's up, and that's going to come pretty fast. And I assume -- I think Robb and I came on about the same time. I don't know that he's re-upping. But the point -- the only reason I'm bringing it up is, you know, when you get involved in your local government -- I'm in District 2. So if you think there's a good person to take my place, you know, now's the time to start thinking about it and not in November after I'm gone and somebody else has been appointed. And, you know, I think you need to talk to your County Commissioners and think about that. I just -- that's the reason I bring it up.

CHAIRMAN FRYER: Well, I, for one, am sorry you're not seeking re-appointment because I think you've served in an outstanding fashion to this Planning Commission, and we're going to miss you.

COMMISSIONER VERNON: Well, thank you.

CHAIRMAN FRYER: Thank you.

Anything further?

(No response.)

CHAIRMAN FRYER: Okay. Members of the public, anybody want to say anything that's not -- that was not on the agenda today, now would be the time.

(No response.)

CHAIRMAN FRYER: If not, and without objection, we're adjourned.

MS. KOREN: Mr. Fryer, I'm Chris Koren.

CHAIRMAN FRYER: Yes, I know.

MS. KOREN: And I just want to thank the Commission. I'm in awe. I have never sat through this much before with county government, and I commend all of you. I mean, you're amazing. Thank you.

(Applause.)

CHAIRMAN FRYER: Thank you, ma'am. We're adjourned.


July 18, 2024

There being no further business for the good of the County, the meeting was adjourned by order of the Chair at 1:53 p.m.

COLLIER COUNTY PLANNING COMMISSION



EDWIN FRYER, CHAIRMAN

These minutes approved by the Board on 8/15/24, 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.