

December 16, 2010

TRANSCRIPT OF THE MEETING OF THE
COLLIER COUNTY PLANNING COMMISSION
Naples, Florida
December 16, 2010

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 8:30 a.m. in REGULAR SESSION in Building "F" of the Government Complex, East Naples, Florida, with the following members present:

Mark Strain, Chairman
Melissa Ahern
Donna Reed-Caron
Diane Ebert (Absent)
Karen Homiak
Barry Klein
Paul Midney
Bob Murray
Brad Schiffer

ALSO PRESENT:

Heidi Ashton-Cicko, Assistant County Attorney
Nick Casalanguida, Growth Management Division/Planning & Regulation
Ray Bellows, Zoning Manager
Thomas Eastman, Real Property Director, CC School District

CHAIRMAN STRAIN: Good morning, everyone. Welcome to the December 16th meeting of the Collier County Planning Commission.

If everyone will please rise for Pledge of Allegiance.

(Pledge of Allegiance was recited in unison.)

CHAIRMAN STRAIN: Okay. Roll call by the secretary.

COMMISSIONER HOMIAK: Mr. Eastman?

MR. EASTMAN: Here.

COMMISSIONER HOMIAK: Ms. Ahern?

COMMISSIONER AHERN: Here.

COMMISSIONER HOMIAK: Mr. Schiffer?

COMMISSIONER SCHIFFER: I'm here.

COMMISSIONER HOMIAK: Mr. Midney is absent.

Ms. Caron?

COMMISSIONER CARON: Here.

COMMISSIONER HOMIAK: Mr. Strain?

CHAIRMAN STRAIN: Here.

COMMISSIONER HOMIAK: Ms. Homiak is here.

Mr. Murray?

COMMISSIONER MURRAY: Here.

COMMISSIONER HOMIAK: Ms. Ebert is absent.

Mr. Klein?

COMMISSIONER KLEIN: Here.

CHAIRMAN STRAIN: Ms. Ebert mentioned she had another commitment today, and I'm sure Mr. Midney is fighting traffic to get here.

***With that in mind, addenda to the agenda. Are there any changes from anybody?

(No response.)

CHAIRMAN STRAIN: Nick, we're on schedule with everything then?

MR. CASALANGUIDA: (Nods head affirmatively.)

CHAIRMAN STRAIN: ***Okay, Planning Commission Absences. Our next meeting is December 25th. Is everybody going to be here? You guys are sharp this morning.

Our next meeting is January 6th. Anybody know if they're not going to make it for that meeting?

COMMISSIONER MURRAY: Yeah.

CHAIRMAN STRAIN: Mr. Murray, you're not going to be here?

COMMISSIONER MURRAY: I'm just coming back from out of state.

COMMISSIONER HOMIAK: I won't.

CHAIRMAN STRAIN: Okay. And Ms. Homiak will not be here. That will leave five of us, maybe more with Paul and Diane, so we should be okay.

***Approval of minutes. The meeting that we have for minutes is November 18th. Are there any comments, changes?

(No response.)

CHAIRMAN STRAIN: If not, is there a motion to approve?

COMMISSIONER HOMIAK: Motion to approve.

CHAIRMAN STRAIN: Made by Ms. Homiak. Seconded by?

COMMISSIONER SCHIFFER: I'll second.

CHAIRMAN STRAIN: Mr. Schiffer.

Discussion?

(No response.)

CHAIRMAN STRAIN: All those in favor, signify by saying aye.

COMMISSIONER SCHIFFER: Aye.

COMMISSIONER AHERN: Aye.

COMMISSIONER MURRAY: Aye.

COMMISSIONER KLEIN: Aye.
COMMISSIONER HOMIAK: Aye.
COMMISSIONER CARON: Aye.
CHAIRMAN STRAIN: Aye.

Anybody opposed?

(No response.)

CHAIRMAN STRAIN: Motion carries, we're down to 7-0.

***Ray, BCC report/recaps. Are you going to talk about the -- let me mention what happened. I was at the meeting at the request of the board for the Davis Reserve that we spent six hours on. And if you recall, that was kind of a long, drawn-out and confusing process in the end. But thanks to Commissioner Fiala and discussions she had with the applicant and the actions at the meeting on Tuesday in which the board had asked me to attend in case they had questions, the developer had agreed to go back to the drawing board more or less and come back with a project that is more in line with the community with a cap on the density of five units per acre.

The support from the community in that area was overwhelming and it worked out well for everybody. So I think that was a really good conclusion. And I think part of the way to get there was this board's actions in ferreting out the issues. And so it worked out well. We did our job and the board did theirs, so --

COMMISSIONER SCHIFFER: Question.

CHAIRMAN STRAIN: Yes, sir.

COMMISSIONER SCHIFFER: Is he going to change the GMP first?

CHAIRMAN STRAIN: Yes.

COMMISSIONER SCHIFFER: Okay, good.

CHAIRMAN STRAIN: Yeah, all that's being redone and it will come back to us in probably a much more appealing form for the community. And it was a good move.

And Ray, I didn't mean to take your thunder.

MR. BELLOWS: No, that was --

CHAIRMAN STRAIN: But since I attended the meeting too I thought it was pretty interesting.

MR. BELLOWS: It was very interesting. And I think -- you're right, you will see a rezone once the comp. plan amendment is fixed and that change occurs.

The board also heard the PUD amendment to the Sonoma Oaks PUD. That was approved 5-0 by the board, subject to the Planning Commission recommendations. However, they also entertained a change by the applicant to address an issue raised by Commissioner Caron about the height of the ALF in the commercial tract, and they presented a revised plan to show that the height would be limited to 42 feet zoned height.

CHAIRMAN STRAIN: Okay.

MR. BELLOWS: The board accepted that.

CHAIRMAN STRAIN: Great.

MR. BELLOWS: There was also a continuance of two items, the DOA and the SRA for Ave Maria, and that will go in January.

CHAIRMAN STRAIN: Right. And that was a result of an advertising issue.

MR. BELLOWS: That's correct.

CHAIRMAN STRAIN: ***Chairman's report.

The arbitration occurred this past week on Saturday and Monday. I was a witness on the county's behalf in the arbitration hearing. It was an interesting hearing. And it went on for two days. I did not stay around after the first, I had other things to get done, but I can tell you one thing that I learned that I am surprised at is the varied amount of interpretations that were supposedly intended but not in my opinion revealed to us and others during the process.

And I think as we go down the road when we have opportunities to adjust or clean up the LDC language so that intentions are clear for any effort that we have, whether it's the SRA's, whether it's our regular language, we need to start paying a little more attention.

Because I thought we had done a thorough job, and I was shocked at the interpretations I was hearing in those two days. And, you know, we just need to go back and maybe we need to amend the LDC to make things better. So it's an opportunity down the road.

***With that, we'll move into the consent agenda. We have one item, which is the golf course driving range at 6500 Airport Road North from last week. We have a series of stipulations; I think it was maybe four or five. They're all incorporated into the plan.

Does anybody have any problems or questions concerning those?

Mr. Schiffer?

COMMISSIONER SCHIFFER: I mean, one thing I thought we were going to get today was some evidence on how high to make the net. I mean, I know we gave it a maximum of 60 and we asked them to locate it where they intended to put it on the plan. But it looks like they're going to put it on the plan and make it 60 feet.

So I think a 60-foot high net is a huge visual burden to the neighbors, and I was kind of hoping I was going to see something that would show where it could be lower and then where it would have to be higher, looking at how golf balls go and --

CHAIRMAN STRAIN: And there was -- yeah, Ms. Mac'Kie, please, help us. Because I know we had a long discussion about the possibility of changing the height, tapering the height and all, and there was some research that was going to be done.

MS. MAC'KIE: There was, and --

(Speakers were duly sworn.)

CHAIRMAN STRAIN: Thank you, Cherie'.

Normally we don't have testimony at consent hearings, I forgot to do that. Appreciate it.

MS. MAC'KIE: We did agree that there would be research.

And what we tried to do was to reflect on the plan exactly what we think you allowed us to do. We went back and listened to the hearing, and the words on the plan are the words that were in the motion. Because we wanted to be very careful that we were not overreaching.

The fact is that the net will be varying in height, as you indicated that it likely would logically be. In some places lower, in some places higher. I wish that it said averaging 60 feet, but I didn't get that from your motion, so we said in no case to exceed 60 feet.

So I'm not exactly -- what we tried to do was to reflect exactly the words of the motion on the plan so that we didn't go outside of our motion.

COMMISSIONER SCHIFFER: And if you did listen to the tape, remember that leap of faith comment I made that we're trusting you to come back and kind of show us that. I know what the motion said is a maximum. For example, I can't see how a guy on a tee can hit it 90 degrees 60 feet.

MS. MAC'KIE: No. Well, Karen says she can. But the point is --

COMMISSIONER SCHIFFER: See, I could.

MS. MAC'KIE: And I couldn't hit it at all, so that doesn't matter.

But the maximum height that you -- we know that it cannot be less than 60 feet -- cannot be more than 60 feet. We commit to making it less where it can safely be less, but in no event higher than 60 feet. If they want -- if they determine that it needs to be higher than 60 feet, that's a come back in and ask again.

COMMISSIONER SCHIFFER: But how are we going to know -- I mean, how are you go about designing it? I mean, it's easy to just make it 60 feet. I think it's tough to go the other way.

MS. BISHOP: We're actually going to hire someone to do this if we get approved at the Board of County Commissioners, and then provide the staff with the report from that professional. There's all kinds of stuff out there.

We only had a couple of days to get the package back in to you guys to get to the consent agenda, so we didn't have time to get someone hired to do the assessment and get it all back in.

When we get to the Board of County Commissioners and we get blessed with them, then we will hire the professional, we will provide that information to the staff and to our neighbors. Because there is an opportunity, from what I'm understanding from the phone call, we spoke with the guy who's done quite a bit of netting in this area. He said there is an opportunity that we may be able to drop the tees as low as 30 -- I mean drop the net as low as 30 in certain areas along that view corridor.

And just based on his conceptual idea of what we had to do, I think that right there where it's going to be in front of the neighbors is going to be a little bit lower than 60, maybe even 40.

But until we will get it finalized we don't know that answer yet. So we put on the plan exactly what the motion said so that we have the time when we go to SDP to provide the research that goes along with the final design.

COMMISSIONER SCHIFFER: Okay. Because I think -- I mean, the intent was that that's what we do here. So what you're saying is on this leap of faith we'll give it a second hop to the commission chamber.

MS. MAC'KIE: Essentially, yes, sir. Except that as I mentioned in the last hearing, this isn't your staff's first shot at this. You know, they have permitted -- this isn't the first time we've had a driving range in Collier County, and they have enforced whatever the rules are that they will require us to comply with or what we will comply with, understanding that it can't be higher than 60 feet.

You know, they will tell us, make it 10 feet, make it 20, make it 40, make it 60, but in no event more than 60.

COMMISSIONER SCHIFFER: But what I'm concerned about, the application came in without any mention -- you know, the net was not something shown or described, so I'm worried about it. But we can move it from here. I mean, it's got to take a second hop.

CHAIRMAN STRAIN: Well, I have another suggestion, but Mr. Murray, did you want to say something?

COMMISSIONER MURRAY: I'd only continue the argument and I don't care to do that.

CHAIRMAN STRAIN: Do you have any doubt that our intention was that you vary the height of the net not to exceed 50 (sic) feet?

MS. MAC'KIE: We have no doubt at all about that.

CHAIRMAN STRAIN: On number five, if we inserted the following language, the first line and second line: Netting to catch errant golf balls shall be installed along the northern and southern edges of the driving range.

Then I would suggest we enter varying in height, not to exceed 60 feet, and as depicted on the Pulling Driving range conceptual plan.

MS. MAC'KIE: That would be perfectly acceptable to us.

CHAIRMAN STRAIN: Okay. Because you have it on the map. But to be honest with you, maps aren't always -- when you record those and you try to pull them up and read that fine print, I can tell you, most of the time it can't be read and it becomes very difficult to track it down.

So if we enter that language in there, I think the intent is clear, and then I'm sure that with the staff's input at the Board of County Commissioners meeting, if you don't have more concise information by then, it could be pulled from the consent agenda and discussed, which I don't think you may want if that --

MS. MAC'KIE: Right.

CHAIRMAN STRAIN: -- happens. So I think the encouragement is there then.

So does that work with the Planning Commission members?

COMMISSIONER SCHIFFER: I'm good.

CHAIRMAN STRAIN: I think that stays in line with our original motion.

Okay, anybody --

MS. MAC'KIE: Thank you, sir.

CHAIRMAN STRAIN: -- else have any other questions?

(No response.)

CHAIRMAN STRAIN: All those in favor of the motion to -- I mean, all those in favor of the item -- well, we've got to get a motion. Is there a motion with the stipulations?

COMMISSIONER KLEIN: I'll make it.

CHAIRMAN STRAIN: Okay, Mr. Klein. The motion, does that include the corrected language that I read into the record?

COMMISSIONER KLEIN: Yes.

CHAIRMAN STRAIN: Okay.

COMMISSIONER HOMIAK: I'll second.

CHAIRMAN STRAIN: Ms. Homiak, with the language?

COMMISSIONER HOMIAK: Yes.

CHAIRMAN STRAIN: Discussion?

(No response.)

CHAIRMAN STRAIN: All those in favor, signify by saying aye.

COMMISSIONER SCHIFFER: Aye.

COMMISSIONER AHERN: Aye.

COMMISSIONER MURRAY: Aye.

COMMISSIONER KLEIN: Aye.
COMMISSIONER HOMIAK: Aye.
COMMISSIONER CARON: Aye.
CHAIRMAN STRAIN: Aye.

Anybody opposed?

(No response.)

CHAIRMAN STRAIN: Motion carries 7-0.

Thank you very much.

***Next one up is by an unknown land use attorney. Let's see, Bruce Anderson. There used to be a guy around years ago by that name.

It's PUDA-PL2009-742, the Barefoot Beach Property Owners Association, Inc., with amendment to the Lely Barefoot Beach PUD.

All those wishing to testify on behalf of this item, please rise to be sworn in by the court reporter.

(Speakers were duly sworn.)

CHAIRMAN STRAIN: Disclosures on the part of Planning Commission. Anybody?

COMMISSIONER CARON: I spoke to Mr. Anderson.

CHAIRMAN STRAIN: And I spoke to Nicole Ryan. And our discussion was about The Conservancy's role in this. That was part of the PUD amendment in '06.

Okay, Bruce, it's all yours.

MR. ANDERSON: Good morning, Mr. Chairman. My name is Bruce Anderson. I'm here to represent the Barefoot Beach Property Owners Association. They are the property owners association for Unit 1, blocks A through K at Lely Barefoot Beach.

The purpose of this amendment is to correct a conflict between the PUD document and the recorded plat for Unit 1 by relocating 15 approved but unbuilt dwelling units to Unit 1.

The PUD currently authorizes only 91 dwelling units to be constructed in Unit 1. However, there are up to 106 buildable lots in Unit 1. 132 were originally platted, but some of them have been deed restricted to only allow one home on two lots that have previously been combined.

Without the PUD amendment, there are going to be some lot owners in Unit 1 who cannot build a home because the PUD limit of 91 is less than the number of buildable lots in Unit 1. After the 91st home is built, any property owner in Unit 1 who applies for a building permit for a new home would be denied by the county.

The 15 dwelling units being relocated to Unit 1 are coming from development tract DC-1, which has been developed as The Cottages at Barefoot Beach. That area was authorized for up to 60 dwelling units; however, only 15 of those 60 were constructed.

The area in question, The Cottages, are down here. And those dwelling units are being moved from here to here.

Approval of this PUD amendment will correct the conflict. And the authorization to build the 15 homes applies only to Unit 1, not to any other part of Barefoot Beach. And the total number of dwelling units authorized to be built in the PUD will not be increased.

And I'll be happy to try to answer any questions that you have.

CHAIRMAN STRAIN: Okay, are there questions on the part of the Planning Commission?

COMMISSIONER SCHIFFER: I have.

CHAIRMAN STRAIN: Go ahead, Mr. Schiffer.

COMMISSIONER SCHIFFER: Bruce, point on the map the area that they're being moved into? It's -- I'm not that familiar with Barefoot, but isn't it multi-story along the waterway and then is it the lot behind it that this goes to, or where you're putting your pen?

MR. ANDERSON: Where I'm putting my pen.

COMMISSIONER SCHIFFER: Okay. And those are single-family zoned, correct?

MR. ANDERSON: Yes, sir.

COMMISSIONER SCHIFFER: So that doesn't change.

Is the DC-1, The Cottages, is that built out or is there --

MR. ANDERSON: Yes, yes.

COMMISSIONER SCHIFFER: So the other 30 units you're leaving behind, or essentially there's no room for them.

MR. ANDERSON: Well, I can't say that, because I don't know. But they're not allocated anywhere but The Cottages area, and it is built out.

COMMISSIONER SCHIFFER: But in the future maybe there would be something, okay.
I'm done, thank you.

CHAIRMAN STRAIN: Okay, any other questions of the Planning Commission?
(No response.)

CHAIRMAN STRAIN: Bruce, just a couple small ones. In reviewing the PUD, I like to go back and read the original documents and make sure the commitments have all been met. This is something I just want to make sure we're cleaned up.

There's a reference in the original PUD to Tract B, which is the recreational tract, and all the developer commitments were supposed to be completed on that tract. Do you know if they've all been done?

MR. ANDERSON: I do not.

CHAIRMAN STRAIN: That's an old PUD, so I'm -- but they were supposed to have them done before the 50th residential building permit. I don't know if they've been done either, but I'm hopeful they have.

It's just a question. Because, I mean, I have no way of knowing it. Thank you.

MR. ANDERSON: Thank you.

CHAIRMAN STRAIN: Anybody else?
(No response.)

CHAIRMAN STRAIN: Thanks, Bruce.
Nancy?

MS. GUNDLACH: Good morning, Commissioners. I'm Nancy Gundlach, Principal Planner with the Department of Land Development Services.

And staff is recommending approval of this PUD amendment. And I just have a little bit of additional information for you.

The Conservancy is supposed to review this particular PUD amendment, and they have. And they have issued a letter of approval. And I want to thank Nicole for providing that in such a timely fashion and bringing it to our attention that this is something that The Conservancy is supposed to do. And I apologize for any inconvenience that we have caused you.

So with that, if you have any questions, it would be my pleasure to answer them.

CHAIRMAN STRAIN: Any questions from the Planning Commission?
(No response.)

COMMISSIONER SCHIFFER: No, I don't.

CHAIRMAN STRAIN: Nancy, the only thing, that agreement with The Conservancy was made as part of the PUD, and so however, the staff needs to earmark those so that it gets caught from now on. We need to make sure that's done.

MS. GUNDLACH: Yes, we are working on that right now.

CHAIRMAN STRAIN: Ms. Caron?

COMMISSIONER CARON: Yes, because we did have that crop up the last time Barefoot was in here when it was a single-family home on a utility parcel that they wanted to change the zoning, rezone it. And that same issue came up then. So it should have been corrected then.

MS. GUNDLACH: Okay.

CHAIRMAN STRAIN: And from a perspective of your own research and even the applicant's, they're asking for 15 units on the premise that most of those empty lots have been built on or some of them have been doubled up.

I had to go to the plats and pull them up and make sizes readable. Then I went to the aerials and pulled all those up. And then I had to overlay each house on the plat to see if the numbers that they were asking for were even close to reality, because the last thing we needed would be for them to come back in here again because they missed a few lots.

It was difficult to do, but it seemed to coincide what they're asking for. I think though in cases like this when

that may occur again in the future, it would be better if we had the applicant supply that information on an overlay so we know exactly why they are trying to justify the numbers they're asking for.

MS. GUNDLACH: Okay, we can do that.

CHAIRMAN STRAIN: Just a suggestion to --

MS. GUNDLACH: Thank you.

CHAIRMAN STRAIN: Okay, anybody else?

(No response.)

CHAIRMAN STRAIN: Do we have any members of the public that wish to speak, Ray, registered?

MR. BELLOWS: Yes, we have one speaker. Nicole Ryan.

CHAIRMAN STRAIN: I wish to make note, Nicole was at the arbitration hearing on Saturday, and I appreciate your very careful and concise articulation of the issues on that day. You did a good job.

MS. RYAN: Thank you, I appreciated being able to participate.

Thank you. For the record, Nicole Ryan, here on behalf The Conservancy of Southwest Florida.

And I too wanted to bring up the issue of how do we make sure when we have settlement agreements such as the Lely Settlement, Deltona Settlement, that the signatory parties that need to review and sign off don't hear about the petition when they read the Planning Commission agenda. So I know, I've discussed this with Nancy and Bruce, and I think everyone in this room is going to certainly make it a better effort on that.

The question is, when you have different representatives, different staff, how do we trigger that. So I'll certainly be working with staff to maybe find some mechanism that will correct that in the future.

I did want to state for the record that The Conservancy has signed off on this PUD amendment. We too were a little frustrated at where will the units go, will 106 units be sufficient. And so this map may help to visualize it a little bit better.

The kind of pink lots, the salmon color lots are the built lots where there is the single-family homes. There are the yellow lots, which are vacant, there are 15 lots there. And there are six parcels where there is a single-family residence, but there is the allowance for two residences. So when you ask where will these 15 units be moved into, they will be essentially moved into some of these yellow vacant lots, and perhaps some of these lots with the crosshatched markings where there's one residence but there's the ability for two if something would happen and that house would come down. So this may help you visualize exactly what is being requested today.

And just for the record, our approval does come with three items that we believe are valid and accurate. The first is that the amendment will not result in any additional impact to open space or preserve areas within the Lely Barefoot Beach PUD.

Second, the amendment will not result in additional encroachment to natural resources beyond what is already allowed through the PUD and the Barefoot Beach settlement.

And third, as the amendment is relocating density already contained within the PUD, there will be no increase in the overall number of units within the development as a result of this amendment.

And these facts being true and accurate, we do approve this amendment. Thank you.

CHAIRMAN STRAIN: Thank you very much, Nicole.

Does anybody else -- oh, Ms. Caron?

COMMISSIONER CARON: I think we should let The Conservancy do our mapping here. At least we can read this one and count.

MS. RYAN: We have some great staff that does a lot of wonderful things with maps. I can't take credit for it, but they make me look good up here, so I very much appreciate their efforts.

And I also made a copy of this for the record.

CHAIRMAN STRAIN: Okay, anybody else have any questions?

COMMISSIONER SCHIFFER: Just a comment, I wish that was in our initial package, that would have saved me some head scratching.

CHAIRMAN STRAIN: That's why I said to Nancy in the beginning, I actually did that, and then I found out Nicole did it. And we're pretty close. We both came to the same conclusion, so it all worked out well. But it does help to have that stuff in the future.

Another comment to staff. We received a copy of the PUD in our packet. But when there's a superseding amendment to the PUD, it's handy to have those too instead of having to dig them up. Then we -- everybody may

have seen this earlier.

Go ahead, Ms. Caron?

COMMISSIONER CARON: I was just going to make a motion to approve with the stipulations from The Conservancy. And I don't believe there --

CHAIRMAN STRAIN: I don't remember if there were any of staff.

COMMISSIONER CARON: -- are any stipulations from staff.

No, just the three stipulations from The Conservancy. So I'll make a motion to approve --

COMMISSIONER SCHIFFER: I'll second.

COMMISSIONER CARON: -- Petition BDA-PL2009-AR-742.

CHAIRMAN STRAIN: Is there a second?

COMMISSIONER MURRAY: (Indicating.)

CHAIRMAN STRAIN: Mr. Murray made the second.

By the way, Bruce, do you have any objections to the stipulations from The Conservancy?

MR. ANDERSON: No, I do not, but I do want to make clear, when we say open space, these vacant lots are open space and obviously they're going to be. They're not included within that.

CHAIRMAN STRAIN: Understand.

COMMISSIONER SCHIFFER: Mark, I have a question on that.

CHAIRMAN STRAIN: Go ahead.

COMMISSIONER SCHIFFER: Is there anything in the PUD that would allow to have happen what the stipulations are preventing?

CHAIRMAN STRAIN: Can you read the stipulations, someone, back to us carefully? And we'll make sure that we don't have any issues with them that would trip us up in the future. It would be good for the record to have it read again anyway.

MS. GUNDLACH: The stipulations are: Number one, the amendment will not result in any additional impact to open space or preserve areas within the Lely Barefoot Beach PUD.

Number two: The amendment will not result in additional encroachment to natural resources beyond what is already allowed per the PUD and settlement.

And number three: As the amendment is reallocating density already contained within the PUD, there will be no increase in the overall number of units within the development as a result of this amendment.

CHAIRMAN STRAIN: The only one I think we may want to clarify is the first one in a sense that the open space doesn't apply to the buildable areas of the lots in question.

COMMISSIONER CARON: I think you can say required open space.

COMMISSIONER SCHIFFER: But again, there's nothing in the PUD that would allow those conditions. First of all, the last one is a statement, not even a condition.

The -- I mean, is there anything that moving this density would allow those to be violated? Is there any reason there's a concern?

CHAIRMAN STRAIN: No, I don't think there is, but Nicole?

MS. RYAN: I don't believe so. But I think echoing what Commissioner Strain mentioned about unless we have it stated and restated and restated, you just never know how someone may reinterpret it in the future. So yes, we believe that what they're requesting is consistent with this. We just wanted to make sure that that was again stated on the record.

And I absolutely agree, we weren't intending that those buildable lots be considered as open space. We consider the open space to be the park and recreation areas.

COMMISSIONER SCHIFFER: And my concern is the predictable results of something -- Bruce is right, theoretically some -- we're all gone, it's 20 years and some guy says hey, you can't built build it, you're covering open space. And if we don't need them, I don't think they should be put in there, that's just my comment.

CHAIRMAN STRAIN: Ms. Caron?

COMMISSIONER CARON: Well, A, I think we can easily take care of that and reference required open space and preserves, so that takes care of that.

And secondly, as we just found out here today, if we don't carry these things forward, then they're lost. I mean, we have somebody who's supposed to be reviewing this. I mean, that should be a red flag up in front of

everybody. And somehow that now twice for us has gone by the board.

So I think carrying these things through is a good thing. It doesn't do any harm, we've added the caveat that it's required open space. Everybody knows the intent is not to impede buildable lots.

CHAIRMAN STRAIN: Well, Lely Barefoot Beach has been a difficult project for quite some time because of its age. The map that is the site plan is so weathered in the recorded documents, you can't make heads or tails of what's going on. I have in the past when we've brought this up, whether it's been a coastal construction setback line issue or an amendment to the PUD, I create a binder where I try to keep the Lely stuff together so I can pull it up right away. It's as thick as this, just with their ordinances.

So I think that any refresher as to some of the issues isn't bad in this case, especially with the lack of detail that we can pull up from record. So I mean, I don't see where it hurts this time. I generally -- Brad, I think you're 100 percent right, we try to hone down on our documents so we're not repetitive. But in this case it might help because of the age of the project.

So with that in mind, I would support the motion with the change, slight change to refer to required open space, if the motion maker and second accept those.

Mr. Murray?

COMMISSIONER MURRAY: (Indicates.)

CHAIRMAN STRAIN: I forgot who the other --

COMMISSIONER CARON: I made the second.

CHAIRMAN STRAIN: Ms. Caron, yeah, I know you accept your own language.

Okay, any further discussion?

(No response.)

CHAIRMAN STRAIN: All those in favor, signify by saying aye.

COMMISSIONER SCHIFFER: Aye.

COMMISSIONER AHERN: Aye.

COMMISSIONER MURRAY: Aye.

COMMISSIONER KLEIN: Aye.

COMMISSIONER HOMIAK: Aye.

COMMISSIONER CARON: Aye.

CHAIRMAN STRAIN: Aye.

Anybody opposed?

(No response.)

CHAIRMAN STRAIN: Motion carries again 7-0.

MS. GUNDLACH: Thank you.

CHAIRMAN STRAIN: Thank you, Nancy, appreciate it.

MR. ANDERSON: Thank you.

CHAIRMAN STRAIN: Bruce, good to see you again. You're rare around here.

***Okay, next item up is the -- where's Tim Hancock? Oh, Fred, you're coming in. Tim didn't even bother showing up today, okay.

Okay, the next item up is PUDZ-2007-AR-11381, the Marsilea Villas, LLC. And it's next to the Royal Palm International Academy off of Livingston Road.

All those wishing to testify on behalf of this item, please rise to be sworn in by the court reporter.

(Speakers were duly sworn.)

CHAIRMAN STRAIN: Disclosure on the part of Planning Commission?

(No response.)

CHAIRMAN STRAIN: I had a meeting with Tim Hancock and Fred Hood over -- and most of the issues centered around an easement that had not yet been identified in regards to its language. They have since provided the easement and resolved the issue, thankfully, and you'll hear more about that during the hearing.

Fred, it's all yours.

MR. HOOD: Good morning, Mr. Chairman and Commissioners. My name is Frederick Hood and I'm with Davidson Engineering representing the applicant, the Henning Group for the Marsilea Villas PUD rezoning.

With me today is Bob DiBacco, he's the project manager on this project with the Henning Group.

The application before you is a request to rezone a 10.25-acre agricultural zoned property to a residential planned unit development known as Marsilea Villas.

The proposed RPUD will allow the construction of a residential development permitting no more than 27 single-family homes. The resulting density of 2.63 units per acre is approximately 66 percent of the base four units per acre permitted in the urban residential subdistrict for the Growth Management Plan.

The Marsilea Villas property is located approximately a half a mile from -- west of Livingston Road. It will be accessed by -- on this aerial you can see we have a proposed and it's actually getting under construction now, proposed access road extension of Entrada Avenue. That spans at approximately half a mile, it's 2,900 feet.

Once the extension road is complete, it will service both Marsilea Villas and the Imperial Golf Estates single-family residential development situated to the immediate south of our property.

The Imperial Golf Estates development is zoned RSF-3. The property to the west, north and east is owned by the Royal Palm International Academy, and it's currently vacant but zoned as Royal Palm International Academy PUD.

As briefly mentioned earlier, the Marsilea Villas property is located within the urban residential subdistrict. This future land use designation contemplated in the Growth Management Plan provides for higher densities in areas with fewer natural resource constraints and where existing and planned public facilities are concentrated.

The base residential density in the subdistrict is four units per acre.

I pointed out earlier that the applicant is only seeking to construct a maximum of 27 single-family homes, which is a density of 2.63 units per acre. I mention this because the potential yield for the proposed development could be higher with a different unit type, but our client has decided to maximize quality of the proposed development by eliminating the unit type to single-family units with traditional front and back yards for home-buying families.

This unit limitation was also designed to promote and continue the character of the existing neighborhood's present and close proximity to this project.

I'll switch over to the MPP.

This rezone began with the idea of creating a small gated residential community that would be compatible with its neighboring properties and their existing and proposed uses. The neighboring property that hugs the Marsilea Villas property on three sides is owned by the Royal Palm International Academy.

The property owner for the Royal Palm PUD filed a Site Development Plan some time ago with Collier County for the construction of a school campus with a variety of recreational activity (sic), fields, water management areas and native vegetation/conservation areas.

Currently the property remains vacant, but if in the future it is constructed, the design of the Marsilea Villas PUD has contemplated the necessary and vital pedestrian interconnection to the Royal Palm International Academy through a boardwalk path between the preserve situated on the Marsilea Villas property, as you can see on the right side of your screen, to gain access to and from the future school campus.

Marsilea Villas' next closest neighbor is the Imperial Golf Estates single-family residential development to the south where the property lines meet for these two projects. The proposed homes to be developed within Marsilea Villas will not only be buffered from the homes within Imperial by the required 10-foot Type A landscape buffer on our side of the line, but by an existing park that exists on the Imperial side of the line, ranging from 20 to about 60 feet in width.

Outside of compatibility with the project's neighboring properties and developments, the issue of traffic was also addressed. In the last TIS provided by Davidson Engineering in July of 2009, the addition of the proposed 13 peak hour directional trips from the Marsilea Villas development onto the segment of Livingston Road that stretches from Immokalee Road to Imperial Street would have a maximum impact of .4 percent, producing a very minor impact on that Livingston Road segment.

In conjunction with seeking an environmental resource permit from the South Florida Water Management District, we have worked very closely with environmental review staff to provide the necessary native preservation requirements on site, in addition to the 15 percent requirement of native communities on-site, which comes out to be about three-quarters of an acre.

An additional 1.14 acres have been set aside, totaling 1.89 acres of preserve on the property.

.66 acres of this preserve area in that section is, again, to the right of your drawing at the top. It is the crosshatched and not stippled hatching. That area, we've worked with staff to actually clear all exotics and replant all

three strata of what's required in the LDC. This is also defined a little bit better within the EIS that staff was provided.

The remaining 1.23 acres will be preserved after being cleared of exotics, and both sections of the proposed preserve area will be monitored per the EIS and Land Development Code standards.

Lastly, one concern that may have come across in reviewing your packet, and Commissioner Strain mentioned this earlier, was the issue of utility access for the project. Through two declaration of easement documents, our client has the ability to run utilities into the Entrada Avenue extension right-of-way from Livingston Road to our project. Other options through working with adjacent landowners may be available and will be investigated further as a part of the platting process.

With that, I'll be happy to answer any questions you may have.

CHAIRMAN STRAIN: Okay, thank you.

Questions of the Planning Commission?

Mr. Murray?

COMMISSIONER MURRAY: I have only one. This is two stories and you have it -- from a zoned height to an actual height you have 12 feet. From 35 to 47.

MR. HOOD: Should be -- let me just check and make sure that's not a mistake on our part.

COMMISSIONER MURRAY: I'm looking at Exhibit B, development standards.

MR. HOOD: Yeah, actually, I think that is a mistake. We meant to have it about seven feet above that. So it should be 42 feet.

COMMISSIONER MURRAY: Thank you. That's a bit better.

Okay, that was my question, thank you.

CHAIRMAN STRAIN: Anybody else have any questions?

COMMISSIONER SCHIFFER: I do, Mark.

CHAIRMAN STRAIN: Mr. Schiffer?

COMMISSIONER SCHIFFER: This sidewalk deviation, you want to run it down one side of the cul-de-sac. But if you look at the entrance, you're coming in on the opposite side of that, thus requiring everybody to cross over it. So why did you choose that side? I think I see why you chose the sidewalk at the entrance where it is, just because it would require moving it over I think if you didn't.

MR. HOOD: Right.

COMMISSIONER SCHIFFER: Why did you choose that side of the cul-de-sac? And could you move it to the other side?

MR. HOOD: I think we could move it to the other side. I'd like to speak with my client before we decide to completely just go over there.

I think the reason was -- well, on the east side of it, we put it on that side because it was just a better connection to get to the lake to go around with that deviation, that path that's going to be within the lake easement. So that was the reason there.

As far as on the east side, why we didn't put one on the west side, the only thing I can think of would be, just looking at it right now, it's kind of small, would just be space limitations. It's pretty tight in that corner. And what we were trying to do -- actually, now that I'm looking at it, we were trying to get a sidewalk access to that extension road. And the way that it's clipped at the corner on the east side, we'd have to, you know, get an easement from Royal Palm to drop that sidewalk into --

COMMISSIONER SCHIFFER: I understand why at the entrance where you have it makes a lot of sense. My question really is, though, can't you just -- I'm not sure it's a good idea to have people crossing the street at a corner and stuff like that. So to me I think it would make more sense if you put the single sidewalk around the thing on the opposite side of the road. And I can't see where that would be a problem. You do essentially circle the cul-de-sac.

One quick question. The shape of the cul-de-sac, not having a -- you know, you have like a sharp corner to it. You don't think you're going to survive subdivision with that, do you? I mean, that's -- you've got to have a curve here.

MR. HOOD: Well, to be honest with you, this plan here is very conceptual. We've actually gone through -- we're gearing up for the more detailed engineering review, and we've got other plans that show that a little bit better.

COMMISSIONER SCHIFFER: Yeah I'm sure, because it doesn't corner.

But anyway, my question is could you flip the sidewalk? And then I guess you could answer that.

The second point that I have a concern is the properties to the south -- and you're right, there is a park there. In all probability, will that be a rear lot yard where you have 20 feet? Because I don't like the 10-foot buffer. But if it's going to be your rear property line and the way you subdivide, you'll have 20 feet, which would relieve that concern. You know what I mean?

In other words, when you subdivide these lots, is there any chance that that southern boundary would not be the rear property line? It could be a --

MR. HOOD: I see exactly what you're saying.

COMMISSIONER SCHIFFER: You could eliminate any concern or any problem with the layout if you added to your table that, you know, you would maintain a 20-foot --

MR. HOOD: Width there.

COMMISSIONER SCHIFFER: -- setback at the perimeter of the properties.

MR. HOOD: Bob, would you be okay with that?

CHAIRMAN STRAIN: Well, Fred, I'll tell you what, we'll take -- you can listen to suggestions, and when we go to staff report speakers, you need to confer with your client and then you can come back up and clarify the issues that are outstanding.

MR. HOOD: Sounds good.

COMMISSIONER SCHIFFER: That's it, thank you.

COMMISSIONER MURRAY: I do have another question.

CHAIRMAN STRAIN: Mr. Murray?

Anybody else have any first?

(No response.)

CHAIRMAN STRAIN: Okay, Mr. Murray.

COMMISSIONER MURRAY: All right. I noted that David Weeks on June 18th had written a memorandum and he related to the TCMA the Northwest Transportation Concurrency Management Area. And it relates to Policy 6.3. And there were five options I believe it is of the management methodology. And I didn't note which one you folks had decided to accept. Do you have that attachment fee?

MR. HOOD: Yeah, I'm just flipping to it now.

MR. CASALANGUIDA: Commissioners? For the record, Nick Casalanguida.

And I was not sworn in, so just --

(Speaker was duly sworn.)

MR. CASALANGUIDA: They only apply the TCMA rules if they chose to do a north, south, east, west corridor analysis. If they go link-by-link on concurrency, they don't have to meet those TCMA guidelines. Where Livingston has enough capacity, they wouldn't be required --

MS. MURRAY: I noted there was a lot of capacity.

MR. CASALANGUIDA: Right.

COMMISSIONER MURRAY: I realize that, 1,200 and some odd.

MR. CASALANGUIDA: Sure. So whenever you're on a link that's failing and you're taking advantage of the network, then you have to use those -- you have pick off that list.

COMMISSIONER MURRAY: So this is moot.

MR. CASALANGUIDA: This is moot.

COMMISSIONER MURRAY: Okay, thank you.

MR. CASALANGUIDA: You're welcome.

COMMISSIONER MURRAY: You got off the hook.

CHAIRMAN STRAIN: Are there any other questions of the applicant?

(No response.)

CHAIRMAN STRAIN: Fred, I've just got one I want to kind of get my hands around and that's the roadway you're going to be using to access your project.

Does your project intend to develop prior to the finalized connection to Livingston Road?

MR. HOOD: No.

CHAIRMAN STRAIN: Okay. So that connection to Livingston Road is the connection you're relying

upon?

MR. HOOD: Correct.

CHAIRMAN STRAIN: I noticed that you have an access to the Imperial Lakes Golf Estates to the south. And I don't know what the responsibilities are to your development versus the maintenance and traffic flows within the Imperial Lakes project. Has that issue come up at all in your discussions with the neighbors at all?

MR. HOOD: On the question about maintenance, I'm assuming you're talking about maintenance for the entire -- or just that section?

CHAIRMAN STRAIN: I notice the county doesn't take on the maintenance of those areas --

MR. HOOD: Right.

CHAIRMAN STRAIN: -- so I'm just wondering how that's being done, especially if you're causing them to have more maintenance problems. Do you guys have any agreements, was any required?

MR. HOOD: It's actually all a part of those access easements that I was referencing earlier. There's -- I think they're about six pages long. And there's statements in there about maintenance, as well as access and utilities. So it's split up between every person that has easement -- access to this easement from Livingston all the way down to Imperial.

But for this specific section, I'm not absolutely sure what the agreement is. I could try and get that information for you, if you'd like it.

CHAIRMAN STRAIN: I just want to -- and I'll probably ask Mike Greene when we get into the staff discussion where they -- you know, what research they may have done to look at the impacts on the adjoining road systems. Even if the county didn't maintain them, what obligations were there to make sure they are maintained.

Okay, anybody else before we go to county staff?

(No response.)

CHAIRMAN STRAIN: Thank you.

Nancy? Boy, you're the star here today. You get them all.

MS. GUNDLACH: They just seem to come in bunches.

Good morning, Commissioners. I'm Nancy Gundlach, Principal Planner with the Department of Land Development Review Services.

And staff is recommending approval of the Marsilea residential PUD. And we do not have any stipulations for approval. It would be my pleasure to answer any questions you might have today.

CHAIRMAN STRAIN: Okay, does anybody have any questions of Nancy?

COMMISSIONER SCHIFFER: I do.

CHAIRMAN STRAIN: Go ahead, Brad.

COMMISSIONER SCHIFFER: Nancy, do you have any concerns if the sidewalk was moved to the other side of the cul-de-sac?

MS. GUNDLACH: I do not have any concerns.

COMMISSIONER SCHIFFER: And do you have any concerns if we put a requirement to keep the setback 20 feet from the perimeter, which is essentially the south property line?

MS. GUNDLACH: I do not have concerns with that.

Let's just back up to the sidewalk. Perhaps we should ask transportation if they have any concerns with that, transportation staff.

CHAIRMAN STRAIN: Okay, let's finish with you, because Mike's going to be here for a couple other questions.

MS. GUNDLACH: Okay.

COMMISSIONER SCHIFFER: I'm done, thank you.

CHAIRMAN STRAIN: Anybody else have any questions of Nancy?

(No response.)

CHAIRMAN STRAIN: I've got one, Nancy. It's in your staff report on Page 15. It's under Environmental Advisory Council recommendations, Item No. 1, third line down. And I want to know from your department what it means.

MS. GUNDLACH: Okay.

CHAIRMAN STRAIN: It talks about exotic vegetation removal and it says: If revegetation is not occurring

naturally -- this is after they removed exotics and possibly caused problems with native vegetation -- then additional revegetation measures may be required.

Do we have standards on what those additional revegetation measures are and how they are triggered by the word may be required?

MS. GUNDLACH: We have environmental staff here today that could assist us with that.

CHAIRMAN STRAIN: Okay, I'd like LDC cites on that. And if not, I'd like to have the County Attorney's opinion on how we enforce that sentence.

MS. GUNDLACH: Okay.

CHAIRMAN STRAIN: And she's right behind you, but I'll make sure I have no others of you before we go to her.

MS. GUNDLACH: Okay.

CHAIRMAN STRAIN: Okay, I don't, thank you.

Environmental then.

Thank you, Nancy.

MS. ARAQUE: Hello. Summer Araque, Environmental Section of the Land Development Services.

And to answer your question, all of that is in the Land Development Code in 3.05.07.

CHAIRMAN STRAIN: So if we have an exotic vegetation removal permit issued and they for some reason destroy a lot of the natural vegetation in the process and it doesn't grow back as it should, we have a provision in our code that's enforceable that they would have then come in and revegetate?

MS. ARAQUE: Yes.

CHAIRMAN STRAIN: Okay. Then why do we have a statement in here that says it may be required if it's in the code? Wouldn't it be required? Or is it optional?

MS. ARAQUE: Yes. But in this case there are quite a few exotics in this preserve, so we wanted to make sure that it was very clear that recreation is most likely going to be required.

So for anybody who purchases this property, a developer, it's very clear to them of what they need to do on this property.

CHAIRMAN STRAIN: Well, but I think the statement isn't clear. I think our code is clear. The way the statement's read, it seems like you are providing an option to the developer so that if revegetation is not occurring naturally then additional vegetation measures may be required. I think our code says they are required. So I'm wondering why we want to give them that latitude, and why would the EAC do that?

MS. ARAQUE: I would probably have to look at the -- I think that's in the PUD document. It specifically states in the --

CHAIRMAN STRAIN: Well, it may have been added to the PUD as a result of this request. I'm just wondering, how does this request clarify the shall provisions of our code? And I just am trying to make sure we don't provide -- I was in a situation on Saturday where I found out we provided loopholes we never knew about. I want to make sure we don't provide anymore.

MS. ARAQUE: Okay. I would want to actually look at the PUD document to see what that says.

CHAIRMAN STRAIN: Nancy has it.

MS. ARAQUE: This is the staff report?

MS. GUNDLACH: This is describing the EAC's recommendation.

MS. ARAQUE: Do you all have the PUD document in front of you?

CHAIRMAN STRAIN: Yes.

MS. ARAQUE: Maybe if you want to pull to that sheet. It's Page 7 of 7, exhibit F, item D.

CHAIRMAN STRAIN: Hang on.

COMMISSIONER CARON: And D does say shall.

MS. ARAQUE: This is what we look at to make sure this is correct.

Do you have any questions about that language?

CHAIRMAN STRAIN: No. But I still have questions about the recommendation from the EAC. The recommendation is not talking about the language that I believe is in the PUD.

Let me read the PUD language. It says: Native plantings in all three stratas shall be required to be added to the preserve areas where there is removal of non-native or nuisance vegetation. A planning plan shall be submitted at

the time of application for plat or SDP immediately following the approval of the rezone.

Great. That's not what the question is I have is. The question I have says: If revegetation is not occurring naturally, then additional revegetation measures may be required.

I think they're two different items. One is saying that whatever you destroy, you've got to revegetate it. But then this one seems to say if it doesn't come back, we might require you to put something else in there. And I'm trying to understand one from the other.

I don't see the -- if we have a code that says if the revegetation does not come back and reoccur that it has to be again implemented, and it's a shall condition, why are we providing a may condition in a stipulation that would more than likely be approved if we went and approved staff stipulations?

MS. ARAQUE: I can't explain what the EAC was saying. Probably their intent here was to replicate exactly what staff was saying. So it's probably -- this stipulation here is probably what we put into the PUD document. I would really have to go back and research the EAC minutes to know specifically if that's exactly what they said.

Nancy, was this taken directly from our staff report?

MS. GUNDLACH: Uh-huh.

CHAIRMAN STRAIN: Let me try to understand. Exhibit F, Item 1.1.D. Do you agree that that's talking about the initial planting revegetation after the initial clearing of exotics?

MS. ARAQUE: Yes.

CHAIRMAN STRAIN: Okay, let's go back to the question I have and the EAC requirement. In here it says: If revegetation is not occurring naturally.

I think they mean after we've attempted to plant it after the exotics have been cleared. Do you believe that to be the case, or not?

MS. ARAQUE: I would have to go back and look at the minutes to see exactly what they said.

CHAIRMAN STRAIN: Okay. But we're being asked today to approve this project with recommendations, and I don't believe the recommendation is needed in regards to the way it's stipulating things as a may when we have a code that you're testified to says shall.

So, you know, I'm not in favor of that stipulation as it stands today. I think it muddies the water and doesn't clarify it. If we have code that's already clear, then let's live with the code. You have statements in there that require the initial revegetation -- the initial vegetation of an area that's been cleared. I'm not sure why we need to mess it up. So that's all I'm trying to get --

MS. ARAQUE: I agree. I think we're all on the same page, actually.

CHAIRMAN STRAIN: Okay. Well --

MS. ARAQUE: I think it's just a matter of the verbiage.

CHAIRMAN STRAIN: -- if we were, then this recommendation wouldn't have been here in the first place. But needless to say, I appreciate your time.

Anybody else have any questions on this issue?

(No response.)

CHAIRMAN STRAIN: And I think next is Mike Greene. Thank you.

MR. GREENE: Michael Greene, Transportation Planning. Good morning.

What questions do you have for me?

CHAIRMAN STRAIN: Brad, I think you had one first.

COMMISSIONER SCHIFFER: Mike, this sidewalk, do you have a concern moving it to the other side?

The reason I'm pushing for that is that right now they have people crossing over at a curve to get to the sidewalk on the other side.

MR. GREENE: Transportation planning and the LDC actually call for sidewalks on both sides of the streets. Unfortunately on-site and private developments, transportation planning does not have purview over these particular items.

We would encourage, if you have to cross the street, though, that it would be further away from an intersection or a curve where there's better visibility of pedestrians.

COMMISSIONER SCHIFFER: Okay. But in my case -- okay, so your comment is you should have it on both sides. What's the reason. But they do want a deviation.

So if you had a choice, do you think it's best on this side? Or do you see any problem with -- I mean, I don't

want them to cross at that intersection, you don't want them to cross at that intersection. So either bring it further down and have them cross further down --

MR. GREENE: With the extremely low volume of traffic that they're going to have on these roadways, I don't see a problem in crossing, as long as it's moved back from the curve in a safer location.

COMMISSIONER SCHIFFER: Okay. The other question here would be the -- they didn't provide a profile of the 50-foot right-of-way, so I'm not sure. But do you think there would be the ability to park on the street?

MR. GREENE: From what I've seen of the construction plans for the roadway, I do not think that there will be enough area to park on the sides of the road.

COMMISSIONER SCHIFFER: So if somebody has a Christmas party, people are parking on the road. Unless they invite two people or something. And if there's multiple Christmas parties, is there a problem with -- I mean, because there will not be the ability to park on the swale or the grass area then.

MR. GREENE: I haven't seen the plat for this neighborhood, so I can't say if they're going to have an area for common guest parking or not, or if it's just strictly single-family homes that will consume all of the area.

COMMISSIONER SCHIFFER: Okay, thanks.

CHAIRMAN STRAIN: Okay, anybody else have any questions of Mike?

(No response.)

CHAIRMAN STRAIN: Mike, the road shows access to the connection to Livingston, which I know the county's not maintaining, but it also provides access through the community of Imperial Lakes.

In your department in reviewing this, are you comfortable with any provisions for maintenance and responsibilities that would occur as a result of the additional traffic through the private communities in that area?

MR. GREENE: As long as this is very clearly stated that the county will never have responsibility for maintenance, we don't have a concern in that this is all private. And it's between the landowners and the developments that have legal access to utilize these easements to decide how they're going to put together their maintenance requirements with each other.

CHAIRMAN STRAIN: Under the transportation section of the PUD it says: At no time shall the county be required to accept maintenance responsibility for the -- and this is singular -- roadway serving this project.

Why don't we pluralize that, because you have two roadways serving the project.

MR. GREENE: That would be acceptable.

CHAIRMAN STRAIN: Okay. That's all I have. Thank you, Mike.

Anybody else have any?

COMMISSIONER CARON: Mike, excuse me, do you get copies, though, of all the agreements that are being signed? Do you keep records of that as well?

MR. GREENE: In some cases we do, in some cases we do not. In this particular case we do not have copies of maintenance agreements between the other developments. But what we had to as part of Marsilea Villas make a requirement of, that they provide evidence that they have legal rights to the access easement, because they were not one of the original parties to it.

COMMISSIONER CARON: Okay. So you do have that.

CHAIRMAN STRAIN: But you just brought up a question that started my conversation with Fred and Tim last week when I asked them, I see your roadway easement was on the plat but I didn't see where you had the right to bring utilities in. Roadway access does not mean utility access. Well, they didn't even have that with them, they had to go find it. And they did since notify me they have that right by another easement.

And you seem to be addressing most of the easements going out to Livingston Road. Do we know that the access easement is in fact viable going through Imperial Lakes? Have you reviewed that?

MR. GREENE: The -- what I've reviewed are the access easements and the easements that were put in place as part of the plats of Delasol and Mirasol, that would only extend from the edge of Imperial out to Livingston Road. Because this access easement to Livingston has been identified as part of a required rear access to Imperial for a very long time.

CHAIRMAN STRAIN: Okay, but obviously they have -- if they wanted to, they could go to the west by going down through Imperial and winding around that project.

MR. GREENE: I'm not sure where the gate is going to end up. I'm under the assumption through the construction permits that Imperial will be re-gating their connection at some point near their property line.

CHAIRMAN STRAIN: Heidi, do you have any -- did you do any research on the easements?

MS. ASHTON-CICKO: Well, I did confirm that the petitioner/property owner does have legal access. Okay, I did confirm that.

CHAIRMAN STRAIN: To?

MS. ASHTON-CICKO: To it's site. There are a number of easements, some are platted, some aren't. And then there's even an older easement that's underneath some of the platted easements.

There is an agreement between Milano, Delasol and Imperial and Marsilea Villas that addresses the Milano Tract R. And there is agreement as to who would be responsible for that.

I don't recall as the platted easements -- I believe they're dedicated to the public. I don't recall in the plats whether or not they specified the maintenance responsibility. Most likely it did.

And then there is this segment that goes across the Imperial Golf Coast (sic) property, which I don't believe is probably addressed.

CHAIRMAN STRAIN: You know, from -- if this project had a straight run down that 60-foot easement going out to Livingston, it wouldn't have as many questions from my perspective. But because it connects to Imperial Golf Estates and they have an equal opportunity then to go either direction, I'm more concerned that we're not putting them into a situation where they could have a problem with Imperial Golf down the road, especially if they changed -- if they become gated to a point where they decide they don't want these people to use that road. Just what kind of rights are there? I was assuming that may have been looked at before today's meeting, but it's more of a problem for the landowner in Marsilea than anybody else.

COMMISSIONER CARON: I know that Imperial Golf Estates and Marsilea have been working very cooperatively together on working out all the issues for easements, both for the road itself and for utilities and everything else.

This has been a very long process for these people to get their back gate here, which is a genuine safety issue.

So I know there's been a lot of cooperation. I'm a little surprised we didn't see some of those agreements. But again, they are also private agreements, so I guess the county's really out of it.

CHAIRMAN STRAIN: Go ahead, Heidi.

MS. ASHTON-CICKO: I believe that you could put as a condition that they'll pay their fair share towards the maintenance of the access road to Livingston.

CHAIRMAN STRAIN: Well, I mean, I think if those agreements are already in place -- again, I don't want to muddy up the water. I just want a confirmation that the issue had been looked into and the agreements that are needed are there so that the county's not caught in a trap down below at some time in the future. So that's all I'm trying to realize here.

And if you're from a legal perspective satisfied and if transportation is satisfied at this point, I'll go forward with that.

Anybody else have any questions of transportation or anybody?

(No response.)

CHAIRMAN STRAIN: Are there any public speakers, Ray?

MR. BELLOWS: No public speakers for this item.

CHAIRMAN STRAIN: Fred, would you like to come up and address the issues that were outstanding that you wanted to confer with your client on?

MR. HOOD: Yes.

Okay. We have three issues. The first one, Mr. Murray was asking about the 47 to 42 feet high. See if we can split the difference and go to 45? We just need to make sure that the units that they're going to design to put in here are going to be, you know, high enough.

CHAIRMAN STRAIN: I don't even know if Mr. Murray's objective was to get you to lower anything in the first place other than try to understand what you were asking.

Mr. Murray stepped out. When he gets back, we'll --

MR. HOOD: Okay, I'll ask that question when he comes back.

CHAIRMAN STRAIN: Personally, I didn't have a problem with your 47. It's actual height, which means chimneys or other things, and that's not abnormal to be 12 feet above your regular height.

MR. HOOD: And if we're okay with that, you know, we'd be better off leaving it at the 47. I'm just -- I

wanted to make sure that he didn't have an objection to it.

Our second issue was Mr. Schiffer brought up about the sidewalk on the opposite side of where the longer sidewalk is on the east side -- or on the west side, rather than it being on the east side. I'm sorry.

The issue with that sidewalk, I kind of eluded to before, we've got kind of a corner issue with pulling it onto the other side. But if we were to pull -- it's a possibility that we could pull the sidewalk that is on the north side of the right-of-way to the south side and just wrap it around the other way so that it's consistent and we won't have that issue. I think that may address your issue.

But we just want to be careful with this, because looking at the more engineered drawings, our lot depths for the units that we -- for front and rear yard, it's very, very tight on that back end.

And that kind of leads to the third question about the additional 20 feet from that vacated right-of-way on the south side of the property line. We had actually planned on once that was vacated using that area for that lot depth.

CHAIRMAN STRAIN: Go ahead, Brad.

COMMISSIONER SCHIFFER: You have a rear setback requirement of 20 feet.

MR. HOOD: Correct.

COMMISSIONER SCHIFFER: And that would probably be the rear property line. So, I mean, I'm not asking you to double up on that. I'm just saying is that if for some reason that wasn't a rear setback, it could be maybe a side or something funky the way you lay it out. I wouldn't want units 10 feet off the property.

MR. HOOD: No, no, that's not the intention.

COMMISSIONER SCHIFFER: So, you know, the 20 feet I'm looking for is from the --

MR. HOOD: Property line.

COMMISSIONER SCHIFFER: -- property line of the perimeter of the site.

MR. HOOD: Correct.

COMMISSIONER SCHIFFER: Which there's nothing in your documents I don't think that would affect. So the unit won't go back.

I'm not sure of your description of the -- where the sidewalk would go, though. So in other words, the sidewalk's within the right-of-way.

MR. HOOD: Right.

COMMISSIONER SCHIFFER: So if it's on the south and west side of a cul-de-sac, in other words, it comes along the south and goes up the west and then goes around the cul-de-sac, that would still put it where you have the connection to the lake, or where do you intend to have that connection to the lake?

MR. HOOD: Connection to the lake is going to be within the lake maintenance easement. So it will link up on either --

COMMISSIONER SCHIFFER: Yeah, it doesn't matter.

So in other words, you're going to go around the cul-de-sac anyway.

MR. HOOD: Um-hum.

COMMISSIONER SCHIFFER: So I'm not sure what you described as your alternate to that.

MR. HOOD: Basically flipping where you see the sidewalk on the north side of the right-of-way to the south side of the right-of-way, to just go around the opposite direction.

COMMISSIONER SCHIFFER: Okay.

MR. HOOD: So that we don't have the break.

COMMISSIONER SCHIFFER: So continue where you come in on the sidewalk --

MR. HOOD: Correct.

COMMISSIONER SCHIFFER: -- and never have to cross the street.

MR. HOOD: Correct.

COMMISSIONER SCHIFFER: Yeah, that's what I was looking for.

MR. HOOD: Okay.

CHAIRMAN STRAIN: No.

COMMISSIONER SCHIFFER: And then on the roof -- what?

CHAIRMAN STRAIN: Well, he said on the north side. You also have a sidewalk on the east side of the north-south section. Are you moving that sidewalk too?

MR. HOOD: No, no, we're moving the entire sidewalk that is the longer loopy one to the south side of the

right-of-way, if you're looking at the diagram like this.

CHAIRMAN STRAIN: The south side and the west side then?

MR. HOOD: Correct.

CHAIRMAN STRAIN: Okay. So the sidewalk's going to go on the opposite side of the street.

MR. HOOD: Exactly. Yes. I guess I could have said that, couldn't I?

CHAIRMAN STRAIN: Wow. Okay, Brad?

COMMISSIONER SCHIFFER: And then the other point is that I'm also a fan of leaving the actual height the way it is. The only thing you punish by lowering it is the slope of the roof.

MR. HOOD: Okay.

CHAIRMAN STRAIN: Okay. And Mr. Murray, while you were gone the discussion came up about the height. Fred asked for a compromise. And since you weren't here --

COMMISSIONER MURRAY: I heard --

CHAIRMAN STRAIN: -- we weren't sure where you wanted to stay on it, so --

COMMISSIONER MURRAY: I heard all of the comments, so -- there's a speaker in the room in there. I have no objections if that's a fairly common practice. It seemed a lot of distance beyond the zoned height, but that's fine.

COMMISSIONER SCHIFFER: I do have one more.

CHAIRMAN STRAIN: Mr. Schiffer?

COMMISSIONER SCHIFFER: Fred, what about my concern for parking on the street way? In other words, you don't have a road section here, so you're asking for the deviation without that. Which is not common.

Where would people park? In that party situation, where are the cars going to be? Is there going to be room for them to be at least half off the road, or what's going to happen there?

Because the reason the 60-foot's a good right-of-way width is it does give you grass on both sides for overflow parking.

MR. HOOD: I don't have an answer for you right now, but I can look at that and get you some information on how we would address that, even if it's going to be -- you know, the driveways will be longer or wider. I'm just not sure of the actual footprint right now.

Maybe -- I haven't looked at the engineering drawings yet so I can't, you know, tell you exactly where those cars would be in a party situation. But that's something I can get back to you, if you really wanted to look at it.

MR. CASALANGUIDA: Commissioner, we typically worry about that if it's a through street. A local street like that that's at a dead end we're not as concerned if they have a special event.

COMMISSIONER SCHIFFER: I mean, these guys are way off.

MR. CASALANGUIDA: Right.

COMMISSIONER SCHIFFER: I mean, to get to them is difficult enough. I mean, so it's -- okay.

So if one lane of the street was taken up with parking, people are still getting around, so --

MR. CASALANGUIDA: It would be a nuisance to the neighborhood but not for through public traffic, so it's, you know, one of those issues that --

COMMISSIONER SCHIFFER: Okay, I'll drop. I fold, thanks.

CHAIRMAN STRAIN: Okay. Anybody have anything else?

(No response.)

CHAIRMAN STRAIN: Fred, do you want to rebut any of the comments?

MR. HOOD: I don't want to rebut anything. I just want to make sure that we're going to look at the sidewalk issue. If --

CHAIRMAN STRAIN: Let me -- I'll read you what I believe are the stipulations, you can tell me if you agree or not.

MR. HOOD: Okay.

CHAIRMAN STRAIN: You're going to move the sidewalk to the opposite side of the street; that's a simple way of saying it.

You're going to have a minimum 20-foot setback to any of the property lines that are on the external boundary of the project with any structure.

We're going to remove the EAC stipulation as staff indicated to the extent it was needed, it's incorporated

already in the PUD.

We're going to pluralize the reference to roads on the transportation section of the document.

Any of those cause you any heartburn?

MR. HOOD: No.

CHAIRMAN STRAIN: Good.

COMMISSIONER CARON: Motion to approve.

CHAIRMAN STRAIN: Well, let me close the public hearing and Ms. Caron made a motion to approve, with the stipulations as read?

COMMISSIONER CARON: As read.

CHAIRMAN STRAIN: Is there a second?

COMMISSIONER MURRAY: (Indicating.)

CHAIRMAN STRAIN: Mr. Murray seconded.

Discussion?

(No response.)

CHAIRMAN STRAIN: All in favor, signify by saying aye.

COMMISSIONER SCHIFFER: Aye.

COMMISSIONER AHERN: Aye.

COMMISSIONER MURRAY: Aye.

COMMISSIONER KLEIN: Aye.

COMMISSIONER HOMIAK: Aye.

COMMISSIONER CARON: Aye.

CHAIRMAN STRAIN: Aye.

Anybody opposed?

(No response.)

CHAIRMAN STRAIN: Motion carries 7-0.

You're done. Thanks, Fred.

MR. HOOD: Thank you.

CHAIRMAN STRAIN: ***Okay, we have an item -- one left on our agenda. I meant to -- I should have noted in the beginning, the staff has a CP-2010-1 amendment for the Vanderbilt Beach Road neighborhood commercial subdistrict that was continued. Doesn't have a continued date, but I'm sure we'll see it in the future.

***And the last item up on our current agenda is CPSP-2010-2. It's the staff petition requesting amendments to the Future Land Use Element and map series in the Bayshore/Gateway Triangle Redevelopment Overlay.

David?

MR. WEEKS: For the record, David Weeks of the Comprehensive Planning Section.

Mr. Chairman, if we could go back to Item 9.C, the request for a continuance. One, I want to clarify -- correct the record that that was not at staff's request, it's at the petitioner's. That's incorrectly stated on the agenda.

Secondly, the date would be January 20th. That's five weeks from today.

CHAIRMAN STRAIN: Okay. Thank you.

MR. WEEKS: And I believe we do need a motion and vote on that, please.

CHAIRMAN STRAIN: Okay, is there a motion to accept the continuance request to January 20th, 2011?

COMMISSIONER SCHIFFER: So moved.

CHAIRMAN STRAIN: Made by Mr. Schiffer.

Seconded by?

COMMISSIONER CARON: Second.

CHAIRMAN STRAIN: Ms. Caron.

All those in favor, signify by saying aye.

COMMISSIONER SCHIFFER: Aye.

COMMISSIONER AHERN: Aye.

COMMISSIONER MURRAY: Aye.

COMMISSIONER KLEIN: Aye.

COMMISSIONER HOMIAK: Aye.

COMMISSIONER CARON: Aye.

CHAIRMAN STRAIN: Aye.

Nobody opposed?

(No response.)

CHAIRMAN STRAIN: Motion carries 7-0.

Thank you.

Okay, David?

MR. WEEKS: Commissioners, this is a county initiated amendment. Most of these amendments are -- or all of these amendments were authorized by the Board of County Commissioners, either I'll say explicitly or in general.

Most of these I would characterize as housecleaning. They're updates to a lot of maps within the Future Land Use Map series, a few text corrections and restructuring and so forth for proper reading and whatnot, but there are a few that certainly staff would acknowledge are of substance.

The First Amendment of note is to Policy 5.1 in the Future Land Use Element. And this is a policy that addresses properties that are zoned consistent by policy. That is, the zoning on the property does not conform to the Future Land Use Map, but nonetheless through some past actions has been deemed to be consistent with the Future Land Use Element, nonetheless, and therefore is allowed to develop per that existing zoning.

And this policy also provides for a rezoning that can occur to the property, so long as the density or intensity of use is not increased. For example, if a property was zoned RMF-12, it was consistent by policy, that property could be rezoned to another residential zoning district of the same or less density, but could not be increased. Similarly, in the case of a commercial rezoning, a rezoning to a lesser or same intensity of use could be allowed.

The specific change that's being requested is to allow for combinations of properties with different zoning districts, and then to allow a redistribution of the use intensity.

The specific sub-paragraph D of Policy 5.1 already provides for residential properties to be aggregated and the density to be redistributed throughout, as opposed to being segregated. If you have one property zoned RMF-6 and another zoned RMF-12, for actual development purposes if they came in as a single project, they would be limited to six units per acre on the first site and 12 on the other; there's no blending ability. But this policy presently would allow for a rezoning to occur to blend that density.

The request here is to allow the same type of thing to occur with nonresidential zoning. It could be a shifting of commercial uses from one location to another, but you cannot increase the use intensity, you cannot exceed the acreage. You've got one acre of commercial today, after the rezoning you still have one acre of commercial of the same or less intensity, but it could be located differently.

It does have to go through a rezoning, so that means it goes through the public hearing process to determine if it's appropriate for that use to be shifted to another location.

CHAIRMAN STRAIN: Let's make sure we have -- if there are any questions on each item you bring up. Anybody have any questions on David's comments on that issue?

Go ahead, Ms. Caron.

COMMISSIONER CARON: Yeah, I just wanted to ask, obviously this has come up somehow. Can you give me an example? I want to make sure that we're not opening a can of worms.

CHAIRMAN STRAIN: It's the same question I was going to ask. Someone decided to --

COMMISSIONER CARON: Because obviously you weren't just sitting around one day going, God, why don't we have blending on commercial?

MR. WEEKS: We do that sometimes.

COMMISSIONER CARON: Yeah, right.

MR. WEEKS: This particular circumstance involves property owned by the Bayshore/Gateway Community Redevelopment Agency down off Bayshore Drive. The CRA owns property and they have a rezone pending right now to create a PUD allowing amongst other things a performing arts theatre is what's proposed.

And the Board of County Commissioners did previously designate that Bayshore/Gateway area as a cultural district. And so that's part of their efforts to fulfill that designation to bring -- help attract that type of development to this area.

The particular properties, and there are several of them that comprise this proposed PUD, have multiple zoning districts, various residential and some commercial.

I'm not sure if the CRA's PUD actually needs this provision, but it certainly brought it to light, the potential for relocation and how it could be beneficial.

COMMISSIONER CARON: Then why aren't we limiting it just to Bayshore/Gateway?

MR. WEEKS: Because I think the provision makes sense to be applicable across the board. If you have properties that have some commercial -- some non-residence zoning and have some residential zoning or maybe two commercial zoning districts, it might make sense to allow for the reallocation. It might result in a better development scheme, a more compatible development.

COMMISSIONER CARON: It might, David, you're right, that could happen. But you haven't actually gone forward and analyzed any other places where this might be applicable, right?

MR. WEEKS: No, no. Because consistent about property maps, there's a lot of properties on there. But that's why I want to emphasize again, it requires a rezoning. It does open the door, but it opens the door to make the request. If it's determined that this is not appropriate, you're not achieving a better compatibility, or it's not a better project, then I believe based upon the zoning criteria in the LDC, the county has the authority to deny that request.

COMMISSIONER CARON: I don't know, I think it would almost be better to let people come forward on a case-by-case basis and let them -- you know, I think we're -- we potentially could be opening a can of worms. And I don't know, because I haven't analyzed where this could happen or where it couldn't happen.

I question changing the FLUE for something that we could easily take care of for Bayshore. I mean, they're a separate entity, they're an overlay to begin with. We could make it quick and simple and easy right there and not effect anybody else in the rest of the county.

MR. WEEKS: We certainly could, if that's the direction.

COMMISSIONER CARON: I don't know how anybody else feels.

CHAIRMAN STRAIN: As soon as you are done, we'll be --

COMMISSIONER CARON: Go ahead.

CHAIRMAN STRAIN: Anybody else have any questions?

Mr. Schiffer?

COMMISSIONER SCHIFFER: I mean, I'm not sure exactly -- Dave, so what that would mean is if you had two acreages with two different densities or commercial zoning that you could move this one to here and that one to there or keeping the same acreage?

MR. WEEKS: It would allow for that. I mentioned the example of the CRA's property, again, just as an example. They have multiple zoning districts. They have some residential and some commercial. So potentially it could literally be a flip-flopping, let's put the commercial from the left, let's put it on the right side and put the residential on the left side.

COMMISSIONER SCHIFFER: Okay. So what you're essentially saying is you can take the pieces out and put them back on the property in the exact same acreage --

MR. WEEKS: That is correct.

COMMISSIONER SCHIFFER: -- any way you want from that point on.

MR. WEEKS: That's correct.

COMMISSIONER SCHIFFER: Okay, good.

CHAIRMAN STRAIN: Anybody else?

Mr. Murray?

COMMISSIONER MURRAY: Yeah, this may not be applicable, but I'm just thinking about Wolf Road. We had a situation one time where one parcel lay this way and the other part -- they wanted to join it. I don't know if you recall that. And there was -- the GMP just simply precluded that. And everybody agreed it seemed logical, and I think this body passed it anyway.

But would that be an example of something of that sort where the parcel owner here required that parcel as well and they wanted to benefit from that? Do you have any recollection of that issue?

MR. WEEKS: I don't. But I would -- the concept sounds the same.

I would remind you again though that this provision would only be applicable to one or more properties that have been deemed consistent by policy. So you could combine two or three or four multiple parcels, but at least one of those has to have been deemed consistent by policy. You could be blending two properties deemed consistent by policy or one property deemed consistent by policy with another one that is simply consistent with the Future Land

Use Map.

But that limitation of at least one property being consistent by policy means that it is limited in its applicability. We can't go to just anywhere on the map and say let's put those two properties together.

MS. MURRAY: That's your safeguard is what you're saying.

MR. WEEKS: It's a limiting factor. I mean, there are still a lot of properties out there on those consistent by policy maps, but it's not all the properties in the urban area. It does limit.

MS. ASHTON-CICKO: Mr. Chair?

CHAIRMAN STRAIN: Yes, ma'am.

MS. ASHTON-CICKO: If the goal is to apply to nonresidential property, what we already have for residential and commercial, then I'd suggest that -- or I'd like the opportunity to work with Mr. Weeks to flesh out the language, because I think it can be more simply stated.

CHAIRMAN STRAIN: I have no problem with that.

David?

MR. WEEKS: No, none.

CHAIRMAN STRAIN: Okay. What is the process, though, after today, if you have to work on something? Is this coming back to us then on -- I mean, it will come back on consent. But is this a -- this is considered a transmittal, right?

MR. WEEKS: Correct.

MS. ASHTON-CICKO: Yeah, I'd ask that we continue this one and hear this particular section with the VBR. You're continuing the VBR five weeks, right? You can continue this, still stay within the advertising period and then everything will be heard by the board at the same time, correct?

MR. WEEKS: That's correct.

CHAIRMAN STRAIN: Okay. But that's one of the options.

I wanted to ask you, the consistent by policy through 5.9 and 5.13, that is a limited number of acreage in mostly the existing urban area of Collier County; is that right? Or does that apply to everywhere now? Those policies are older policies for the zoning reevaluation process, weren't they?

MR. WEEKS: That's correct. And those properties that are identified are probably the 99 percent located within the urban areas. There's a few isolated properties outside.

CHAIRMAN STRAIN: Any of those properties at the area around 951 or Rattlesnake Hammock?

MR. WEEKS: No, no.

CHAIRMAN LEFEBVRE: Because I know there's some issues there with a larger project coming in and potentially maybe they would be looking for density blending of some nature regarding the activity center moving into the fringe areas that were to the east. But I want to make sure we're not opening ourselves up for --

MR. WEEKS: No.

CHAIRMAN STRAIN: -- commitments there.

MR. WEEKS: No, not at all.

CHAIRMAN STRAIN: Okay. So this then is primarily urban area and primarily properties in a limited number based on the zoning reevaluation criteria back years ago.

MR. WEEKS: Correct.

Just to summarize what those properties are, they're properties that were improved; that is, already developed, as defined by that ordinance that implemented the zoning reevaluation program. And a variety of properties that were granted exemptions or certain applications approved through that zoning reevaluation program were based on compatibility or a vesting principal; they were able to retain their zoning. Those properties are the ones that are identified as consistent by policy.

CHAIRMAN STRAIN: You know, it's real hard to track those properties. And occasionally it's missed. It's ironic, there are some pretty good entitlements out there for those property owners. And most of the time they don't know it because of the way it's written in the code.

There is a list of those properties in an ordinance, but they're all done through a legal reference. It's very hard to track them down. I've come across a few of them for people, so --

MR. WEEKS: Unless we've missed some, all of those should be identified on those consistent by policy maps. We made the effort when we first changed the policy in correlation with establishing the maps. The objective

was to make those properties readily identifiable for everybody, certainly including staff, not just the public. Because we need to know when we're applying our Growth Management Plan and zoning regulations what properties are treated differently. And those are in a different category.

CHAIRMAN STRAIN: Okay, if we are done with the questions in this section -- I do think we ought to take a break. We're at a good point. We'll come back and finish up in probably short order. So let's come back at 10 after 10:00. Thank you.

(Recess.)

CHAIRMAN STRAIN: Okay, welcome back from the break, and we were right in the middle with David's presentation on the GMP.

So David, why don't we just move forward. We were on Page 2, I believe.

What I'd like to do, David, is after each topic, if there's a break point, just to see if we have any questions, that might be easier as we go along.

MR. WEEKS: Certainly.

The next proposal is number two on Page 2 of the staff report. And that's to revise the office and infill commercial subdistrict regarding its applicability.

Right now the office and infill subdistrict applies to a property that abuts commercial zoning on one or both sides. But if that adjacent commercial zoning is within an infill subdistrict, it will not qualify -- cause the subject property to qualify.

And the rationale is just like within the office and infill commercial subdistrict itself, there is a no piggyback provision. The idea is that you have an infill property, and if you're allowed to tack on again and again and again, you'll end up with a lengthy strip of commercial, not meeting the intent of infill.

So similarly there's a provision that if an infill subdistrict has partial zoned commercial within it, it would not cause the adjacent property to qualify.

There's at least one circumstance -- actually only one circumstance that I know of that the result I think is nonsensical. There's a piece of property on Pine Ridge Road -- I think I have it to put on the visualizer. The property's on the south side of Pine Ridge Road, just east of Livingston Road. To its east is -- it's highlighted in blue. To the east of it is property zoned commercial that's within an activity center. Based on that, the property would qualify as having customer zoning on one side.

On the other side in part is commercial property, a PUD, but that property is within one of these infill subdistricts. Therefore, this subject property would either be viewed as not complying at all with this criteria of the subdistrict, not being eligible for commercial zoning at all, or would be viewed as abutting commercial on one side only.

And one of the requirements for properties that abut commercial on one side only is that it must transition. Well, in this case you'd be transitioning from commercial zoning on two sides of approximately the same intensity; c-3, C-4 type uses are allowed in those two PUD's.

The result again, I would tell you I believe is nonsensical. You really -- there is no transition. You've got commercial zoning on both sides of you.

And this proposed language would allow for this particular property then to qualify for commercial zoning to be the same as the commercial zoning on both sides.

The subject property there is about 13 and a half acres. It does have -- you can see on the zoning map the ST boundary. And visually looking at it, it does appear to be a lot of wetlands on the property, so the development potential may be limited.

I mention that in particular because this subdistrict has a maximum size limitation of 12 acres, but if any -- a larger property can still qualify, but any acreage in excess of 12 has to be limited to open space type uses. But that's the specific property anyway that this would benefit.

CHAIRMAN STRAIN: Mr. Murray?

COMMISSIONER MURRAY: David, unconfuse me, please.

MR. WEEKS: I'll try.

COMMISSIONER MURRAY: I keep on hearing in my mind here this infill is 10 acres. Is that not applicable because it's an activity center, or am I in error about the infill being 10 acres or less? Or is that residential infill?

MR. WEEKS: Resident -- it does get confusing. Residential infill used to be 10 acres in size. Several years back it got changed to 20 acres.

COMMISSIONER MURRAY: I missed that.

MR. WEEKS: Okay.

For this office in infill for commercial, the size limitation is 12 acres, or I probably should say 12 acres of developable property. Like I was just saying, you could have a property that's larger than 12 acres, but no more than 12 can be developed commercial, the balance would have to be left in open space.

COMMISSIONER MURRAY: That helps me, thank you.

CHAIRMAN STRAIN: Anybody else? Oh, Heidi?

MS. ASHTON-CICKO: I think I can comment to clarify. Because I think I understand what this is attempting to accomplish.

I think with the language without the change, if you're adjacent to office infill or you're abutting office infill, then you don't qualify to take advantage of this. Correct?

MR. WEEKS: That's correct.

MS. ASHTON-CICKO: So what you're changing is you're saying that you don't qualify if the only abutting property that would make you qualify is office infill; is that correct?

MR. WEEKS: That is correct.

MS. ASHTON-CICKO: I think we can also revise that to make it a little more simply stated as well, if --

CHAIRMAN STRAIN: Well, I think what we're going to do today is walk through, give you comments and come back with the final language when we --

MS. ASHTON-CICKO: Okay.

CHAIRMAN STRAIN: So in the end I think all your suggestions will be worked on, the way it's heading.

David, the PUD to the east is a commercial PUD, mostly, right?

MR. WEEKS: Yes.

CHAIRMAN STRAIN: The P for the fire station is a public facility. The PUD to the west is a residential PUD, right?

MR. WEEKS: No, it's a commercial. It's a shopping center.

CHAIRMAN STRAIN: Oh, okay. That's what I was going to -- now, if this property wanted to change the GMP in order to be consistent to what they're trying to do now, they would have to come forward with a GMP amendment, right?

MR. WEEKS: That's correct.

CHAIRMAN STRAIN: So why are we doing that for them? I mean, who's the push behind this, just out of curiosity?

MR. WEEKS: I proposed it because I became aware of the circumstance through discussion with an agent. To my knowledge there is no petition filed for this property, no rezoning. But in the discussion about the applicability, the agent was asking me questions about how would the office and infill commercial subdistrict apply. And in that discussion I realized that in my opinion this is an unintended consequence, so we're trying to fix it.

CHAIRMAN STRAIN: Do you feel it's an unequitable consequence? Or is it equitable left as it is? I mean, we've got to be fair and equal to everybody. And I'm just wondering, are we providing an advantage to some individual because of for whatever reason over what anybody else would have to do to accomplish the same task?

MR. WEEKS: Well, there's no question that it's going to benefit one landowner. I still go back to it's debatable as to whether -- I would take the position that with the language as it presently exists, the property would qualify for commercial zoning. But I would suggest that the plain reading of the language would mean that the subject property would be limited to what the subdistrict refers to as low intensity office and other commercial uses. So I believe it does qualify for commercial zoning, but of a lower intensity.

CHAIRMAN STRAIN: What's wrong with that, on a street that's got a miserable track record for traffic congestion? I mean, I'm just wondering, why are we opening ourselves up for someone to come in with a project that's now going to be able to qualify by the GMP for higher intensities when this area is one of the worst roads in Collier County.

MR. WEEKS: My thought process is simply this: Why require property to develop with lower intensity commercial when it's sandwiched between two properties of high intensity commercial? That is the very type of

circumstance that this subdistrict was intended to accommodate, a property that's relatively small in size, located on a major roadway that is sandwiched between higher intensity uses.

CHAIRMAN STRAIN: And I'm glad it's coming back, because between now and then, I think the uses of the PUD to the east and -- I know what's -- I vaguely remember what's there by memory, but it would be good to see what their flexibilities are and their built-in development standards. So we'll take it up when we come back in January as well.

MR. WEEKS: Okay.

CHAIRMAN STRAIN: Ms. Caron?

COMMISSIONER CARON: Again, as with the last one, you found this one piece of property that it affects. But have you analyzed how many other properties this will affect?

MR. WEEKS: This one I have. There's a -- besides the office and infill commercial subdistrict itself, there are six infill, commercial infill subdistricts within the Future Land Use Element.

And as I looked at those, I only identified two that I believed had -- well, no, there are none, no properties that are similarly situated. There are no properties that have commercial on both sides like this one does. The others are just abutting the infill subdistrict on one side only.

The change to this policy would not affect those properties. This -- I believe from my evaluation, this is the only property that would benefit from this change.

CHAIRMAN STRAIN: And the effective change is to allow a higher intensity commercial?

MR. WEEKS: Correct.

CHAIRMAN STRAIN: Okay. I think that's kind of -- it boils it down to what we need to consider when we come back in January on that one.

MR. WEEKS: Okay.

CHAIRMAN STRAIN: Want to move on to the next one?

MR. WEEKS: The third item, staff is going to withdraw. That's a very minor change, but it's a date change in the Davis Boulevard/County Barn Road mixed use subdistrict. The reason for the withdrawal is the County Commissioners just Tuesday of this week directed staff to make some major amendments to that subdistrict.

Number four, the bottom of Page 2, and number five that follows it are twins, they're just within two different designations. Number four is to the Rural Fringe Mixed Use District sending lands, and number five is to the conservation designation. Both of these have a provision for essential services. And as the language currently reads, it's essential services necessary to serve permitted uses within the respective designation.

But then if you look at the list of those permitted essential services, many of them are not accessory to the uses above. For example, you're allowed to have single-family development in both the sending lands and the conservation, so certainly a private well or septic tank would be viewed as accessory to those.

But utility lines, sewer lines, lift stations, these are not accessory to the types of uses that are permitted in those designations. They're not accessory to typical agricultural development or to conservation uses or to low density residential.

So simply what staff is proposing is restructure the listing. Take those that are not accessory to specific uses in the respective designations and list them separately. So they've been deleted in the case of number four, bottom of Page 2 of the staff report and carrying over to Page 3. The various ones that are not accessory to the permitted uses therein are deleted and then they're relisted below in a separate paragraph.

CHAIRMAN STRAIN: Any questions on four or five from the Planning Commission?

(No response.)

CHAIRMAN STRAIN: David, it wasn't that simply done, from what I can read. You didn't just take the language that was struck and move it into a new paragraph, you added something to it, right?

MR. WEEKS: I added one entry. And again, on Page 3 under new paragraph G, I added water pumping stations and raw water wells.

And the reason for this, number one, I would interpret that those are allowed anyway, but we have had raw water wells approved in a conservation designation. And again, the sending lands and the conservation designation in my mind are twins. I just wanted to put that in there for clarity so every reader could see them.

And the general protocol is if an interpretation is made, the next round of amendments let's put that interpretation into the plan so that it's plain, clear for everyone to see.

CHAIRMAN STRAIN: You want to tell us about the other issue you added? Let's start at the top of Page 3 under G. Essential services as follows: Necessary to serve. And before it always referenced a rural transition water and sewer district; now it's the urban areas.

What urban areas are we serving in the Rural Fringe Mixed Use District and the conservation designation? I'm just curious why that was added.

MR. WEEKS: Yes. The rural transition water and sewer district exists within the rural fringe area, and in some cases between it -- between it and the urban area between the rural fringe area and the Estates. But you may have -- for example, the water lines, you could have the raw water wells out in the rural parts of the county or in the Estates, but the lines that transmit that water into the urban area to treatment plants could potentially in the future run through either the transition -- or rural transition water and sewer district or could run to the urban area. I mean, that's where presently our treatment plants are only located in the urban designated area.

So in the future the potential is there for water lines, as an example, to run through sending lands.

CHAIRMAN STRAIN: And those water lines would be for water theoretically processed in a plant out there that serves the urban area water needs and then pumped back in this direction; is that kind of like --

MR. WEEKS: That's possible. But there's also -- I mean, that's one possibility. Now, I think we all know that there's future plans to develop water and wastewater treatment plants in the Orangetree area. And that simply just changes direction. You could still have the water being pumped from the sending lands and sent to the treatment plant there at Orangetree.

Similarly, there's the potential to have sewer lines and lift stations that are pumping -- that those lines need to run through the sending lands to get to the rural transition area or to the urban area.

CHAIRMAN STRAIN: Okay, just needed to understand the change.

MR. WEEKS: Sure. And you're correct, there are more changes than I noted, thank you.

CHAIRMAN STRAIN: I guess we'll move on to six.

MR. WEEKS: This begins on the bottom of Page 3 of the staff report. A few changes to the Bayshore/Gateway Triangle Redevelopment Overlay.

The first is simply correcting a date.

The second is to add a performing arts center type uses to the subdistrict.

Presently for those portions of the subdistrict that qualify for commercial zoning, it's limited to the C-1, 2 and 3 zoning districts. As I noted during earlier discussion, the County Commission has designated the Bayshore and Gateway Triangle area as a cultural district. And there is an existing PUD that -- excuse me, a pending PUD by the CRA of that area. And one of the uses they are requesting is a performing arts center.

Staff believes it's a reasonable change to make in light of the board's specific designation of the area as a cultural district. It is -- the use being added is a use that falls within the C-4 zoning district, so it is an increase of intensity in that sense. And because it would go through a rezoning process, the appropriateness of that use actually being added to that PUD would be evaluated during that process.

On Page 4, letter C, clarify uses, that uses are allowed is provided by Future Land Use Element policies.

Presently the overlay makes it clear that residential uses and densities can be allowed by Future Land Use Element policies. We discussed Policy 5.1 earlier; that would have some applicability here. But there's no recognition in the overlay that those same Future Land Use Element policies would be applicable for non-residential uses. And there is commercial zoning within the Bayshore/Gateway areas that are identified on those consistent by policy maps.

I view it as nothing more than a cleanup. The policies already apply to those policies, but the overlays should have that cross-reference to the policies that everybody can read, clearly understand, yes, those policies apply here, they would allow for the potential for a zoning change for those commercial properties.

Paragraph D on the staff report is to delete a development standard. This overlay is unique in the Growth Management Plan in that it specifies the number of feet allowed per story. We do have other provisions in the Future Land Use Element and the Golden Gate Master Plan that impose a height limitation within individual subdistricts, but that typically is a fixed number or it is a number of stories. In this overlay there's both number of stories for certain uses and the overlay specifies how many feet can be within a story.

Staff recommends that be deleted. Leave that determination to the zoning process. And the LDC does contain two zoning overlays for this Future Land Use Element overlay area, both of which have height limitations

based on stories and maximum number of feet.

And the staff perspective is it's appropriate for that to be implemented through the zoning action. If a particular project wants to exceed the height limits provided in the LDC, then they have two avenues to pursue: One is a variance application or, if it's a PUD, they can request a deviation. That's from the LDC requirement.

The total number of stories is still a limitation in this Future Land Use Element overlay, but we simply would not longer be dictating the height of those stories.

And again, the CRA's rezoning brought this to light. Because there is a proposed performing arts theatre in there. And a theatre typically, as you may know, it's usually a large building and it's frequently one story, and it's far more than 14 feet. This would allow for that type of use to be there if the board ultimately decides that a deviation or variance is appropriate to allow that use.

CHAIRMAN STRAIN: Okay, any questions on the Bayshore section?

Mr. Schiffer?

COMMISSIONER SCHIFFER: And number one, I think the intent, you have theatrical producers except motion picture. What do you really mean by that? I mean, an office for the producer or actual productions, or -- what is that intending? And is that where you're bringing the actual center in? Because --

MR. WEEKS: What I did was I went to the SIC Code and grabbed the one that allows the performing arts theatre. I think the point you're raising is that it allows things beyond just a theatre. I did not propose something so narrow as to say the theatre only, but instead the SIC Code that allows other I'll say related used.

COMMISSIONER SCHIFFER: Okay. But you think -- okay, so theatrical producers means the building. Because the producer is an individual, normally, or individuals. So you're comfortable that that means the building.

And then the exception for motion pictures. You wouldn't want to exempt the -- somebody filming the theatrical production, so could you add the word except motion picture studios? Because your intent is not to have a studio for motion pictures, correct? Or is your intent to not allow people to film the theatrical productions?

MR. WEEKS: Let me find that exact language.

COMMISSIONER SCHIFFER: It that also might limit, you know, the showing of movies.

MR. WEEKS: I didn't bring that with me.

My recollection is that LDC provision, though it uses the term producers, as you said, it's not referring to a person, it's referring to a business or an operation.

The except motion picture precludes the ability to have, as I remember, a movie theatre. You could not have a Hollywood 20 located here. But you could have a stage production; you could have bands, dancing, whatnot.

COMMISSIONER SCHIFFER: And could that stage have a screen and show movies then?

COMMISSIONER MURRAY: I hope so.

COMMISSIONER SCHIFFER: Could that stage also film a production? I mean, you don't want to limit that, that stuff.

I mean, I think you could say, you know, that the movie houses are out and a movie studio is out. But I don't think you want to limit your --

CHAIRMAN STRAIN: Why would we want to even eliminate those? I mean, what's wrong with those?

COMMISSIONER SCHIFFER: Nothing. That's what I'm saying, keep them.

CHAIRMAN STRAIN: I mean, David, you might want to just leave the exceptions to the LDC implementation language and change the word producers to theatrical facilities. And then any exceptions to that, why don't we do what we normally do and put those in the standards in the LDC?

MR. WEEKS: We could do that.

What I was trying to do here was specifically capture the SIC Code listing for clarity. You put theatrical facilities, that leaves it up to interpretation. Maybe that's not a bad thing, but I was trying to keep it very clear so at the time of implementation, when somebody wants to come in and file a rezoning petition, they can look to the plan, they can see specific language, they can look to the LDC and the SIC Code and say oh, that matches exactly, that's what that means. As opposed to putting in a more vague term.

CHAIRMAN STRAIN: But this is the GMP.

MR. WEEKS: Yes.

CHAIRMAN STRAIN: And you always advised us to keep the GMP less detailed and let the detail come out through the implementation of the LDC. And wouldn't we -- aren't we kind of getting into very specific uses here,

when actually we might -- and I'm not -- East Naples is starting to really come onto its own. They may have an advantage to have a nice movie house there. I don't know. I'm just -- didn't know if that would better come up at the LDC level than now.

MR. WEEKS: Commissioner, I would agree, that generally that is a staff position, let's keep things more general and let the LDC take care of more of the details.

But as far as uses go, one thing we do typically do, and you'll see it in the existing overlay, is it makes reference to the C-1, 2 and 3 zoning districts. So that provides that direct link to the LDC, it eliminates any question. If it's not in the C-1 through C-3 zoning districts, it's not allowed, unless it's been interpreted to be allowed within those zoning districts.

And in this case since we're talking about a use, use the same type of logic, let's make it very clear, put that direct link back to the LDC for uses.

But I'd be glad to try to be prepared at the continuance hearing to have the information about what the SIC Code allows.

CHAIRMAN STRAIN: Okay, that would be helpful.

Mr. Murray?

COMMISSIONER MURRAY: Yeah, the --

CHAIRMAN STRAIN: Or Brad, did you finish?

COMMISSIONER MURRAY: -- aside from the SIC Code, there -- I'm sorry?

CHAIRMAN STRAIN: Brad hadn't finished yet; I didn't know that.

COMMISSIONER MURRAY: Oh, go ahead.

COMMISSIONER SCHIFFER: I was going to say, maybe you might want to note it and just say live theatrical. And if the word producers legally makes sense, use it. And then that would eliminate your -- but again, carefully, you won't be able to show a movie in that -- on that stage if you're not careful.

I think you might have an easier time saying what you don't want than saying what you do want. I mean, give a broad category and then take out everything. But if you don't want movie theatres, just say you don't accept movie theatres.

MR. WEEKS: Okay. I'll check the LDC, SIC Code and also discuss this with the CRA staff.

COMMISSIONER MURRAY: That was going to be part of my question, whether or not the SIC Code is the only code that we use. I think we have a number of times talked about another code. That might be more broad or general and perhaps reference that. I can't remember, it's NAICS or something like that?

MR. WEEKS: Yes.

COMMISSIONER MURRAY: And that might help in this regard.

I would think -- I'm not sure that we want to preclude the development of the community as it is intending itself to develop. Again, I think the rezone area is where you really want to be constructive about restraint. Anyway, that's my thought.

CHAIRMAN STRAIN: Anybody else? Brad?

COMMISSIONER SCHIFFER: One more thing. Down on AE, this is the 14-foot.

The reason we did it, and I, you know, designed some buildings down there, and that 14-foot is a real pain in the butt. But the intent was is to have a high first floor.

And when we did the initial review, the intent was that when you drive down the street, you have these nice uniform. And they were really focused on the first level. You know, why they did it on the other levels was always a question.

So is the CRA comfortable with eliminating that? That was a big discussion at the overlay time. And the intention of requiring a tall first story I think does make sense in design.

MR. WEEKS: They definitely support it. They initiated the request to have the height limit removed. And then from there it evolved into adding a use.

CHAIRMAN STRAIN: Okay, Ms. Caron?

COMMISSIONER CARON: But they did it with respect to this one new use that they want, this theatre that they want to put in?

MR. WEEKS: Yes, that was the genesis. But there are other uses. You think about a bank which frequently has a lobby, or certain office buildings may have a tall lobby.

If you're saying you're capped at 14 feet per story, that precludes that type of development as well.

COMMISSIONER CARON: Okay. But it's not so much the first story, that if somebody wanted to make it 20 stories -- I mean 20 feet and have it be a two-story, you know, entryway that would be the problem. It's coming down the other way.

Because essentially what they had planned in the overlay was maximum of three stories. And with this 14 feet of height, it limited the height, the maximum height to 42 feet.

Now, what you're telling me is that the CRA has analyzed this and they're okay tossing out that overall limit, not the stories. I understand -- stories was always an awkward thing to have in there, but Brad said there was some rationale for it in the beginning.

COMMISSIONER SCHIFFER: Dave, one thing, maybe leave something in there noting that the first story may not be -- or, you know, go back and get their approval, it's their overlay -- that the first story may not be less than 14 feet. That cures -- that may maintain the reason for it.

On the upper floors was always the real pain. I think the 14 feet came because in building, a story can also have a mezzanine, up to a third and in some classifications a half of the floor area. So I think the 14 feet was a way to prevent you to really crank the story using the mezzanine trick.

So anyway, just run that back and see what they want. If they don't want that sight line that was very important in the beginning, then they don't want it. But if they're throwing it away just to make a cultural center, they may want to reevaluate it.

COMMISSIONER CARON: Because again, then why couldn't you narrow it and limit it to just cultural center and not blow up the entire rest of the overlay as a result?

MR. WEEKS: Understood. But I'll just comment again that this is unique to the Growth Management Plan, and maybe that's not a bad thing, but it essentially stands out as a limitation. And it has been a problem for the CRA in this particular instance.

And in discussions about a bank building, there's been interpretations of the LDC that would allow for the bank building if a part of it has stories and say you just have a lobby area but outside of the lobby area you have your traditional stories. And it would make things cleaner if we had clarity and uniformity between the GMP and the LDC.

And if we eliminated this requirement in the GMP and totally leave it up to the LDC, that's more in keeping with how all other provisions are, they simply defer to the LDC for that level of detail.

COMMISSIONER SCHIFFER: Mark, one --

CHAIRMAN STRAIN: Go ahead, Mr. Schiffer.

COMMISSIONER SCHIFFER: And Dave, where it's really a problem, when you're doing the mixed use, you're up at the fourth level, the upper residential level. That 14 feet is a big waste of area and height.

CHAIRMAN STRAIN: So it needs to be changed, we just need to refine the way it's being suggested.

COMMISSIONER SCHIFFER: Just make sure we don't lose the -- remember, it's the downtown, the urban look of a tall first story, that's all.

CHAIRMAN STRAIN: And you'll get back to us on it then in January, David?

MR. WEEKS: Yes.

CHAIRMAN STRAIN: Okay. And if that's finished with this discussion, let's move on to the Future Land Use Map and map series.

MR. WEEKS: Most of the map changes, I think I said at the beginning, are cleanups. But the Future Land Use Map is one area that at least one might argue has some substance. And the last map we'll get to, the well head protection areas.

Over the years the City of Naples has had a variety of annexations and the various maps are being proposed to be amended to reflect those. The Future Land Use Map, activity center maps, just about every map on the list falls into that category of revisions to reflect the annexations.

The activity center maps themselves, all of them are being revised because of the underlying information that's shown there has changed. Zoning is identified there, and it's changed over the many years since these were last updated. Parcel boundaries, streets and street names, and the amount of development which is also depicted on these maps in a shading plus actual building locations and shapes. So again, to me housecleaning changes.

Let me zero in on the Future Land Use Map itself, the county-wide map. On your staff report, Page 5, this would be letters B, C and D. And let me put the map on the visualizer.

The first area of change is the Golden Gate Estates Natural Resource Protection Area. And I believe in all three of the changes I'm about to go through, it's a matter of the map features being askew. The recommended change is to move -- and this is the proposed change, so it's already showing the correction -- is to move the NRPA boundary north towards I-75. Presently it doesn't touch I-75 at the north side. On the south side it extends south of U.S. 41. And in part that pushes the NRPA overlay on top of the Port of the Islands urban area.

This corrects that. It moves the boundary to follow U.S. 41, to follow I-75 and to remove it from Port of the Islands urban designated area, which was never intended to cover.

Second change: Letter C in the staff report on Page 5, number one, is in the vicinity of U.S. 41, County Road and State Road 29, and the Everglades City area. And this is to shift the border between the conservation and agricultural rural areas. Again, to clean it up so that it follows U.S. 41, moves slightly to the south and west to accomplish that. The boundary moves slightly to the west to follow County Road 29, and also expanding to the west so that it extends all the way to the area of critical state concern boundary. And I believe that's it for that change.

And by the way, the ownership. The ownership of the areas east of 29, which this is where you arguably would say well, you've made a substantive change, because the present map shows that agricultural rural, now you're changing it to conservation. That's all owned by the U.S. Government.

The areas in white, which is the agricultural rural area that's again, if you want to make an argument, it's substantive, it's being expanded to the west. All but I think one parcel of that is privately owned. So if anything, if you want to make the argument, then we've expanded slightly the rights of those landowners.

But again, I suggest to you that's not the case at all, it's simply a map correction.

That land, that white that you were seeing south of 41 and west of 29, is virtually 100 percent tidal wetlands.

And then the third area is letter C in the -- D in the staff report. That is an adjustment to the boundary northwest of Immokalee along County Road 850.

Where the present map shows the conservation boundary extending slightly to the north of County Road 850, and the map change is to have it follow County Road 850.

And the ownership to the north is all private lands, large tracts and agricultural use.

The conservation area to the south of CR 850 is all owned by the Water Management District. It's part of the CREW trust land. So again, a map correction.

CHAIRMAN STRAIN: Anybody have any questions on the FLUE section number seven?

(No response.)

CHAIRMAN STRAIN: David, the rest of the book is backup to the elements that we just addressed; is that how you're --

MR. WEEKS: There's one more map change, Mr. Chairman, of substance I definitely need to walk through briefly. That's on Page 6 of your staff report, number 12. That the Collier County well head protection areas and proposed wellfields and ASR's map.

That map depicts the potable water wellfields that are permitted for withdrawal of a minimum of 100,000 gallons per day within aquifers that are most sensitive to contamination; that is, the surficial aquifer and the intermediate aquifer.

The GMP, Growth Management Plan, requires us to maintain this map and to conduct a revision to the three-dimensional modeling, the hydrologic model, every two years. And as a result of that modeling effort, if necessary, to revise the map.

And attached to your staff report is that 33-page report. It is the technical basis for the map revisions.

If you look at the map and compare it with the existing map, you'll see that all of the wellfields have changed, though most of them are minor. The most significant change is number one to the Ave Maria wellfield area. It is smaller and different shaped.

And secondly, Port of the Islands wellfield has been added as they have installed some shallow water wells.

You're probably aware that the Land Development Code contains the same map but has a map series in far greater detail. And within the LDC are regulatory components restricting certain land uses from being within the wellfield zones.

This map in the Future Land Use Element has no regulatory provision. It is informational only. But again, it does set the stage for the Land Development Code maps.

And finally, I would mention that there are special advertising requirements any time we go to amend this

particular map. And those advertising requirements have been fulfilled for both this hearing and for the Environmental Advisory Council's hearing.

Ray Smith, who's the director of the Pollution Control and Prevention Department is here, if you have technical questions.

CHAIRMAN STRAIN: Okay, I think we're then ready for any questions on the last item, which is number seven. And actually the balance of the book, which is supporting documentation to it.

Ms. Caron?

COMMISSIONER CARON: Yeah, I don't have a question on the well head, so if you want to get those questions in first, I just have another question on another map here.

CHAIRMAN STRAIN: Okay. Anybody have any questions specific to the well head?

(No response.)

CHAIRMAN STRAIN: I think it's just me. I didn't want to disappoint Ray, he sat there all day, I've got to ask him something.

Ray, on your existing well head map and future one too, we have other wells in the county besides the wellfields that are outlined there. And I'm just wondering, how do we address the open well that exists in the county? I know Marco Island pulls water out of what I used to think as a kid was a reservoir. But I think it's just a giant open lake north of 41 and east of 951. And it's not shown on your maps, and I'm just wondering, does that warrant the same level of protection that this process does for what I think you customarily deal with as well fields that are underground?

MR. SMITH: For the record, Ray Smith, Pollution Control Department Director.

The map that -- well, first of all, let me address the map and why I'm here.

The Growth Management Plan requires that I review the map, this particular map that's required by 9J-5. And it's specific to wells, not surface water bodies. And I update this map based on the information provided to me by the utility representatives or stakeholders. That's the intent of this particular map.

Now, to answer the Chairman's question regarding surface water bodies.

CHAIRMAN STRAIN: Well, just surface water bodies used for I guess --

MR. SMITH: For potable water sources.

CHAIRMAN STRAIN: -- moderate extraction, like I believe --

MR. SMITH: Right.

CHAIRMAN STRAIN: I believe that's what Marco Island's doing in that location I described.

MR. SMITH: Right. There are specific criteria associated with potable water supplies that the Florida Department of Environmental Protection enforces regarding the drinking water obtained from that.

In addition to that, the Pollution Control Department conducts inspections on businesses throughout the county that may be generating a hazardous waste that may be impacting the -- this particular drinking water resource. That happens throughout the entire county, surfacing groundwater.

If there's any pollution complaints, we respond immediately to make sure that the -- any released materials are cleaned up.

But bringing it back to DEP, DEP regulates any potable water sources associated with surface water and groundwater.

CHAIRMAN STRAIN: Okay. But the intention I believe of this map is to highlight to people who would be developing property in the general areas of the wellfields, that there may be special conditions or circumstances concerning pollution issues that they may want to adhere to. There's no indication on this map where the open well sites are, like Marco Island.

Do you feel, from a perspective of your department, that if someone wanted to develop something nearby, that open well that Marco Island uses for their water supply, we don't seem to have any restrictions on that then; is that a fair statement?

MR. SMITH: That's a fair statement regarding the LDC. And they're specific to the wellfields only.

CHAIRMAN STRAIN: Okay.

MR. SMITH: This particular map -- and I'm trying not to repeat myself, but 9J-5, Florida Administrative Code, Chapter 9J-5.006 requires that existing and planned public potable water wells and wellfield protection areas be delineated on this land use map that I'm proposing here today.

Regarding the Land Development Code and the land uses associated with -- when I'll be back with these wellfield protection zones, we can take a look at the modeling of the Marco Island wells and propose that as an addition to the LDC when I come back.

CHAIRMAN STRAIN: I just think if we're going to be real careful in the pollution standards that apply, why don't we look at them for all the water sources of a potable nature in the county. And maybe it centers on the definition of what you have to do regarding the -- you just read a section of I think 9J-5 and made reference to --

MR. SMITH: Yes, sir.

CHAIRMAN STRAIN: -- what wells are. Do they define wells? Do they define wells only as a wellfield or a well head in the nature you show here, or is an open body that's used as a water source considered an open well?

MR. SMITH: I don't believe they define an open body of water as a well. It's considered surface water body.

CHAIRMAN STRAIN: Okay. You know, it's something you should -- if you want to consider it when you come back, fine. But I would be concerned for Marco Island's well site -- water site as it is.

MR. SMITH: We can look at that through the LDC amendment cycle and approach it at that point. There may be some minor language changes to the LDC itself to allow that accommodation.

CHAIRMAN STRAIN: Understood. Thank you.

Anybody else have any questions?

(No response.)

CHAIRMAN STRAIN: I guess, Ms. Caron, we can go on to your other issues. Thank you, Ray.

MR. SMITH: Sure.

COMMISSIONER CARON: I'm back to David. It's okay.

MR. SMITH: Thank you.

COMMISSIONER CARON: I just had a quick question on the estuarian and bays map. And I was wondering why Wiggins Bay is not included. Probably our most important estuarian system.

CHAIRMAN STRAIN: I think he did that just to see if you'd catch it.

What page -- oh, it's just one of the maps.

COMMISSIONER CARON: It's just in the back.

CHAIRMAN STRAIN: Yeah, that's fine.

MR. WEEKS: About the fifth or sixth map from the back, from the end, behind the ordinance.

And I don't have an answer. I don't know why it's not there.

COMMISSIONER CARON: So perhaps you could check that out.

MR. WEEKS: I sure will.

COMMISSIONER CARON: Thanks.

MR. WEEKS: I know this is a map that's been around for many years, and certainly we don't have any new bays, so I'll have to try to research that to see --

COMMISSIONER CARON: Could have been an oversight right from the beginning.

MR. WEEKS: -- why, is there a size threshold or -- I don't know. I don't know.

COMMISSIONER CARON: The river shows up on the rivers map, but so does the Gordon River, as well as Naples Bay. So I just was curious why Wiggins Bay -- thanks.

MR. WEEKS: Okay.

COMMISSIONER SCHIFFER: Donna, maybe it's Hickory Bay? I mean, that's where Hickory comes out. No?

CHAIRMAN STRAIN: Okay, any other questions of anywhere in this book before we release David and he can come back to us in January?

(No response.)

CHAIRMAN STRAIN: Okay. David, I think you got the general changes or suggestions we have, and we'll look forward to cleaning it up when we finish in January with it.

Anything else you had?

MR. WEEKS: Thank you.

COMMISSIONER MURRAY: I do have a --

CHAIRMAN STRAIN: Mr. Murray?

COMMISSIONER MURRAY: -- point. I think it's a point.

On Page 7 where -- under Environmental Advisory Council recommendation. Their recommendation will be presented at the CCPC meeting. And so you're the EAC?

MR. WEEKS: Thank you. Another omission.

The EAC unanimously recommended the map, the well-field map, be changed as proposed.

COMMISSIONER MURRAY: Okay.

CHAIRMAN STRAIN: Thank you, David.

MR. WEEKS: Thank you.

CHAIRMAN STRAIN: ***Next item up on the agenda is old business. We are -- one item is continued. It would be the Flood Damage Prevention Ordinance review.

But we still have an update on the Watershed Management Plan with Mac Hatcher, who's been patiently sitting in the audience all morning.

MR. HATCHER: Good morning, Commissioners. Mac Hatcher with the Stormwater and Environmental Planning Section.

I'm here this morning to discuss briefly the model fertilizer ordinance and get your input at this point.

Fertilizers are intended to stimulate plant growth. Generally they contain nitrogen and phosphores, at least. And applied to turfs and landscape plants they work fine. When they get into the water system, they tend to stimulate algal growth, which can cause nuisance conditions.

Fertilizers can contribute to non-point source pollution when they get into surface waters or groundwaters that will feed surface waters. Non-point source pollution is generally considered to be any type of pollution that's not from a readily identifiable source, like an industrial pipe or something that's making a continuing discharge.

In 2009 the legislation created a statute that encourages local governments to adopt a fertilizer ordinance. And for local governments that have water bodies that are impaired for nutrients, nitrogen or phosphores, they are required to adopt at least the model ordinance.

The model ordinance was developed with Florida Department of Environmental Protection, Florida Department of Agriculture and Consumer Services, and the University of Florida Institute For Food and Agricultural Sciences.

It's intended to protect water quality. Local governments can adopt more stringent standards than the model ordinance, but they must support those with some documentation.

And farms and agricultural lands are exempted from the fertilizer ordinances.

And one of the primary provisions of the ordinance is a certification and training program. And the reason for this is that studies have shown that proper application of fertilizer produces very little nutrient runoff. Improper applications can result in significant discharges of nutrients which can then cause problems in surface waters.

The model ordinance requirements. Again, training and licensing are the primary requirement. They require a six-hour training course that's been developed by Florida Department of Environmental Protection and EIFS. They include a prohibited period where fertilization is not allowed, the model ordinance. The prohibited period is any storm watches or warnings and when soils are saturated with water.

The application rates are based on the new fertilizer label requirements which have recently been changed by the Department of Agriculture and Consumer Services. They require a fertilizer free zone around impervious areas and water bodies. The free zone is set at 10 feet. You can come in as close to three feet if you use deflectors or drop spreaders that don't provide a lot of spray.

They require a low maintenance area, which is an area adjacent to water bodies where grass clippings and landscaping trimmings are not allowed to be kept. But this is a voluntary situation in the model ordinance.

Again, all agriculture is excepted from the ordinance. And the application practices in a model ordinance typically are that no fertilizer is allowed to be left on impervious surfaces.

There have been a lot of local ordinances adopted by some of the communities adjacent to us. We've got a recommendation from the Southwest Florida Regional Planning Council. And I prepared this table to show the similarities and dissimilarities between the model ordinance and the other local communities.

And also The Conservancy of Southwest Florida has proposed a more stringent ordinance which closely resembles the City of Naples and Lee County.

You can see that the training is required for applicators in all instances, certification is required in all instances and in The Conservancy's. They also require a certification of the businesses that are hiring people to do

fertilization.

The prohibition period, again, it's the watches and warnings for the model ordinance. And all of the other local governments have adopted what is commonly referred to as a rainy season blackout period. And goes from June to September. And The Conservancy has added those watches. Because of course storm warnings and watches can occur earlier than June and after September.

The application rate, the labor requirements vary from two to seven pounds of nitrogen per thousand square feet per year, based on the type of grass that's present. You can't apply more than one count of nitrogen per application, and that's per 1,000 square feet, or half a pound of phosphores per year.

The City of Naples and Lee County both require 50 percent slow release nitrogen.

The Regional Planning Council recommended 70 percent slow release nitrogen. And The Conservancy has recommended 50 percent slow release nitrogen.

The Naples and Regional Planning Council had the less than two percent phosphores. Both of these recommendations were made before the Department of Ag. changed the label requirements and reduced the allowable phosphorus content in turf fertilizers.

The Conservancy of Southwest Florida requires no phosphores fertilizers. And that doesn't -- the label allows a no phosphores fertilizer to have up to .25 percent phosphores, so it's not necessarily a complete ban of phosphores. But phosphores is generally recognized as not needed for most soils in Florida.

The fertilizer free zone is 10 feet in all instances, except for the Regional Planning Council, which recommended 25 feet. The Conservancy of Southwest Florida doesn't require -- or doesn't allow the deflector shield provision that allows people to get closer.

Exceptions to the fertilizer ordinance: Agriculture and research in the case of the model ordinance, City of Naples allows for vegetable variance. Lee County allows a variance for new plantings and vegetables. And The Conservancy allows for vegetables and a few other specific instances.

The enforcement is similar for everyone except for The Conservancy's allows for enforcement against the property owner and the City of Naples. And The Conservancy recommendation is that there be notification at the retail point of sale that notifies the consumer that an ordinance is in place restricting fertilizer applications within the municipality.

And the Environmental Advisory Council has recommended that we consider The Conservancy's recommendations for more stringent requirements, and we're putting together a support document for that. The Conservancy has already submitted a support document, but it was received too late to post and make you all aware of it. But it's on the website now.

CHAIRMAN STRAIN: Okay. Questions of Mac at this point?

(No response.)

CHAIRMAN STRAIN: Mac, as far as the information you're providing here today, can you get that to us in hard copy? These comparisons are good to have ahead of time. I certainly would like to look at them.

And what about the notification to the applicators as stakeholders? The specialty sales, like I know there's a company, I think it's called Naples Fertilizer on Goodlette, and there might be others. Since they are considered under one of these categories, a notification would be the responsibility I would assume of anybody selling fertilizer. Have we gone to having any stakeholder meetings on this, or --

MR. HATCHER: We've got stakeholder meetings tomorrow. I have not contacted any of the potential licensees or affected industry yet. But I'm getting a list of the registered fertilizer applicators from the City of Naples so that I can inform them that the county is considering this.

CHAIRMAN STRAIN: I think it would be good to get -- I mean, I'd hate to see us bring something into play that they didn't have an opportunity to -- just like we do with the other stakeholders in the other issues that we've asked to have stakeholders involved, this is no different. Not saying we necessarily agree or disagree with them, but it certainly would be good to have their input as well.

And I hadn't seen any more data than what you provided in the packet, which is minimum.

So anybody else? Ms. Caron? Then Mr. Murray.

COMMISSIONER CARON: Just a quick question on -- it says here under certification turned what The Conservancy proposed, it says all venues. What does that mean?

MR. HATCHER: That means that if you are hiring someone to do fertilizer applications then you should --

what they're suggesting or requiring is that a decal be issued to the applicators and that the applicator provide his customers with a decal and the decal be posted.

COMMISSIONER CARON: Okay. So it would still be to the applicators, but with some additional --

MR. HATCHER: Correct.

CHAIRMAN STRAIN: Mr. Murray?

COMMISSIONER MURRAY: Mac, just to be certain that I understand what applicators is defined as, is that the individual that drives around on a vehicle or pushes a doohickey, is that the applicator or is that the supervisor of the applicator?

MR. HATCHER: The ordinance does not require the individual to be certified. It would require that the business be certified.

Any business that I guess is a commercial fertilizer applicator would need to be certified, licensed, trained. It doesn't mean that every individual would.

The City of Naples has required that the business and 10 percent of the employees, with the additional specification that any crew that's out making an application has to have somebody that is certified present when they're making the application.

COMMISSIONER MURRAY: If is that what's in the model ordinance?

MR. HATCHER: That is not. That specific is not in the model ordinance.

MS. MURRAY: Do you propose to apply that in there? Because I noticed The Conservancy also has property owners. They're trying to reach any individual who might have personal responsibility, it would appear, anyway, personal responsibility to actually put fertilizer on the ground.

And I'm concerned with the notion that we can get individuals in any large or even a smaller company where they send crews out and that supervisor may make the rounds to those crews during a given day and not be present and therefore not really supervising in the true sense what's going on on the ground.

So is it our desire to increase the requirement or to leave it at that level of just the defined applicator?

MR. HATCHER: I certainly agree, I guess, or think that the idea of more than the owner of the business should be trained. I'm not sure if I would support the, you know, requiring somebody on-site to be trained. Or at least certified. I think that they should be trained, but I don't think that they should necessarily have to be certified.

I don't have a recommendation at this point.

COMMISSIONER MURRAY: How would we enforce the ordinance if we leave what appears to me at least to be a gaping hole in the concept between the applicator as say the business owner or one of his hench persons and the person who's on the ground who has either the responsibility to mix chemicals or to apply particulate matter.

How do we enforce that ordinance? What do we do? We just simply penalize them? But we haven't achieved the result that is intended, which is to start to get the whole process of fertilization under control.

And I offer to you, at least for your thinking, that it seems to me -- and while I'm not a real enthusiast for major controls on people, I think in this matter, particularly, that I think it is better to have it more controlled than less.

And perhaps none of the others on this board agrees with that, but that's my view anyway.

MR. HATCHER: Well, I'll give you this consideration: We have two levels of licensing for these types of individuals currently at the county. One is for a lawn service business which simply requires an occupational license. The other is for a landscaping business, and that requires a professional certification license.

There's a big difference in cost of the fee. The landscaping professional certification requires proof of insurance and this sort of thing. So there's an avenue to address things either way if you go with the professional license.

You know, we may be cutting the lawn service guys out of this end of the business. That may not be a bad thing. But what I told the Environmental Advisory Council was that I would bring back costs at the next presentation to them and I will factor those types of considerations into that cost analysis when I come back to you all also.

COMMISSIONER MURRAY: Thank you. But I must acknowledge that I'm not sure what that gets at relative to what I'm arguing or issuing.

MR. HATCHER: Well, it obviously doesn't get directly at what your point is. But the professional -- all of these ordinances will, I imagine, be enforced by our code enforcement staff. They need to observe an infraction to take enforcement action.

They can take action against the individual in all instances, no matter how things are licensed. If we require

the professional license, then theoretically an infraction of an employee could be included as a business infraction, and the business license would then be at stake. And it obviously puts a lot more impetus on the business owner to train his individuals, whether or not they are certified or not.

COMMISSIONER MURRAY: Well, that sounds like a remedy potential. But there may be a remedy somewhere in between there.

But I'll give you an example, maybe it's real, maybe it not, but let's say a condominium association or an HOA is noticing that their turf is not looking as pleasant as they'd like to see it and the company explains well, we really don't -- we can't do that because this is not allowed. And so flexing their muscle they say to the company, well, we'll get somebody else who will. And there's an acceptance on the part of that company, a lawn company, if you will, to put in a fertilizer in excess of quantities and materials that would be covered by the model ordinance.

Now, in order to catch them, the infraction would have to be seen at the time by the code enforcement person. I just don't know that if that were a scenario or there were multiple scenarios, whether or not the ordinance does anything more than just put something on the books without any real teeth. And that's a concern I have.

MR. HATCHER: Well, I think that your assessment of the situation is correct. The model ordinance would probably not have much teeth in that instance. And I don't believe that any of the more stringent ordinances would either.

COMMISSIONER MURRAY: Oh.

MR. HATCHER: The observation of the infraction --

COMMISSIONER MURRAY: Why are we doing this then?

MR. HATCHER: -- still is the requirement of -- I mean, you have to observe the infraction in order to enforce it. You just have more stringent provisions in the case of --

COMMISSIONER MURRAY: Is there nothing in the ordinance that would allow to us test soil to see if there's a higher ratio of certain chemicals on the ground? Is there any means by which we can verify if we have a suspicion?

The probability of having a code officer at the moment in time when something like that is being, you know, chemically mixed or walking around is very, very high probability it will not happen. But if there's a means by which our people who have skills and knowledge and training and can go about and take a sample and verify that there's compliance or not, then we're in a much better position to effectively control. And it wouldn't matter then about the scenario that I painted where they may try to enforce -- they being the condo or the HOA people -- trying to enforce something and yet the service company would simply say I cannot, I'd lose my business.

Is that a possibility, doing something of that nature?

MR. HATCHER: It doesn't seem like a practical solution. The applications -- you know, once you get a rainfall or an irrigation event, the fertilizers or some portion of the fertilizers, depending on whether they're --

COMMISSIONER MURRAY: They break down.

MR. HATCHER: They break down. They go into the soil. They're used by the plants. And to come back after the fact and make an assessment like that, you would have to have a gross violation in order to be able to --

COMMISSIONER MURRAY: Well, you will respect the fact that my ignorance of the specific chemistries and that, I don't know that. I offer that as -- I'm sure somewhere along the line there may be something. Otherwise, I suspect that okay, we're being required to have a model ordinance at the minimum, but it seems to be a circular activity.

MR. HATCHER: Well, I agree with you. And the thrust of the model ordinance is to increase education and training. And at this point in time the state agencies feel like that's adequate.

COMMISSIONER MURRAY: Okay. Thank you for that direct answer.

COMMISSIONER CARON: It would seem to me, Mac, then the most important part of this ordinance -- I mean, given that we're trying to get people trained and certified. But the most important part actually is the application rate. And those things that if we follow what the Regional Planning Council wants, then even if people are somehow not doing it quite so correctly, the chances of it having an effect are less, because they put the most stringent requirements here.

In terms of both the fertilizer free zone, the application rates, I think adding watches to the prohibitive period, all those things are the things that really need to be as tight as possible, as strict as possible, because we really are going to have no enforcement.

MR. HATCHER: Well, it may seem like we won't have any enforcement, but I believe that it's gross misapplications in the past that have caused the most problems in this area.

But I agree with you, that the Regional Planning Council's provisions are probably the most stringent. And the only I guess logic that I can provide to argue against that is that the maintenance of a dense area of turf that is very healthy prevents runoff and it facilitates the assimilation of nitrogen and phosphores. So the EIFS studies that have I guess been used to develop these guidelines show that when you have a very healthy turf and fertilizers are applied according to the label requirements, there is very little runoff of nitrogen and phosphores.

COMMISSIONER CARON: Go ahead, Brad.

COMMISSIONER SCHIFFER: Mac, just quickly, what do you think the certification cost -- I mean, the course would cost somebody?

MR. HATCHER: The course that's been developed by Rookery Bay for the City of Naples, the current charge is \$25.

COMMISSIONER SCHIFFER: And it says six hours in our -- so the guy sends people for -- I mean, it seems reasonable to have a certified guy on-site.

Do they keep logs on projects, which essentially would try to show, you know, how they're compliant with these requirements?

MR. HATCHER: Currently none of the model ordinances that I've reviewed require a log of applications for every application. The City of Naples, when they certify an applicator, they require -- they demonstrate that they I guess know how to do it, but they don't require it for each application.

COMMISSIONER SCHIFFER: And when you said the gross misuses, is that easily because somebody doesn't know what they're doing, or is that Mr. Murray's condo association pushing for a greener lawn?

MR. HATCHER: I'm sure it's a combination of both. Obviously fertilizers that are applied to impervious areas or water is a direct contribution to surface water pollution.

Gross applications where you exceed the label limits, you run the risk of damaging the landscape because fertilizers can kill when they're applied in too large a quantity.

But the other obvious -- or the problem that would be a problem here is the potential to get runoff and going into surface water.

COMMISSIONER SCHIFFER: All right, thanks. That's --

COMMISSIONER CARON: Anybody else have any questions?

(No response.)

COMMISSIONER CARON: Thank you, Mac. We look forward to your next update.

And thanks -- oh, I'm sorry, we do have public speakers. I beg your pardon.

MR. BELLOWS: Yeah, first speaker -- or the only speaker is Amber Crooks.

MS. CROOKS: Well, the good thing is that --

COMMISSIONER CARON: Speaking of people who have been waiting all day long to speak.

MS. CROOKS: The good thing is that Mac's covered most of the information.

But Amber Crooks from The Conservancy of Southwest Florida.

I juts wanted to take this opportunity to discuss in a little bit more detail very briefly some of the components about the fertilizer ordinance. The Conservancy has recognized that nutrient pollution's a growing problem, not only in the county but all over the state. And so we've been -- our advocacy efforts have been lending to fertilizer ordinances throughout Southwest Florida, because it's clearly one of the best and most cost effective ways to deal with this non-point source pollution.

And as Mac indicated, when we do get excess nutrients in our aquatic systems, there are potential adverse effects to water quality in the form of harmful algal blooms. And whenever you do get the harmful algal blooms, you'll see dimensioning dissolved oxygen in the water.

And that's a one-two punch for water quality. You'll get fishkills, toxic shell fish. We've seen situations with algal blooms affecting human health, respiratory agitation and illness, and of course aesthetically a negative effect on our qualify of life and on our tourism economy.

So we have been advocating for fertilizer ordinances all throughout Southwest Florida. Because if done correctly with the right measures, we can protect our water quality and we don't have to do it at the sacrificing, you know, a healthy attractive lawn.

Back in 2007 the Regional Planning Council, like Mac suggested, did their reasonable in model, if you will. Not a state model but a regional model that was specific to The Conservancy of Southwest Florida.

And at that time the 22-member jurisdiction unanimously approved that resolution. And since that time there's been a domino effect all throughout Southwest Florida of municipalities that have adopted what ends up being more stringent measures than the state model ordinance. That includes Bonita Springs, Lee County, Naples, Charlotte County, Fort Myers Beach, Fort Myers, Sanibel.

Two weeks ago Cape Coral adopted their fertilizer ordinance, which is more stringent than the state model. And we've also been working with Marco Island on theirs, and we expect that to be heard by their council in the next couple of months.

And this is just a map that sort of depicts -- I don't know if you can see, and I can pass it around, I can put it on the screen. But the red dots show where a more stringent ordinance has been passed before the state model came out in 2009.

In the green you can see scattered is post state model. So municipalities continue to adopt more stringent fertilizer ordinances, based on the needs of their communities, without any kind of problem.

And so as Mac indicated, The Conservancy does propose fertilizer ordinance elements that are indeed more stringent than the state model that are comparable to municipalities that are in our area, such as City of Naples. Our proposal really is a piggyback of the City of Naples and very similar to what the City of Marco Island is currently proposing.

I do have -- I don't know if you've seen our proposed ordinance, but I do have a packet for you, if I could approach and distribute these.

CHAIRMAN STRAIN: Sure.

MS. CROOKS: And hopefully what each of you have in your packet is The Conservancy's proposed ordinance.

We also have completed the little handout that sort of lays out some of the support that we've provided to the county in regard to some of those more stringent measures.

And in fact many of the sources that we've cited to support those more stringent measures come from DEP and EIFS and prior studies. So that's just a short snippet of what we -- of the comprehensive letter that we did submit to the county just at few days ago that could go to support the more stringent measures.

You also should see in your packet a map. The state model ordinance, as Mac indicated, was really solidified in 2009 with some state statute language. And like he said, it's intended to be the minimum base line. It's the floor, not the ceiling in that municipalities can and should implement more strict measures where it's needed.

In the state statute -- or excuse me, in the state model language itself, it does lay out particular situations where more stringent measures would be appropriate. For example, where a municipality has impairments. You can see on that map that's got the yellow and browns and reds that the county does have some verified impairments. About a third of the county is considered to be impaired, either for nutrients or where the causative pollutant is excess nutrients. So we are already seeing some problems with nutrient pollution in Collier County. So that would qualify, we believe, the county for these more stringent measures.

The state model also suggests where there's possible TMDL's, or where the county or municipality has seen environmental harm or human health harms or where they want to simply protect their waterways from future impacts, that more stringent measures could be considered.

And so in order to do that, the municipality would have to meet a two-prong test under the state statute. And we believe that the county would easily be able to do this, based on what we've seen in other municipalities who have passed more stringent measures after the state model ordinance.

The first prong is that they must show that they're not simply relying just on the fertilizer ordinance to deal with their non-point source pollution, that they do have other programs in place.

So based on our review, we see that the county already does in fact have irrigation and landscape ordinance and requirements, and they've been doing extensive work with these watershed management plans, with education in terms of Florida Yards and Neighborhoods type programs, and with the water -- quality of work that they've constructed, the Freedom Park. So I think any of those things would help support that aspect of the state statute language.

The second element that they must meet under the state statute is that they are using scientific and technical

support for these more stringent measures.

And so what we saw done in Cape Coral just a few weeks ago was a report was drafted from a consultant that utilized much of the information we have already put together for the county. And the Cape ordinance was approved with no problems.

Marco is doing something similar. And we provided just this week a letter to the county that shows some of the scientific and technical support that could be put on the record in order to meet that other second prong of the state statute.

If you're looking at this map here, you can see it's really time for this. Not only do we have existing problems, but Collier County is one of the last municipalities in Southwest Florida to look to do a fertilizer ordinance. And we want to make sure that we do it right, that we have an ordinance that is effective and protective.

And, you know, there's not really necessarily a need for me to go point by point through the comparison that Mac's already done. Although there is that component in your packet, looking at all the different municipalities.

And you can see what The Conservancy proposes is more stringent than the state model on all counts. However, it's not inconsistent with what your other coastal communities have up and down the coast, and what the municipalities that are within Collier County have.

So what we're looking for is something that's going to be consistent between the City of Naples and City of Marco Island. I think that's important, not only from just a commonsense perspective but for your applicators. Because you have of course people who work in both within the city limits and within the county, and so they're going to want to have something that's easy to identify between the two municipalities.

And also, in an environmental way, simply having the more stringent measures we think will lend to protecting the water quality. The slow release, as Max said, is a bit more in what we are proposing, it's 50 percent, at least. That product is -- because it's already been adopted by the City of Naples, those types of products are available in the stores already.

And some people might be shocked when they see it's a little bit more pricey per bag, but because you're using less product and it's lasting longer, you actually will have money savings. So it's a sort of a no-brainer to use these products that are available.

And Regional Planning Council actually recommended up to 70 percent slow release. So we would be advocating for a minimum of 50 percent slow release for the nitrogen.

And on the phosphores, and we agree with Mac that most soils don't need additional phosphorus, so we were looking to a zero or a minimum two percent, which is what the City of Naples has. So we can clarify on that language. But minimum or zero phosphores we think would be appropriate.

And we do have a clause in the ordinance that allows for if you do a soil test and your particular lot is lacking, is deficient, that it does offer you to apply phosphores. So there is a means to, if it's necessary. But in most cases it's not going to be.

And unfortunately the state model, if we were to just adopt the state model, would allow up to half a pound of phosphorus application per year. Because again it's this minimum baseline for the whole state. And what's appropriate for the whole state may not be appropriate for Southwest Florida.

Just a few more things.

The other is the application rate. The state model uses the urban turf rule, which allows up to seven pounds, depending on the type of grass, per year per thousand square feet. What other municipalities have been using is a four-pound cut-off. And for most grasses, that's going to be all that you need.

So we were going to advocate for the four-pound mix. Of course any time you have excess, it's a potential pollution event, so we want to make sure we limit the total application rate.

Another component is the blackout period. What we've done here in The Conservancy's proposal is combine the good things from the state model ordinance. The don't fertilize during hurricanes and floods and things like that or where you've got two inches of rain or more, along with the more easier to follow rule, the calendar based. You know, meteorological predictions can change in an afternoon. And really, what the state model ordinance is where you're going to get two inches of rain or more. So sometimes that's difficult to predict.

So we're basing our recommendation on the calendar blackout period. And in fact, most rainfall in Southwest Florida in our area is less than two inches per rainfall. Only three to five percent of our rainfall events are reaching that two inches or more. So our most common rainfall events are the sort of summer rains that we get. So that would

help to address our most common types of rains.

And during the rainy season we are going to get some other sources of nutrients into our grasses from the rain, from grass clippings, other sources.

And the final thing is a fertilizer free zone. You saw that Sanibel and the Regional Planning Council do have a recommendation of even more than 10 feet; they're up to 25 feet. But most ordinances have the 10 feet. So that would be something that we would want, 10 feet with a deflector shield. And that's really going to go to protect from runoff into our waterways.

And on those two components, the blackout period and the fertilizer free zone have been some of the more contentious elements. And I can tell you that Sarasota adopted their fertilizer ordinance back in 2007 and they just issued their State of the Bay report where they have found that their water quality has been improved since their fertilizer ordinance has been in place, and that they have not seen drastic changes to their lawns due to lack of fertilizing during the summer or having the fertilizer free buffer zone.

So there is some precedent in front of you. The guinea pigs have gone and they have not found that there's any dramatic effect to the lawn based on implementing these more stringent elements.

And going to your -- as a final thing, going to your questions that you had of Mac in regards to the certification and the enforcement. Again, you have folks who have gone before you. I guess that's one benefit of waiting. And City of Naples has found that, you know, enforcement, it is difficult because you do have to see something that's -- you do have to see the infraction. But I think their experience has been overwhelmingly positive, because people will be educated by about the ordinance. They'll want to do good to protect their water quality. So it is very much having the teeth of the ordinance but then the educational components that make it effective.

And in the City of Marco where they already do have a licensing component, we've heard that people will specifically request applicators who are certified and trained in protecting their water quality. So they'll actually be looking for the people who are going to be doing good and request a list of those particular applicators.

And I will work with Mac on some of these components. Because what we meant to have in our ordinance is something that's very identical to City of Naples in terms of training and certification.

We have in our ordinance that at least one supervisor on-site should have received that training and certification. And just like Marco Island has with their decals, they'll be able to -- it will be better for enforcement to know you can just drive by and see that there is a decal on the vehicle to know that they have gone through the process and they have gone through the training.

And if you have any questions, please let me know. But our proposal will be to ask that you recommend these more stringent measures that The Conservancy has put into our ordinance proposal. We believe that the science is there to support. And we'll be happy to provide any additional information you feel might be necessary to make that happen.

CHAIRMAN STRAIN: Any questions of The Conservancy?

Mr. Schiffer?

COMMISSIONER SCHIFFER: Amber, if you used less chemicals, proper amount of chemicals, doesn't that save money?

MS. CROOKS: Yeah, right. That's one of the principles of getting people educated, including homeowners, that they maybe only need a certain amount to actually achieve the results that they're looking for.

COMMISSIONER SCHIFFER: And then the other thing, in putting this together, did you meet with landscapers and lawn services to see, you know, why they put more on? Or do they have any idea of what they're doing?

MS. CROOKS: Well, we've heard a mixed bag of there are some applicators who are like yeah, we're already doing this. You know, so this ordinance, although it's great to have it, you know, you'd want to have it adopted, they're actually already doing many of the things so it wouldn't affect them that much.

But then we've also heard some of the horror stories of people fertilizing, you know, when the hurricane's coming.

So I think it's a mixed bag. I think something like this would really help go a long way to making sure that everybody is aware of these Best Management Practices.

COMMISSIONER SCHIFFER: And the shield you use on the impervious surface, describe what that is. What is that?

MS. CROOKS: Right. It's an attachment that you would put on your spreader that you're moving along to make sure that no spray of fertilizer goes beyond that. So it's great to have along that buffer zone or any impervious surface you don't want to apply fertilizer to.

COMMISSIONER SCHIFFER: Thank you.

CHAIRMAN STRAIN: Any other questions?

(No response.)

CHAIRMAN STRAIN: Thank you.

MS. CROOKS: Thanks.

CHAIRMAN STRAIN: Mac, I think we've got enough to digest here.

I did notice that you had a list of exceptions on the prior document you had on the screen, but yet the whole ordinance only applies, from what I can read, to turf, specialized turf or landscaping plants. So I'm not sure why you need exceptions. I'd rather you might want to list what it applies to instead of what it's excepted out.

MR. HATCHER: You make a good point. The -- primarily the only agriculture that would be affected would be pasture.

CHAIRMAN STRAIN: Not the way this is written.

MR. HATCHER: Right. Agricultural -- any agricultural operation is exempted.

CHAIRMAN STRAIN: No, no, I mean the way -- the current way your ordinance is written, it only applies to turf, specialized turf or landscape plants, period. So nothing beyond that is applicable. At least that's how I read it.

But we've got time to discuss that after we digest everything we've gotten from you and The Conservancy. But I think the most important thing is, and I've seen this happen before, a lower board may recommend something and have an empty audience basically. And then it gets to the board, the newspaper picks it up ahead of time and says look out all you people, you're going to have new rules, and 100 of them and 1,000 of them show up at that board meeting and the board looks at us with why didn't you do your job.

So I really want to stress to you, you need to get the word out to everybody that could be impacted by this. Because it will cost businesses additional effort. And it may cost members of the public a change in their habits and money. I'm in favor of more strin -- I don't use fertilizer, I don't know anybody should. But at the same time, we've got to be absolutely fair. And I'd rather we dealt with that issue here and passed on a good resolution of the Board of County Commissioners than one that is going to be slaughtered if it goes to that level and we don't bring the stakeholders involved early. So I think that's going to be the biggest issue of this whole thing. Okay? Anybody -- Mr. Murray?

COMMISSIONER MURRAY: How close are we to bringing that to a conclusion?

MR. HATCHER: Not real close. I don't really anticipate it going to the board for a final conclusion until March or April. So I believe we have time to make notification and get input from as wide a group as we can get.

COMMISSIONER MURRAY: Well, if we were in a position, having digested the ordinance, say, from The Conservancy and we're in a position to give you direction, how difficult or how long would that be before you would be prepared to go forward? Or would you just simply adopt it or attempt to adopt it -- or we would adopt it.

But would you attempt to take it as it is, or would you start looking through it to qualify it? Or do you wish to go forward with your document? You've given us choices.

So I'm not sure where you're going. It's nice for us to hear this and make our points, but whatever we see as a product has to be reflective of what this board and others are interested in. So I'd like to understand where you're going.

MR. HATCHER: Well, most of the input that I heard today was for more stringent provisions of the ordinance.

COMMISSIONER MURRAY: Right.

MR. HATCHER: What I would propose would be to come back with the model ordinances still, a more stringent ordinance, financial implications of both options, and of course a more thorough vetting with the industry.

COMMISSIONER MURRAY: My concern for you personally would be that for you to do that work when we might -- and that's what I'm about to offer of the board here -- when we might suggest that no, that's not what we want, we want something more stringent than that.

I'm wondering if we couldn't give you some direction. I recognize we haven't digested what The Conservancy has offered. But I'm assuming that there may be enough support for a more stringent ordinance than the

model ordinance. And I'd like you to avoid having to do that than be told no, go back and do something else.

So Mr. Chairman, I'm really asking for I guess support in that regard.

CHAIRMAN STRAIN: I mean, I just got the information from The Conservancy for the first time today. And just like we have cautioned The Conservancy in their interest to assure that they are a stakeholder involved in elements that come forward, I will not venture a guess on whether it should be less stringent or more stringent until I know all the facts involving the stakeholders out there who are in the business.

And you have a lot of applicators in this county that are going to be impacted. I want to hear what they're going to say. And they may not like it or they may say okay, we can live with it. We can take the additional training, it's good for us.

But I -- I mean, I'm not going to tell you from my perspective, Bob, what's good or bad --

COMMISSIONER MURRAY: That wasn't my question.

CHAIRMAN STRAIN: -- until I hear more from the public who are involved in it.

COMMISSIONER MURRAY: That wasn't my question. Maybe I didn't make myself clear.

What I was attempting to ascertain is to be able to, number one, give him more guidance whether or not this body seeks to have more stringency. And then finally beyond that, when this individual should come back to us with whatever form he would have. Or if we are to look at this from The Conservancy, should we have the model ordinances from these other organizations to review as well.

I mean, that's a lot of reading, a lot of qualifying. And so that's where I was attempting to go, to try to understand what the next move is.

CHAIRMAN STRAIN: Brad?

COMMISSIONER SCHIFFER: Quick question.

Mac, is there an association, the Collier Lawn Service Association -- Collier Chapter of the American Lawn Service Association?

MR. HATCHER: I'm not positive. I know that there are industry organizations that were involved in the development of the Best Management Practices with DEP. But I do not know at this point in time if there is a local chapter.

COMMISSIONER SCHIFFER: Because Mark's point of hearing from them now before it goes too far. You know, the small guys. The big guys would be perfect.

CHAIRMAN STRAIN: I can tell you, there's a golf course superintendents group that will have all kinds of input. And I don't want to see 50 of them with their members showing up at a Board of County Commissioners meeting contradicting what -- to any great extent saying they have a voice in front of us.

I mean, I'm still at the point where I think we need a fertilizer ordinance; I'm 100 percent in favor of it. I think it needs to be as stringent as we can possibly make it, provided we are not -- we hear all the input and we have adequate representation from the industry.

So, I mean, at that point I think you've got your marching orders. Get it done. And bring it back after you've got others involved. That's the way I see it. And I don't know what the rest of this board wants to do, but that's the only instruction I had.

COMMISSIONER SCHIFFER: And maybe notifying suppliers or posting at shops would get it around quickly.

CHAIRMAN STRAIN: You tell the golf course superintendents this is coming up, you'll have them all here.

MR. HATCHER: Well, I didn't --

CHAIRMAN STRAIN: I wrote an article in favor of -- trying to suggest we don't need as much fertilizer, and believe me, I heard plenty about it. But I was surprised, so --

MR. HATCHER: I didn't include it specifically in the comparisons because virtually all of the ordinances basically exempt the golf courses if the golf courses are following FDEP's Best Management Practices for golf courses. They got targeted and educated first.

CHAIRMAN STRAIN: Well, like I say, the way it's read, it said all turf and then specialized turf and landscaping. So to me golf course is turf. So we've still got that to deal with. And if it needs refinement, so be it.

But I don't know what any more direction that we can give at this point.

MR. CASALANGUIDA: We're clear.

CHAIRMAN STRAIN: Everybody comfortable with that?

Okay, I think you're fine, Mac.

Thank you. You've got an interesting road to go. We'll see how it all comes out.

That's the last of the old business.

***We don't have any new business.

I just want to say one thing, and this goes to everybody. We've had a great year, and we've had good staff. I want to thank everybody for all they've done. And especially in the holiday season, a very Merry Christmas to everybody, including our faithful Cherie' and Kadie across the hall, the facilities management staff, the recording, everybody, they've done a great job this year.

And I want to also thank the guards downstairs. Although I really think their request for a Christmas gift of a full body scanner isn't appropriate.

So with that in mind, Merry Christmas to all, and I'll entertain a motion to adjourn.

COMMISSIONER AHERN: Motion.

COMMISSIONER KLEIN: So moved.

CHAIRMAN STRAIN: Motion made and seconded. All in favor, signify by saying aye.

COMMISSIONER SCHIFFER: Aye.

COMMISSIONER AHERN: Aye.

COMMISSIONER MURRAY: Aye.

COMMISSIONER KLEIN: Aye.

COMMISSIONER HOMIAK: Aye.

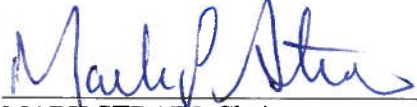
COMMISSIONER CARON: Aye.

CHAIRMAN STRAIN: Aye.

Okay, we're adjourned. Thank you all.

There being no further business for the good of the County, the meeting was adjourned by order of the Chair at 12:50 p.m.

COLLIER COUNTY PLANNING COMMISSION



MARK STRAIN, Chairman

These minutes approved by the board on 1-20-11 as presented or as corrected _____.

Transcript prepared on behalf of Gregory Reporting Service, Inc., by Cherie' R. Nottingham.