

November 18, 2010

TRANSCRIPT OF THE MEETING OF THE
COLLIER COUNTY PLANNING COMMISSION
Naples, Florida
November 18, 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
Karen Homiak
Barry Klein
Paul Midney
Bob Murray
Brad Schiffer

ALSO PRESENT:

Jeffrey Klatzkow, County Attorney
Ray Bellows, Zoning Manager
Thomas Eastman, Real Property Director, CC School District

CHAIRMAN STRAIN: Good morning, and welcome to the Thursday, November 18th meeting of the Collier County Planning Commission.

Ray's in the process of making sure we've got our croissants and donuts and coffee here this morning.

And with that, will all please rise for Pledge of Allegiance.

(Pledge of Allegiance was recited in unison.)

CHAIRMAN STRAIN: Okay, roll call. Ms. Homiak?

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: Yes.

COMMISSIONER HOMIAK: Ms. Ebert?

COMMISSIONER EBERT: Here.

COMMISSIONER HOMIAK: Mr. Klein?

COMMISSIONER KLEIN: Here.

CHAIRMAN STRAIN: Okay, thank you.

***Addenda to the agenda. We have an item on 10.A that's been continued to December 2nd.

Ray, I understand December 2nd may be kind of crowded. We may want to consider putting that off even further unless it's some pressing issue. But check our calendar, but I've heard this morning we may have a real packed agenda on December 2nd.

MR. BELLOWS: And it's about the same level of petitions on the second meeting in December, too.

CHAIRMAN STRAIN: Oh, really? Okay, well, put it wherever it fits in best time-wise, that's the only thing to worry about.

MR. BELLOWS: I looked into it, and we thought maybe the 2nd would be the best.

CHAIRMAN STRAIN: Okay.

MR. BELLOWS: Because one of those items is a companion item on the 2nd.

CHAIRMAN STRAIN: ***Okay, Planning Commission absences. Does anybody know if they're not going to make it to the December 2nd meeting?

(No response.)

CHAIRMAN STRAIN: Looks like we will have everybody here.

***Approval of the minutes. The October 21st, 2010 minutes. They've been distributed. If there's no corrections, is there a motion to approve?

COMMISSIONER HOMIAK: Motion to approve.

CHAIRMAN STRAIN: Made by Ms. Homiak. Second --

COMMISSIONER AHERN: Second.

CHAIRMAN STRAIN: -- by Ms. Ahern.

All those in favor, signify by saying aye.

COMMISSIONER SCHIFFER: Aye.

COMMISSIONER AHERN: Aye.

COMMISSIONER MURRAY: Aye.

COMMISSIONER EBERT: Aye.

COMMISSIONER KLEIN: Aye.

COMMISSIONER HOMIAK: Aye.

COMMISSIONER CARON: Aye.

CHAIRMAN STRAIN: And I will be abstaining because I wasn't here. Motion carries -- what are we, seven, with one abstention.

***BCC reports and recaps. Ray?

MR. BELLOWS: Yes, on the November 9th BCC meeting, the Board of County Commissioners continued the PUD rezone for Davis Reserve to December 14th.

They also approved on their summary agenda the PUD amendment and DOA amendment for City Gate. That was on the summary agenda.

And they also approved the conditional use for the Immokalee Sand Mine on the summary agenda also.

CHAIRMAN STRAIN: Okay, thank you.

***Chairman's report. I'm glad to be back.

Cherie', I hope I'm talking slower now. Without that caffeine it might just work out well for everybody.

COMMISSIONER CARON: We're glad to have you back.

CHAIRMAN STRAIN: Thank you.

***Consent agenda items, there are none, so we'll move right straight into the advertised public hearings.

***First one up is PUDZ-2009-AR-14425. It's the Happy #4 Family Corporation, Larry Pomposini, president/director. It's also known as Addies Corner CPUD. It's around the Immokalee Road and 951 intersection. 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 the Planning Commission.

Ms. Homiak?

COMMISSIONER HOMIAK: I spoke with Mr. Yovanovich.

CHAIRMAN STRAIN: Ms. Caron?

COMMISSIONER CARON: I also.

CHAIRMAN STRAIN: Okay. Anybody else?

(No response.)

CHAIRMAN STRAIN: And I -- other than staff, I don't think I spoke to anybody about this.

You -- I mean, Rich, we didn't talk about this.

MR. YOVANOVICH: No, we called and you were a little under the weather.

CHAIRMAN STRAIN: Okay.

COMMISSIONER EBERT: No, just staff.

CHAIRMAN STRAIN: Just staff, okay.

Thank you, Richard, it's all yours.

MR. YOVANOVICH: Sure, thank you.

Good morning, for the record, Rich Yovanovich, on behalf of the petitioner.

With me today I have several individuals that can answer any questions that I can't answer. Bob Duane with Hole-Montes, who's the professional planner on the project; Terry Cole, also with Hole-Montes, who's the professional engineer on the project. Chuck Mohlke, who did the market study is here to answer any questions. And David Wheeler with TR Transportation is here to answer any transportation questions you may have regarding the project.

The petition before you today is a request to rezone a little over 23 acres of agriculturally zoned land to a commercial PUD which would allow up to 135,000 square feet of retail or office uses on the property.

On the visualizer you'll see a zoning map for the existing zoning. To the right of the property, which is shaded, which would be east, is the Tree Farm PUD, and that's a mixed use PUD with commercial uses allowed adjacent to our property.

To the left or the west of PUD is the Mirasol PUD, which is a residential PUD.

To our south and across Immokalee Road is the Richland PUD, but basically the Pebblebrook community.

Immediately to our south is their preserve, and a little bit southeast is the commercial portion of that project.

The property is located within activity center number three. And as the Planning Commission knows, activity centers is where the Growth Management Plan almost forces retail and office uses to occur under a limited

circumstance. As you know, you can have those uses in other locations. But the Growth Management Plan really dictates that activity centers be where commercial uses are allowed.

The Growth Management Plan allows the full range of commercial C-1 through C-5 to be asked for within the activity center.

What we basically did is we looked at the uses that were allowed within the Tree Farm PUD as far as commercial uses, and essentially mimicked those but eliminated some of those uses that we felt may not be compatible immediately adjacent to the Mirasol PUD.

I tried to, Ms. Caron, go through the entire list and figure out where they were in the C-1 through C-5 spectrum. But it actually turned out to be a much more difficult exercise than I had hoped. So I think I have them all listed, if you want to go through them. But I think the list of uses are compatible with the Mirasol people to our west and the Tree Farm PUD to our east, as well as the Pebblebrook PUD to our south.

The development standards would allow for the retail to be in two stories, not to exceed 45 feet zoned height, 65 feet actual height. And the office would be allowed four stories not to exceed 55 feet zoned height and 65 feet actual height.

I noticed in the -- and Ms. Caron pointed this out, I noticed in the staff report summary of the NIM, there was a reference to basically all the buildings would be 45 feet. I've confirmed that that's not an accurate summary of what was said. That reference to 45 feet was in reference to retail uses, not in reference to the office uses as well. So we are requesting 55 feet for the office buildings in order to accommodate four stories.

The Tree Farm PUD allows for a building 77 feet in height, and actually portions of the Mirasol project allow for up to 75 feet. So I think we're consistent with what has been approved around us.

We're consistent with all of the aspects of the Growth Management Plan. Your comprehensive planning staff has concluded we're consistent with the Growth Management Plan.

We have -- or we're consistent, your traffic -- your transportation staff has said we're consistent with the Growth Management Plan and that we don't have any traffic related issues.

There's one stipulation that we have not agreed to, and I think there's some confusion as to whether or not it really is supposed to become part of the PUD process that we're supposed to include in the zoning document, a trip cap. We analyze -- our traffic analysis analyzed the worst case scenario here. So my understanding is the instances when we're including a trip cap stipulation is either one, there's a traffic related problem, or two, we have not analyzed the worst case scenario for a transportation -- or for what we're asking for. Like when we did the Sonoma Oaks PUD a couple of meetings ago, we had asked for a maximum of CCRC of one number and a maximum of retail of another number. We never intended to reach the maximums on both, so our trip analysis was based upon a combination. So we included a trip cap to make sure we could never max out.

So I think in those instances it's appropriate to include a stipulation for maximum. In other instances, I don't think it's appropriate to include a stipulation for maximum trip counts.

Your staff is recommending approval to you, as well as the Board of County Commissioners, and we're requesting that the Planning Commission forward our petition to the BCC with a recommendation of approval.

That is a summary of what we're requesting, and we're able to answer any specific questions you may have regarding the project.

CHAIRMAN STRAIN: Okay, we'll start with questions of the Planning Commission. Do we have any? Mr. Schiffer?

COMMISSIONER SCHIFFER: I have some --

COMMISSIONER EBERT: I do.

CHAIRMAN STRAIN: Okay, Mr. Schiffer.

COMMISSIONER SCHIFFER: Go ahead.

COMMISSIONER EBERT: No, you go ahead.

COMMISSIONER SCHIFFER: Rich, my questions are on the development standards. First one, maximum distance between buildings, you have 10 feet or one-half the sum of the heights. The 10 feet would be two 10-foot buildings, which then nothing would be really smaller. So can we just make that one-half the building heights? I mean, leaving it in doesn't hurt anything either, but --

MR. YOVANOVICH: That's fine.

COMMISSIONER SCHIFFER: And then the other thing on the retail, it's 45 feet or two stories. So does

that mean I could do a taller building with two stories or --

MR. YOVANOVICH: No, we need to clarify that. It's supposed to be two stories not to exceed 45 feet.

COMMISSIONER SCHIFFER: 45 feet.

MR. YOVANOVICH: Zoned height.

COMMISSIONER SCHIFFER: If you'd do that -- because carrying stories and feet not going to --

MR. YOVANOVICH: Well, there's a triple asterisk there that says whichever is less. So 45 feet would -- you know, two stories may be less than 45 feet, but we can clarify that.

COMMISSIONER SCHIFFER: Right. And comparing feet and stories is in a Boolean logic's kind of confusing too. So I think clarify that.

And then down at the bottom, essentially what you're saying is that if you do group housing, you're going to calculate the area of that group housing site, and at that ratio remove it from retail.

MR. YOVANOVICH: Correct.

COMMISSIONER SCHIFFER: When we really have commercial is our maximum unit. So, I mean, is the intent not to remove it from office, or --

MR. YOVANOVICH: No, I think that's a good catch, and we should say from the retail and/or office.

COMMISSIONER SCHIFFER: Or commercial, which is what you call it every place else.

MR. YOVANOVICH: Okay.

COMMISSIONER SCHIFFER: All right.

That's it, thank you.

CHAIRMAN STRAIN: Okay, Ms. Ebert.

COMMISSIONER EBERT: I have a ton of questions, because I live in the area. And I was also at the NIM meeting back in 2009.

One thing I noticed in our paperwork is there is no map of the activity center. Normally there should be I would think a map like that.

And the other thing is the multi study. I am looking for -- it is so -- it's so out of context, I can't believe it. On Addies Corner they ask you to give two miles from there. And in that area is the Olde Cypress Preserve, commercial, and they say they've only used 5.4 acres and there's 7.02 left, and it is completely wrong. That is completely filled up. Our PUD is completely done in that section. It has utilized all the space. We are close to 165,000 feet.

The other thing is, they talked about Jersey Joe's Bar. And I don't know how long people have lived here, but I cannot find Jersey Joe's Bar.

CHAIRMAN STRAIN: It's gone. It's been gone. It used to sit where the high school is.

COMMISSIONER EBERT: But in here it's got that it's 9.2 -- wait, that it's 4.25 acres and it's got 8,150 -- and I'm going what is -- I mean, this -- I mean, I just kind of --

CHAIRMAN STRAIN: Diane, what we ought to do is focus your questions one at a time.

COMMISSIONER EBERT: Okay.

CHAIRMAN STRAIN: And then ask them to respond to the questions as you ask them. And that way we can get all your issues on the table.

COMMISSIONER EBERT: Okay.

CHAIRMAN STRAIN: So why don't we go back to your -- I guess the most relevant issue right now is the commercial study. Is that what you're focusing on now?

COMMISSIONER EBERT: Yeah, there was no map in --

CHAIRMAN STRAIN: Okay.

COMMISSIONER EBERT: It would be nice, staff, to have a map, or somebody put it in with this so we can know what's going around it.

And I also found -- okay, then we'll just go --

CHAIRMAN STRAIN: Well, let Chuck respond to the map.

MR. MOHLKE: Commissioner Ebert, I regret I cannot respond to the issue of the map. That material was prepared or not prepared either by staff or by the Hole-Montes team that is here. That I am not able to respond to directly. And perhaps you can ask that question of Mr. Duane.

Let me respond in as forthcoming a way as I can to your very good questions regarding inventory of commercial. This --

MR. YOVANOVICH: Let me, if I may. And again, I don't have a complete packet of what you have, but --
COMMISSIONER EBERT: Obviously.

MR. YOVANOVICH: With our -- you have our application, our complete application? You should have our complete application.

And if you look in our application materials, right after the minutes of the meeting, at which you'll see there's a summary, a checklist of -- the environmental review checklist?

COMMISSIONER EBERT: In the back?

MR. YOVANOVICH: Within there. And you will actually see an activity center map. And this is what it looks like right here, that shows you the boundaries of the activity center. So it's within the materials that we provided to staff. And you should have that, that map, as part of our application materials.

COMMISSIONER EBERT: There is not --

MR. YOVANOVICH: Now, if you want it on a larger scale where we give you an aerial to put it in context, we'll take that and we'll take that as constructive feedback and we'll do that in future applications. But we did in fact provide as part of the backup the activity center boundaries as they're currently existing in the Growth Management Plan.

But Ms. Ebert, if you want it on -- if you want us to pull out a little bit to put it in better context in future petitions, we'll be happy to do that.

COMMISSIONER EBERT: I'd like to see what's around it --

MR. YOVANOVICH: We'll be happy to do that, Ms. Ebert.

COMMISSIONER EBERT: -- to know what's there.

MR. YOVANOVICH: We'll take that as constructive feedback for the next one to make it easier for you.

MR. MOHLKE: Commissioner Ebert, if I can go back to the questions that you began your comments with.

These -- this data was based upon an inventory conducted by the comprehensive planning department for the years 2006, 2007. This analysis began in those years. And that inventory of commercial has been relied upon for planning purposes for some years. Is it as contemporary as it needs to be? No, it is not.

The material which you found both in the memorandum dated November 6th, 2009, and the original study that was completed about a year and a half prior to that time was used as the baseline information for the purposes of this submission and the memo to Mr. Duane on November 6th.

If that needs to be corrected, if I may offer this view: That modest amount of acreage and commercial space in the larger context of the study that was undertaken for this purpose is very material to the point, but is not as, shall we say, large enough in terms of its potential for impacting the proposed petitioner agreement, when considering all of that within the two-mile radius of the study, or the area included in the analysis attested to by Mr. Schmidt and others in regard to their response to the November 6th memorandum.

It is an important point, it's material to your discussion, of course. And if the material needs to be amended, it is a point which we will consider, of course, and modify the supporting material accordingly.

Again, this is based upon the latest available comprehensive planning inventory of commercial published in 2007 at the beginning of the analysis, which you have before you.

If we need to modify that in respect to this, we'd be very pleased to do that.

COMMISSIONER EBERT: Well, in reading this, in reading the report, which is dated November 6th of 2009, in this study they asked for road miles to the subject property within two miles to be accounted. And it says west of the commercial development is the Olde Cypress Preserve, 12.9 commercial property north, leasable space and everything.

And it says these properties -- it's just they were done well before -- they were done by 2008. These properties were all done.

The thing also is, it says it's approximately 1.5 miles west of the proposed Addies Corner CPUD, well outside of the activity center. And a mile and a half is not well outside of the activity center.

MR. MOHLKE: Commissioner; that calculation was made based upon the 160 acres, 40-acre quadrants within the activity center. That is, in this particular sense, outside. The question of whether or not it is well outside is an important issue.

COMMISSIONER EBERT: What it's written in your report (sic).

MR. MOHLKE: Yes, it is. And I stand by that calculation.

COMMISSIONER EBERT: That's all for right now. I will have some more questions, though.

MR. MOHLKE: Thank you, Commissioner Ebert.

Thank you, Mr. Chairman.

CHAIRMAN STRAIN: Anybody else have any questions at this time?

(No response.)

CHAIRMAN STRAIN: Well, Ms. Caron, go ahead.

COMMISSIONER CARON: Yeah, because it was referenced at the beginning of this meeting, Mr. Yovanovich, as you know, I was most concerned about what might qualify as C-4 or 5. Not everything --

MR. YOYANOVICH: Right, I know that.

COMMISSIONER CARON: -- on this list, so --

MR. YOYANOVICH: And I think -- I'll give you some examples, if that will help. For instance, on the -- let's go on Page 1 of 13 of Exhibit A. Items five, six and seven are technically C-4 uses. Now, I think those are probably fairly benign, similar to C-3 type uses. But those technically fall within the C-4 category.

And I'm not going to go through every one, but I'll just kind of give you some examples. Like carpet and upholstery cleaning, that's a C-4 use. If you go to the next page, dance studios, number 42, is technically a C-4 use. Drinking places are a C-4 use.

And there are others. Hobby and toy game shops. But, you know, by way of example, those are the types of C-4 --

COMMISSIONER CARON: Were there any C-5?

MR. YOYANOVICH: There was one that I know -- that I know of, and that is item number 96, which is the medical equipment rental and leasing is the only one that I think is a C-5 use. Again, I don't know how some of these uses find their way into C-5, but those are -- now, again -- and wait a minute, there's one other one I can see. Newsdealers and news stands was a C-5 use. That's item 107.

So I mean, again, I -- we did a quick look, but I can't tell you that I caught every one that might be a C-4 or C-5 use, but those are some examples of the types of uses we discussed the other day.

Oh, you're right, hotels and motels is a C-4 use. Thank you, Bob.

COMMISSIONER CARON: Okay, the other thing was on drinking places, we don't have any qualifiers on that for --

MR. YOYANOVICH: It could be anywhere within our PUD.

And ironically, one of the neighborhood comments was is they will need one, so --

COMMISSIONER CARON: No, they wanted a nightclub.

MR. YOYANOVICH: A nightclub. You're right, we talked --

COMMISSIONER CARON: They wanted a nightclub.

MR. YOYANOVICH: We laughed about that, but --

COMMISSIONER CARON: Which is even more intense.

MR. YOYANOVICH: So -- but anyhow, you're right, we didn't say it has to be in connection with a restaurant, and it didn't seem to be a concern for anybody who attended the neighborhood information meeting that there would actually be a location somewhere in town that would allow a bar to occur.

COMMISSIONER CARON: Okay, right up against Mirasol. That's good.

MR. YOYANOVICH: Well, they're next to their road.

CHAIRMAN STRAIN: Are you done, Ms. Caron?

COMMISSIONER CARON: With those particular questions, yeah. A lot of mine are for staff, so I'll wait until staff --

CHAIRMAN STRAIN: Okay, Ms. Homiak?

COMMISSIONER CARON: -- does their presentation.

COMMISSIONER HOMIAK: Speaking of drinking places, do you think maybe it would be a good idea to prohibit bottle clubs? I mean, those tend to be an all-night after bar --

MR. YOYANOVICH: I don't think we would have an objection to excluding a bottle --

COMMISSIONER HOMIAK: And cabarets?

MR. YOYANOVICH: -- club.

COMMISSIONER HOMIAK: I don't know where the closest cabaret --

MR. YOVANOVICH: I can honestly tell you, I've never been to a bottle club.

COMMISSIONER HOMIAK: -- I'm not sure what that means.

MR. YOVANOVICH: -- so I don't really -- a cabaret --

COMMISSIONER HOMIAK: If I recall, they tend to be something that you go to after the bar is closed and you bring a bottle.

MR. YOVANOVICH: Okay.

COMMISSIONER MURRAY: So you've been there.

COMMISSIONER HOMIAK: So they're all night --

MR. YOVANOVICH: That's your understanding. That's all hearsay.

COMMISSIONER HOMIAK: I heard.

MR. YOVANOVICH: I think that -- I guess we can preclude a cabaret. You know, I honestly can tell you, I don't really know what one is. I don't mean to --

COMMISSIONER HOMIAK: No, that sounds kind of risqué. I'm not sure.

CHAIRMAN STRAIN: Is that it?

COMMISSIONER HOMIAK: Well, number -- the retirement communities I asked you about --

MR. YOVANOVICH: We did, and we --

COMMISSIONER HOMIAK: -- number seven; is that correct?

MR. YOVANOVICH: Number seven.

You know, I think number seven is actually more restrictive than what we're currently used to. As you all will recall, we did an assisted living -- an independent and assisted living project up on U.S. 41. And this is kind of where we came up with this list of seven --

CHAIRMAN STRAIN: Number seven --

MR. YOVANOVICH: -- requirements.

CHAIRMAN STRAIN: Can you tell me --

COMMISSIONER HOMIAK: I mean, I'm sorry, Page 6 of 13. It's under on --

MR. YOVANOVICH: Yeah, you see, number seven, this is -- in the context of these are the seven requirements for senior housing, in order to qualify as senior housing. And we had come up with this list. I think it started with the project up on U.S. 41, the old Szabo Nursery. And the old language used to say that we would construct these in a manner that would allow you to retrofit them for people who needed them. I think what this language says is we're actually going to include those requirements up front as far as handicapped grab bars and things like that. I think this is more restrictive. But we could go back to the old language that we're all used to about making them retro -- that's probably not a word, but that we can retrofit them.

COMMISSIONER HOMIAK: Design to --

MR. YOVANOVICH: Yeah, designed to be retrofitted. So we can -- at the consent stage we'll come back and put in that language, if everybody's more comfortable with that language. And it may make more sense for independent units and --

CHAIRMAN STRAIN: I think you ought to suggest the language. I'm not sure -- what language are you specifically suggesting to replace --

MR. YOVANOVICH: And Mr. Strain, I apologize, I don't have it with me, but what the general context was is that we used to provide that each of the units would be constructed in a manner that they can be retrofitted so someone could kind of age in place. So if they needed -- for instance, if they needed to lower the sink because while they were living there something happened to where they could no longer use a standard level sink or we needed to install grab bars in the showers so they wouldn't have to move to another unit, that's the language that we've seen many times. I don't have that exact language in front of me, but that's the context of how we used to address that condition number seven.

CHAIRMAN STRAIN: Well, wouldn't it be in addition to number seven so you're going to have a number eight that says that? Number seven would still apply regardless; you have to be applicable to the federal and state codes.

MR. YOVANOVICH: Correct. But I don't think that every unit would be required to address individuals with physical impairments. I think from a building code perspective, the way this reads right now is every unit would be. What we used to say is we would build the unit but we would build it in a manner that we could address physical

impairments that come along for that individual while they're living in that unit.

CHAIRMAN STRAIN: Is there a certain number of units within each building that's been designed as group housing by federal regulation or codes that is -- a certain percentage that are required?

COMMISSIONER SCHIFFER: Yes.

CHAIRMAN STRAIN: That's what I thought. So you've still got to have some that meet that physical --

MR. YOVANOVICH: But this list is not -- correct. I'm not saying you're -- we'd have to meet that anyway, whether it says that in the PUD or not. We'd have to meet the building code.

CHAIRMAN STRAIN: Right.

MR. YOVANOVICH: What we said on the other ones is that all units would be constructed in a manner for people to age in place.

CHAIRMAN STRAIN: Okay.

MR. YOVANOVICH: So I think that language is probably the better language to go back to. I apologize for not having that specific language, but I think when you all see it again, you'll say yeah, we've seen that the last four or five times these projects have come through.

CHAIRMAN STRAIN: Mr. Schiffer -- oh, I'm sorry, Ms. Homiak, okay.

COMMISSIONER HOMIAK: So on Page 4 of 13 on 130, you have no SIC Code for that still? It says not available. You just won't have one, like 6513 --

MR. YOVANOVICH: There is no code for retirement communities in the SIC book.

COMMISSIONER HOMIAK: It refers to 6513, which is retirement hotels and apartments. If you look --

MR. YOVANOVICH: I brought -- I'll look at that when you're asking staff. We brought the SIC Code book, we'll look at 6513 to see if that's the same thing.

COMMISSIONER HOMIAK: Okay.

MR. YOVANOVICH: It was my understanding that there's not a specific SIC Code that kind of hits the retirement community umbrella.

CHAIRMAN STRAIN: Brad?

COMMISSIONER SCHIFFER: Yeah, I think this seven, the intent there is that this thing is really outfitted for a retirement community with people with disabilities and needing nursing. If you don't put seven in like that, you could build a condo and just age limit the people that live there, correct?

MR. YOVANOVICH: Well, no, and that's what the other -- the other requirements were intended to address, which is -- first one is age, if you go to the previous page. We'll have on-site dining. We'll have group transportation. There'll be an on-site manager for activities, there'll be an on-site wellness center. All of those things were intended to distinguish it from a regular condominium project so that we -- and that was usually in the context of additional density. In this case it's really not an issue in an activity center, but it was an issue when we were bringing projects that were capped at four units per acre under the typical residential calculation. And we were -- we put these seven criteria in there to make people understand we weren't doing what you're saying, it's just building a condo and making it 55 and older to get additional density.

COMMISSIONER SCHIFFER: Do you have a problem leaving seven as it is? You put it in there.

MR. YOVANOVICH: Uh.

COMMISSIONER SCHIFFER: Wouldn't it work best for somebody running the place, that way they don't have to --

MR. YOVANOVICH: Yeah, but again, I'm trying to think, if I'm moving into an independent unit and I'm physically able, do I want all of those things? And you know, do I want the grab bars in my bathroom, do I want the -- I may not want that as a person who's physically -- who doesn't need them. So why -- you know, so I think the answer is we probably ought to take seven out, let the code address what we have to do under the code and then make them retrofit -- I don't want to say -- make them capable of being retrofitted in case something were to happen to me where I needed those services instead of going in.

From a marketing standpoint I'm not sure I'd want to see that if I don't need it.

COMMISSIONER SCHIFFER: But now I'm getting suspicious what you're marketing, so --

MR. YOVANOVICH: Well, what -- retirement communities are independent, assisted and skilled nursing. It's your typical -- you know, and we could do any one of those things. And I've known people who moved in just to purely an independent living facility where they didn't want to be around anybody who needed any assistance at all,

and then I've seen the purely 100 percent assisted living and I've seen the purely 100 percent skilled nursing, and then you have the continuing care retirement communities, which is a combination of all of them. We have the flexibility to do any of those. So if we want to do independent, we have the ability to do that under the category of retirement community.

So, you know, it may be -- you know, it may be that we decide to do an independent community where people are older, want to be with other older people, but are physically fine and don't need all of the handicap accessories within their units.

COMMISSIONER SCHIFFER: Okay. All right.

CHAIRMAN STRAIN: Okay, Ms. Ebert?

COMMISSIONER EBERT: Rich, another ALF type, huh?

MR. YOVANOVICH: Well, no.

COMMISSIONER EBERT: Well, we just had you on the 21st with Sonoma.

MR. YOVANOVICH: Right.

COMMISSIONER EBERT: Which was one. And boy, there's just kind of all clustering -- and I understand, it's going to be like a CVS and a Walgreen's, but I mean, everything that's coming up you're putting it in as a permitted --

MR. YOVANOVICH: As a potential use. And as we discussed the last time, you know, from a market standpoint, we know that not every PUD that asks for this use is actually going to end up with this use.

COMMISSIONER EBERT: I know, but there's some way we're going to have to track them. Some way we're going to have to track these.

MR. YOVANOVICH: And I think the market will do that. Because at the end of the day, you're not going to build another assisted living facility or continuing care retirement community if there's no market for people to buy into that concept.

It's not a -- again, we talked about this. The pre-sale requirements for these in order to build them is pretty significant. It's not a build it and you hope they will come type of atmosphere out there for anything. You know, you're going to have to prove a market in order to get a loan to build it. And you're certainly not going to build it with your own cash if you don't think you're going to be able to fill it up.

COMMISSIONER EBERT: The hotel use that is -- that you have put in there --

MR. YOVANOVICH: I'm sorry?

COMMISSIONER EBERT: -- all the things, that would probably be good in that area with all the homes going in. I feel that was probably one of the better things that was in here for this property.

As far as the liquor stuff, apparently they miss Jersey Joe's Bar too, because apparently he had liquor flowing at the time back then.

The other thing is, on the maps, there are two different maps in here. One is Exhibit C and that -- which is on Page 1 of 16. And the other one is on Page 8. And they are different maps, which is a little confusing to me. Because where you enter from Immokalee Road on Exhibit C, it just shows nothing really on the Mirasol part. And when you get to the other one on Page 8 of 16, you have it outlined in red.

MR. YOVANOVICH: This is the staff report, right?

COMMISSIONER EBERT: Yeah.

MR. YOVANOVICH: Okay, this is where we're talking about documents that staff has included for your review. So --

COMMISSIONER EBERT: Should I just ask staff?

CHAIRMAN STRAIN: That might be better answered by staff.

MR. YOVANOVICH: It may be, because Exhibit C is our actual PUD master plan that does show you where we intend to get access off of Immokalee Road. And the interconnection with Mirasol and the interconnection with Tree Farm to the east. But that's the master plan and all our proposed access points. I think staff was trying to show you in a context of what's around us, but --

COMMISSIONER EBERT: Don't worry, I'll ask.

CHAIRMAN STRAIN: Okay, we'll finish with Richard.

Anybody else have any questions of the applicant at this time?

(No response.)

CHAIRMAN STRAIN: Looks like I'm next.

Richard, what's the status of Mirasol?

MR. YOVANOVICH: I don't know.

CHAIRMAN STRAIN: Okay, is it -- the reason I'm asking, is it's relevant to -- it's the next door neighbor of this site; therefore, it's going to be impacted.

MR. YOVANOVICH: Sure.

CHAIRMAN STRAIN: You produced a site plan as part of your backup data that showed Mirasol with a road up against your property. My question is, what's the status of Mirasol so I know if that road is a reality.

MR. YOVANOVICH: It's an existing and approved PUD that is going through the permitting process.

CHAIRMAN STRAIN: Hasn't there been some legal actions, and did those influence the site plan at all?

MR. YOVANOVICH: Mr. Strain, I -- I don't know what the status of that litigation -- I'm not involved in it.

CHAIRMAN STRAIN: There was something with the flow ways and the Corps of Engineers and the permitting and all that process.

My concern is if we're relying on the Mirasol site plan that exists today and the basis for your impacts and compatibility determinations for the Mirasol project, if they change in the future, we could have different impacts. Right now Mirasol's got a major roadway going up against your project.

MR. YOVANOVICH: In the areas of the Mirasol PUD that address the flow way that you're referring to is the north and west sections of Mirasol, not in this general area.

CHAIRMAN STRAIN: I understand that. But I mean, when you change one area of a master plan, a lot of times it changes the others. And with time, products and ideas and ownership changes.

MR. YOVANOVICH: I can tell you that the representatives of Mirasol were at our NIM and have been monitoring this project.

CHAIRMAN STRAIN: Okay. I'm more concerned what happens to the after market, the next market buyer, the buyer of the homes. With some of the uses you have asked for, the intensity of those uses up against a residential project could be problematic. And if the residential project is closer to your property line than the site plan you provided us for Mirasol today, we end up with a problem maybe like Pebblebrook with Stevie Tomatoes with residential being too close to drinking places and eating places with outdoor activity.

MR. YOVANOVICH: Well, and we can include limitations like we've done in others where we don't -- we prohibit outdoor amplified music, TV. You know, we're not opposed to those same stipulations being included in this PUD to address that concern, Commissioner Strain.

CHAIRMAN STRAIN: There's an element that has not been incorporated into the PUD because the petitioner believes there's no LDC or other mandate to require it, and that involves the issue with the traffic counts.

I disagree with your position, and I have talked to staff about it and I have talked to Nick about it. And Nick was emphatic, it should be included. That gives the transportation department a handle on how many traffic counts they can rely upon for that area.

I disagree with the fact you did it to the most intense use. You did it at 820. 820 is a shopping center category and it's used to minimize the traffic counts, not maximize them. And if you were to do it for a 135,000 square foot Home Depot or Target or Wal-Mart, I think your traffic counts might be quite different than a general shopping center category that averages out some of your traffic counts. There are individual uses that take higher traffic counts than a shopping center traffic count. And since there's no maximum size, unless you can tell me there is, is there a maximum size for any particular building on this site?

MR. YOVANOVICH: I don't believe so.

CHAIRMAN STRAIN: Okay. Well, then, any particular use that has a higher traffic count than 820 could be a single use on that property generating more traffic than a shopping center use might.

But regardless of all that, I think the protection to the public and the traffic analysis should have a limitation on it. We've done that customarily. I don't believe the limitations were done for the reasons you've stated on the record earlier. It was a practical application based on the applicant's input in their traffic statement. You say you're going to put this much traffic on the road, then you ought to be limited to that much traffic. And if you go beyond it, that becomes a problem.

MR. YOVANOVICH: And Mr. Strain, a couple of -- from a practical standpoint I don't have a problem with anything you just said. But I think we need to distinguish a couple of things. One, the zoning analysis is not a

concurrency analysis. We don't get concurrency by getting zoning. We don't have the ability to go forward. We deal with all of that at the site development stage or platting stage. And we have to provide another traffic analysis to address whether or not there's capacity on the roads for that. So there is that additional safeguard and additional traffic review that happens subsequent to the PUD.

If this is going to become a condition of every PUD from this day forward, then that's fine. I just want to make sure that every PUD, whether I do it or someone else does it, when I read it I'm going to see that same traffic cap in there. Because until recently we didn't have that. And I'm not disagreeing with what you're saying about maybe it's a good need. I just want to make sure it's going to be implemented from a policy standpoint from this day forward that we're going to do this.

The language that we've addressed with staff I think works. My concern really was is what if the ITE manual changes and it becomes -- it assesses additional trips to a particular use and yet there's still those additional trips available on the road. So I think this language addresses that, so that addressed my concern about changes in the ITE manual.

All I'm asking for is again, uniform application from this point forward. Because really, to this point the only time I remember -- and obviously I've not done every PUD, but the ones that I've been involved in -- what I said earlier is really, it's only been implemented when we had a less than -- we haven't done it in every PUD. I'm okay if we're going to do it from this point forward for every PUD, as long as we use the language that staff's proposing. And I'm hoping you're comfortable with the language that staff's proposing is the stipulation.

CHAIRMAN STRAIN: Well, this issue was a hot issue for a long time and the resolution to it was the idea of putting these in PUD's, putting the traffic counts in it. And to the best of my knowledge, especially PUD's with commercial components or mixed use components, I thought we've always included those because we've always had a similar discussion. Now, if I'm wrong, okay, from the future I won't try to forget. But I thought this has been included all along since the discussion came up a while back.

MR. YOVANOVICH: I'm not saying you're wrong, I'm just saying I'm not -- I don't know. It's only the last -- these are -- the last two that I've been involved in they've come up. And maybe that's because that's when it became a hot issue.

And again, I'm not saying -- I'm not disagreeing with it, as long as it's, you know, firmly applied. And it sounds like we're doing it uniformly. And if the language that you -- as long as the stipulation that staff's recommending is okay with you and your colleagues, it's okay with us, because it addressed my concern about changes in the ITE manual.

CHAIRMAN STRAIN: Okay, next item is there's a -- you're attempting to minimize or reduce or eliminate setbacks if the Tree Farm MPUD next door somehow has similar language so that you can create a building apparently across boundary lines, property lines?

MR. YOVANOVICH: Correct.

CHAIRMAN STRAIN: Just out of curiosity, do you have some knowledge of the ownership of Tree Farm PUD wanting this? Is this something -- because they'd have to amend their PUD to get the same thing.

MR. YOVANOVICH: We -- back when the economy was a little bit better, there was some discussion about that occurring, that there would be a subsequent amendment to the Tree Farm PUD to allow for the combining of the two commercial projects.

CHAIRMAN STRAIN: Okay. And earlier we talked about in your presentation -- I'll get into the document in a minute. In your presentation earlier you talked about the NIM and you -- the height reference. The staff's statement in our document says that applicant represented the project is a 23-acre parcel, that they are proposing a commercial use from agriculture up to 135,000 square feet of office/retail use, and the buildings are to be no higher than 45 feet.

Now, I think you said that was meant for the retail buildings but not the office buildings. But yet in the staff report it says office/retail.

Have you since got any document or any kind of minutes from the meeting or something that indicates that you didn't mean office/retail, as stated in the staff report?

MR. YOVANOVICH: I asked Mr. Duane, who made the statement, what was the context of that statement. And he told me the statement -- the context of that statement was it was 45 feet for the retail and not for the office.

CHAIRMAN STRAIN: Kay, you were at the meeting, I assume, or -- I see Jamie getting up and wanting to

answer for you, but --

MS. DESELEM: I'm sorry, I was involved in another conversation. I believe your question --

CHAIRMAN STRAIN: I don't need the staff report, I need to know just this one answer to this question I just asked. Did you hear it or you want me to repeat it?

MS. DESELEM: I heard your question about the 45 feet.

I didn't realize this was an issue so I didn't go back and check. I can go back and check.

CHAIRMAN STRAIN: When?

MS. DESELEM: I don't have any way to listen to the NIM tape right now.

CHAIRMAN STRAIN: I mean, it's a relevant issue. We just had to continue an earth mining pit discussion because they said 80 feet instead of 90 feet. That's 10-foot difference. This is a serious issue. And if they've included in their statements on the record, if they've said office retail would be limited to no higher than 45 feet, we need to know that.

So however that needs to come out. I didn't know it was an issue until I heard it this morning, so --

MS. DESELEM: Right, and I agree with you, yes, it is an issue and I need to find out. But I don't have the ability to do it here, so -- I mean, maybe if we took a break. But this is the only petition, so --

CHAIRMAN STRAIN: Richard, do you have a --

MR. YOVANOVICH: I have a potential -- how about -- I really don't want to get continued over this issue. If there's an -- and I don't want to reduce the issue either.

Let me ask a question: Other than what may have been said at the NIM, is the request of 55 feet zoned for an office building a problem? Because what I would propose is that we kind of give -- if you're inclined to approve this project, say the height will be based upon Kay's listening to the NIM and reporting back to you her opinion --

CHAIRMAN STRAIN: Well, here's the problem, Richard. And you just set the example by what you discussed with me regarding the traffic language. You wanted to be consistent; you wanted to know how to do it in the future and how we were going to -- from basically how we've been doing it all along.

Well, I can tell you how we've handled NIM's. If someone says something at a NIM, that becomes part of the document. And if they -- if they're in error or they made a mistake, if they don't like it, they've got to go back and redo the NIM to get it corrected, or we've got to have a reasonable testimony that the NIM was or was not stated in a certain way.

In this case we've got two different parties: The applicant's representative saying they didn't say office/retail, but the staff report saying they did. And it's got to get resolved.

I don't know how to say you're approved subject to a resolution on a consent when the vote has to take place today.

MR. YOVANOVICH: Well, the only issue is verification of what -- you have contrary testimony. You have Mr. Duane saying that 45 feet was in the context of retail, and you have Kay saying I don't know, I need to go listen to the tape.

What I'm saying to you is if height is not an issue other than what may have been said at the NIM, say the 45 feet is conditioned upon verification that there wasn't the commitment to reduce that height to 45 feet at the NIM.

CHAIRMAN STRAIN: Mr. Klatzkow?

MR. KLATZKOW: Sir?

CHAIRMAN STRAIN: If we render a decision on an approval that goes to consent for verification but on consent that issue isn't verified properly or there's still some concerns over it, does that nullify our approval?

MR. KLATZKOW: You can condition it. How's that? Why don't you condition your approval pending getting back from staff what exactly was said. And if you're not comfortable with what was said, then you reopen it up.

CHAIRMAN STRAIN: Okay.

Kay, what evidence are you going to be looking at to give you information that you're seeking?

MS. DESELEM: The applicant provides a tape of that neighborhood information meeting and I will go back to the office and listen to that tape.

CHAIRMAN STRAIN: What format is the tape in?

MS. DESELEM: I believe it's on a disc. I'm not certain.

CHAIRMAN STRAIN: Okay, could you send that tape to the Planning Commission members?

MS. DESELEM: Certainly.

CHAIRMAN STRAIN: Okay. Then we'll listen to what you have to say at the consent agenda, if we get that far with this project, and at the same time we can come with a full understanding of what was said ourselves so we can all know how to agree or disagree on it.

MS. DESELEM: Okay.

CHAIRMAN STRAIN: Okay, thank you.

COMMISSIONER SCHIFFER: Mr. Chair?

CHAIRMAN STRAIN: Yes, sir.

COMMISSIONER SCHIFFER: Carol, do you remember what was said? You said you were there.

COMMISSIONER EBERT: Oh, this was well over a year ago. There were only five of us there, Brad, so --

COMMISSIONER SCHIFFER: Okay.

MR. KLATZKOW: And just for -- if we're going to have to reopen it up, we're going to have to readvertise it. So, you know, if that tape doesn't say what you think it says --

MR. YOVANOVICH: I'm asking you to approve either 45 -- 55 feet conditioned upon the NIM. And if the NIM comes back and says we committed to 45 feet, approve 45 feet.

MR. KLATZKOW: That would be fine.

MR. YOVANOVICH: That's all I'm asking. You know, again, it was a while back, you know, it's not fair to, you know, ask Kay to remember. She's been to a few, and Ms. Ebert's been to a few.

CHAIRMAN STRAIN: Okay. No, I mean, if we can move forward under that issue -- for that issue, that's fine, we'll keep at it.

In the actual document, the PUD document, Page 1 of 13, Exhibit A, list of permitted uses, number six says: Agricultural uses until such time as the issuance of the first certificate of occupancy.

That's not how things normally happen. You don't leave cows there qualifying for ag. after you've been in there and knocked down all the trees and started pouring concrete. And the tax assessor needs to collect his money as soon as the entitlements are realized.

So I had talked to staff about this. I don't know if they got back to you. The development order -- some form of development order past the PUD is what should trigger that. If you go in after the PUD is approved -- or assuming it's approved, if you go back in for any other development order on that property, at that time you lose the ag. exemption.

MR. YOVANOVICH: No, you don't. You don't lose the -- because I can get an SDP approved and it's good for three years. I may not actually start work on that SDP, but --

CHAIRMAN STRAIN: Well, the certificate of occupancy isn't going to work, Richard, so --

MR. YOVANOVICH: I'm not disagreeing with you, Mr. Strain, on that, but I don't -- I don't think it should be SDP plat, I think it should be something much further along.

CHAIRMAN STRAIN: Okay, give me an example. Once you break ground on something, if you get an SDP and you let it sit and it still stays ag., I'll go along with that, you're not doing any development. But as soon as you go out there and start some kind of activity on that site, it's an active site and shouldn't be qualified as ag. after that.

MR. YOVANOVICH: Well, shouldn't we actually leave that to the property appraiser, since the property appraiser is tasked with determining when you lose your --

CHAIRMAN STRAIN: Not when you put in a list of permitted uses in your PUD we can't leave it, because you brought it up. You added it to the list of permitted uses.

MR. YOVANOVICH: Exactly I've added that, because it's an ag. property today and the -- there are guidelines for the Property Appraiser to determine when it is you lose your ag. exemption. And he may very well say you lose it the minute you start moving dirt.

CHAIRMAN STRAIN: Richard, on number six, see the word agriculture?

MR. YOVANOVICH: Right.

CHAIRMAN STRAIN: Drop everything after that word and it works. If you want to leave it up to the tax assessor, then that's all you've got to do, because that's what everybody else does.

MR. YOVANOVICH: That's fine.

CHAIRMAN STRAIN: On Page 2 you have a classification for group housing, which is number 70. And I

think Karen started to hit on this when she talked about your number 130. 130 talks about retirement communities. And I understand you believe there's no SIC Code for this.

What in the group housing section wouldn't cover you under the activities listed in 130?

MR. YOVANOVICH: I don't think that 8051, 8052 and will 8059 address independent living facilities.

CHAIRMAN STRAIN: Okay, are there any other SIC codes that do or --

MR. YOVANOVICH: I'm not aware of one, Mr. Strain. There might be, but I'm not aware of one that addresses specifically independent living facilities.

CHAIRMAN STRAIN: Well, the reason I'm -- it becomes important is under your five asterisks on your development standards table, in the last sentence it says for each acre of group housing or fraction thereof developed, you have a certain square foot reduction against the max gross leasable commercial area. But --

MR. YOVANOVICH: I know.

CHAIRMAN STRAIN: -- you could do a retirement community and you could say it doesn't have any impact.

MR. YOVANOVICH: You're right. And we do need -- and I saw that and I meant to mention it, but I forgot to.

We need to add retirement community to that other -- to that laundry list of things that for each acre you lose 10,000 -- what is it 193 or 10,000 something. So add -- I think we should either replace those -- I think you should put group housing and retirement communities.

CHAIRMAN STRAIN: Well, it would have to be retirement communities as referenced in your number 130, so maybe just reference the numbers of your uses. That might make it even --

MR. YOVANOVICH: Okay, that would be fine.

CHAIRMAN STRAIN: -- clearer, because that's unique to your PUD.

MR. YOVANOVICH: So uses 70 and uses 130.

CHAIRMAN STRAIN: That's the only group housing in there, I believe.

MR. YOVANOVICH: I believe you're right.

CHAIRMAN STRAIN: Okay. Okay, and on -- I've got to keep writing all this stuff down.

Okay, and Page 5, you have a Roman numeral III. We recently modified the LDC to better define what are passive uses and what aren't. You're going I don't know where in regards to that. You'd be better off just leaving the reference to the LDC.

And I think Kay may have discussed that with you, I brought it up to her yesterday.

Kay?

MR. YOVANOVICH: I don't think Kay and I had a conversation yesterday, did we?

MS. DESELEM: No, sir, I did not.

CHAIRMAN STRAIN: Oh, sometimes you fill him in on issues when I bring them up, so --

MR. YOVANOVICH: Usually we do, we just didn't this time.

MS. DESELEM: Yesterday was too hectic, I did not get a chance to get back to the applicant and agent.

CHAIRMAN STRAIN: Okay, you had a solution to number three, based on our conversation, and based on what I just said. Could you repeat that solution?

MS. DESELEM: Yes, sir. I think we could just make the reference to the LDC, because the LDC has pretty clear guidelines as to passive uses within a preserve area.

CHAIRMAN STRAIN: And that would eliminate all the other verbiage so you'd end up with just one two or three-sentence paragraph on the top.

MS. DESELEM: The only thing additional you might want to add is Item E if -- for the future, but I don't even know that that's necessary.

CHAIRMAN STRAIN: I don't think it would be, because if they're going beyond the preserve uses and standards in the LDC, he would be the only solution to that anyway.

MS. DESELEM: Yes. I was thinking the same thing, but I was just leaving the door if you wanted to do that to allow them the opportunity through a public hearing process.

CHAIRMAN STRAIN: They could have it anyway, right? They just come in and amend their PUD and --

MS. DESELEM: That's true.

CHAIRMAN STRAIN: So that opportunity's always there, whether we put it in print or not.

MS. DESELEM: Right.

If you'd like, I can give you the exact citation for that preserve.

CHAIRMAN STRAIN: Yes, what was it?

MS. DESELEM: Just a moment, I'll get it for you.

CHAIRMAN STRAIN: Richard, do you have any problem with this line of reasoning?

MR. YOVANOVICH: I have a question.

CHAIRMAN STRAIN: Well, that's what you're here for.

MR. YOVANOVICH: Since I don't -- and maybe I can be provided a copy of the section reviewed if we have a break. I just want to make sure that all the uses I've asked for are currently in the Land Development Code. I don't --

CHAIRMAN STRAIN: Richard, there's more uses than you asked for. I was actually doing a benefit to you, not hindering you.

MR. YOVANOVICH: Thank you, that's all I'm -- I'm just trying -- I don't want to object to something that helps me, but I don't want to consent to something that may hurt me.

CHAIRMAN STRAIN: I'm just trying to simplify --

MR. YOVANOVICH: I'm all for simplification.

CHAIRMAN STRAIN: -- the document.

MR. YOVANOVICH: I just want to make sure I didn't inadvertently leave something out by simplifying.

CHAIRMAN STRAIN: We won't get done before break, so you certainly will have time to look at it at break and we'll go back and visit it then.

On Page 7, your development -- yes, Kay?

MS. DESELEM: If I may, I can give you the citation.

CHAIRMAN STRAIN: Sure.

MS. DESELEM: It is Section 3.05.07.H.1.h. And I will give a copy of this information to Rich on a break.

CHAIRMAN STRAIN: Okay. And after break we can see if you have an objection to it or not.

MR. YOVANOVICH: Thank you.

CHAIRMAN STRAIN: Page 7 of your development standards table, your fourth line down where it says minimum yards from northern boundary as shown, can you show me what you're talking -- where the dimension is on the northern boundary? You've got a plan up there.

MR. YOVANOVICH: I know.

I don't know, Bob, can you answer that?

He's asking from external, what's the minimum yard.

CHAIRMAN STRAIN: Well, it just says as shown, and I couldn't find it.

MR. YOVANOVICH: Well, I think you'd have to -- if you look at the master plan, you'll see, and that's now pointing -- the north is actually pointing down.

CHAIRMAN STRAIN: I know.

MR. YOVANOVICH: But you can see that the preserve is upon our northern -- the northern boundary is agricultural adjacent to that preserve, which is -- gosh, I don't know how many feet that is.

Bob, can you read that number?

CHAIRMAN STRAIN: I would suggest that you take a minimum distance and put it in your table.

MR. YOVANOVICH: That's fine.

CHAIRMAN STRAIN: Because that is a not to scale drawing, and I'd hate to rely upon that drawing and staff coming out with different rulers to come up to see what the distance is you should be from the northern property line. And you narrow from one side to the other. So pick your narrowest point. That's fine.

MR. YOVANOVICH: I got it.

CHAIRMAN STRAIN: But we ought to put a number there.

MR. YOVANOVICH: You want me to put -- how about -- if we put 100 feet, it's going to be in the middle of the preserve. So why don't we just put something.

CHAIRMAN STRAIN: Well, I think it ought to be close to where you're at but isn't -- I'm saying, put a minimum so you don't have to worry about coming back in if you're a few feet off here and there, that's all.

MR. YOVANOVICH: Okay, we'll --

CHAIRMAN STRAIN: On the last item in that table, it refers to max gross leasable commercial area, 135,000 square feet. Then it says group care facilities, .60 FAR, and hotel and motel .60 FAR.

Now, just so there's no -- I know that you have a footnote that attempts to clarify it, but the FAR's, whatever square footage they would calculate is included within the 135. So you're not under any circumstances asking for more than 135,000 square feet of gross leasable area, whether it's a group housing care facility or a hotel/motel.

MR. YOVANOVICH: No, I don't believe that's correct.

CHAIRMAN STRAIN: Okay, then explain to me what the total build-out of this project's going to be.

MR. YOVANOVICH: If we do an office and retail, it will be 135,000 square feet. If we do a hotel exclusively, it will be a .6 within the development standards. And if we do a retirement community, it will be a .6.

CHAIRMAN STRAIN: .6 of what?

MR. YOVANOVICH: .6 FAR.

CHAIRMAN STRAIN: Of the entire acreage of this property?

MR. YOVANOVICH: I believe we intended of the 12 point something acres of retail, the net number.

CHAIRMAN STRAIN: Okay, well, we just got done -- well, I wasn't here for that fun one called Sonoma. On Sonoma you included the preserve as part of your calculation for FAR. Had I been here, I would have been objecting to that as I am right now to this. Right now you're saying on this project you don't want to include the preserve as part of your FAR calculation; is that right?

MR. YOVANOVICH: That's what I'm saying, on this project I don't want to do that.

CHAIRMAN STRAIN: Kay? Yesterday when I asked you if the .60 FAR's were inclusive of the 135, I thought you acknowledged to me they were. He's saying something different.

MS. DESELEM: That was my understanding as well.

CHAIRMAN STRAIN: Okay. Well, now we have a different problem. So now you've got 135,000 square feet, but if you use an FAR in the buildable area of .6 on this acreage that you're now saying is net acreage, what is the total capabilities for square footage on this property?

MR. YOVANOVICH: It couldn't have been 135. It could not have been 135.

CHAIRMAN STRAIN: Richard, it's a matter of what was -- how this project was reviewed. If it was reviewed as 135,000 maximum, that may have an impact on staff's calculations and how they may differ if it's greater square footage.

MS. DESELEM: Based on his statement right now, I don't know what the maximum would be. I thought it was 135,000 square feet.

MR. YOVANOVICH: I wouldn't have included an FAR if it was the same. Because simple math tells you 42,560 times 12 is almost 600,000 square feet.

CHAIRMAN STRAIN: So that's what you want --

MR. YOVANOVICH: If you multiply that by .6, that's 360,000 square feet. There would have been no need for an FAR calculation if we were capped at 135, nor would we have needed to include a conversion formula that says for each acre of retail -- I'm sorry, each acre of group housing retirement we would take out 10,000 something square feet of the retail or office. I mean, it couldn't have been that number or else I wouldn't have needed an FAR.

CHAIRMAN STRAIN: Okay, but let's back up another step. Let's say 300,000 square feet or what -- what number did you just come up with the .6, approximately 300,000 square feet of --

MR. YOVANOVICH: Right. See, I rounded up on the 50,000 square feet per acre because I can't do 42,560.

CHAIRMAN STRAIN: Say you could put a 300,000 square foot --

MR. YOVANOVICH: CCRC.

CHAIRMAN STRAIN: Okay. But -- well, no, you could only do -- well, it would be a big one, but you could do a hotel/motel for that size. But when you come back and you eliminate square footage from the 135, you do it at 10,900 square feet per acre.

MR. YOVANOVICH: Right.

CHAIRMAN STRAIN: Now, if you put a hotel off on what is it a four net -- how many acres are we talking about?

COMMISSIONER HOMIAK: 12.3.

CHAIRMAN STRAIN: That's gross, isn't it?

MR. YOVANOVICH: No, that's what's left at the end of the day I think for the commercial piece.

CHAIRMAN STRAIN: Okay, 12 acres. Say you use six acres for a hotel.

MR. YOVANOVICH: Right.

CHAIRMAN STRAIN: That's 36 times 10,000, that's 60,000 square feet. So out of the 135 you're saying you can have the hotel at 300,000 square feet, but you take 60,000 square feet out of the 135 and you still could do all the retail and commercial on top of that; is that what you're saying?

MR. YOVANOVICH: Yes.

CHAIRMAN STRAIN: So we're talking about a half million square feet by the time this is -- or 400,000 square feet or so by the time this is all said and done.

MR. YOVANOVICH: Okay.

CHAIRMAN STRAIN: Okay, well, I don't -- that isn't what was portrayed in this PUD. I think everybody's been concentrating on 135,000 square feet.

COMMISSIONER MURRAY: Yeah.

Kay, this is critical to staff's concern. And John, transportation wise I need to know what you guys were reviewing.

Heidi?

MS. ASHTON: This was advertised for 135 square feet (sic). We didn't separately reference the hotel and the group housing. Because the way the ordinance was written, it said 135, including office and retail and permitted uses in Exhibit A. And Exhibit A includes group housing and hotels. So maybe there was a lapse of communication in what he thought he was applying for --

COMMISSIONER MURRAY: Sure sounds like it.

MS. ASHTON: -- but apparently there was.

CHAIRMAN STRAIN: Well, what about the NIM?

MS. DESELEM: I believe that Heidi's correct, the idea all along has been 135,000 square feet.

And I might add that the applicant did approve the title wording. It's not like they never saw that before. And I just talked to John Podz, and he reviewed it -- he can speak for himself, but it's my understanding that he reviewed it also for 135,000 square feet.

CHAIRMAN STRAIN: Richard, I think we have a problem. How do you want to proceed?

MR. YOVANOVICH: Well, let's -- hang on a second. My understanding -- can we take a five-minute or 10-minute break? Because I need to look at the TIS. Because it's my understanding the TIS did in fact analyze --

CHAIRMAN STRAIN: Cherie', we'll take our break here now and we'll come back at 10 minutes till 10:00. That will give you time.

So we'll come back at 10 of 10:00. Please try to straighten this out. I would suggest you talk to our County Attorney to make sure whatever legally insufficient advertising we had is figured out as well. So we're on break.

(Recess.)

CHAIRMAN STRAIN: Let's resume the meeting. I don't know what was resolved, so Richard, would you please fill us in?

MR. YOVANOVICH: Yeah. First of all, I think from a traffic standpoint it's an academic discussion, because we have trip caps. So regardless of what I put on that slide from a traffic impact standpoint, transportation is a wash because I've got trip caps.

The larger problem is the advertisement that went out. I'm being told that I'm capped at 135,000 square feet, regardless of the fact that my development standards table had the .6 FAR in it. And if you did the math like I did for you, you would realize that the FAR is over 135,000 square feet. I wouldn't have put an FAR in there if I was capped at 135.

But the interpretation I've been given is I have two choices: Continue this hearing, go have another NIM, and then come back by readvertising to put the .6 FAR in the legal ad.

That's not acceptable to my client from a timing standpoint and a cost standpoint. So the only option I have is to I guess remove the .6 FAR and just leave every use as capped at 135. Although I think that's an unfair result for my client. He has no choice at this point because the cost of going back and readvertising this in time is not something he's willing to do at this time.

CHAIRMAN STRAIN: Well, I believe, Richard, that when a document is produced and given to staff,

County Attorney's Office, all of us, we all read it one way. But if that's not what you meant, maybe it wasn't written clear enough.

MR. YOVANOVICH: Well, we had the very same discussion, Commissioner Strain, on Sonoma.

CHAIRMAN STRAIN: I wasn't here for that.

MR. YOVANOVICH: No, I'm talking about with staff. You know, we had that conversation. Now I will tell you Sonoma came in later. So as we were talking, we all reserve the right to get smarter as time goes along and catch things. And it got caught in Sonoma. It didn't get caught in this particular petition.

But again, I say there would have been no reason to have the .6 in there if I was capped at 135. So we are where we are. And we're stuck with going forward with the 135 cap, unless someone could find us a way out of the 135 cap applying to the hotels and the retirement community.

CHAIRMAN STRAIN: But I think it's interesting -- and Bob, I'll get you in just one minute.

I think it's interesting that you wanted a release from the paragraph that limited the traffic on the project when we had a TIS that provided us -- that limited the limited the traffic strictly to the shopping center. Now, had we done that, then the traffic generated by the hotel or all the other FAR uses, which will be three times the square footage of the shopping center, would have gone on without any traffic count analysis having added to it. It would have been part of the process.

MR. YOVANOVICH: And my traffic consultant tells me that's less than what we analyzed for the 135,000 square feet of retail and office.

But be that as it may, we are where we are. You have your trip cap in there and we're stuck at 135 unless we can find a way out.

CHAIRMAN STRAIN: Mr. Murray?

COMMISSIONER MURRAY: Yeah, you made a statement that I want to be clear on. When you said you would be -- you know, with the 135, you're then saying you're going to do retail and office only. Because if you take out the .60, you can't do any of the assisted living --

MR. YOVANOVICH: No, I can do it, I just am capped at the 135, and for each acre that I do, I lose 10,914 square feet.

COMMISSIONER MURRAY: But you're going to have it in your standards, won't you?

MR. YOVANOVICH: What's in my standards?

COMMISSIONER MURRAY: The .60.

MR. YOVANOVICH: No, it's an unnecessary number.

COMMISSIONER MURRAY: So how do you lose the 10,000, if you don't have that?

MR. YOVANOVICH: For every acre I do of --

COMMISSIONER MURRAY: I didn't know that was in the Land Development Code, that's why --

MR. YOVANOVICH: It's not.

COMMISSIONER MURRAY: Well, that's why I'm wondering how you can do that kind of calculation.

MR. YOVANOVICH: Well, we'll have to. When we bring in a Site Development Plan, we'll have to show what is dedicated to office and commercial versus -- office and retail, versus what's dedicated to either a hotel or a -- actually, you're right, we probably don't need it, just calculate the square footage. We don't need it. We don't need a conversion formula anymore.

COMMISSIONER MURRAY: That's what you have to do.

MR. YOVANOVICH: Which further evidences the reason why the formula was in there in the first place, was to figure out how to address that. But, you know --

CHAIRMAN STRAIN: Richard, I don't know who your clients are, but, you know, if this site is better developed with a hotel/motel or whatever operations you want, to redo the NIM and come back to us at this stage is more cost effective than accepting this and coming back in and having to amend the PUD. It takes much longer and probably more involved dollar-wise process to get that done.

MR. YOVANOVICH: Well, the difference, Mr. Strain, at this point is you're not dealing with someone with unlimited pockets.

CHAIRMAN STRAIN: That's why I mentioned this.

MR. YOVANOVICH: So there's kind of -- they're kind of stuck. So whoever comes in to buy the property -- this is a family piece of property that was inherited. They're going through to finish the process. They've been in it

for quite a while. They're trying to finance this process, get it ready for a developer to come in and buy it. They're just going to have to let the developer who comes in and buys it, if they determine that they need more square footage for either a hotel or a retirement community use, bear that expense.

But they don't -- you know, the expression they told me is they just need to stop the bleeding. So that's kind of why we are where we are.

CHAIRMAN STRAIN: Well, and I'm sorry that it got to this, because the question was asked, and everybody thought we were on the same page until you told us differently today. So --

MR. YOVANOVICH: Well, I appreciate there was a failure to communicate.

CHAIRMAN STRAIN: Okay, so as far as the development standards table in Exhibit B, after the words maximum gross leasable commercial area, 135,000 square feet, everything below that gets removed from the table. It's not going to matter, because you're going to be part of the gross square footage; is that right?

MR. YOVANOVICH: Yes. And I'm assuming that means the quadruple asterisks go away.

CHAIRMAN STRAIN: Yes, those both go away. That gets you where you need to be.

And then the only other thing we have outstanding for the similar issue would be the height, which is going to be resolved by the NIM tape.

John, could you verify to us that you're comfortable with the traffic impact statement cap as it is now, and will apply it this way?

MR. PODCZERWINSKY: Good morning, Mr. Strain.

Yes, I am satisfied with the trip generation cap as it's been proposed in the stipulation.

CHAIRMAN STRAIN: Okay, thank you, sir.

COMMISSIONER SCHIFFER: One question, Mark.

CHAIRMAN STRAIN: Go ahead, Mr. Schiffer.

COMMISSIONER SCHIFFER: And Rich, it's on the development standards. And it's the minimum distance. You use the word structures. Could you change that to buildings? And here's why: There are things that are structures that aren't buildings, and you don't want to get into a distance issue.

MR. YOVANOVICH: Okay.

COMMISSIONER SCHIFFER: I think you're totally talking about buildings.

MR. YOVANOVICH: Okay, thank you.

CHAIRMAN STRAIN: Okay, on Page 8, Roman numeral II, development with adjacent property to the east. The last six or seven words puzzle me: And all other pertinent LDC requirements shall be applicable.

Does that mean if you didn't say that they wouldn't be?

MR. YOVANOVICH: I'm sorry, I had my head somewhere else when you started the question.

CHAIRMAN STRAIN: Roman numeral II on Page 8.

MR. YOVANOVICH: Okay.

CHAIRMAN STRAIN: The last seven words of the paragraph: And all other pertinent LDC requirements shall be applicable.

You know, if that wasn't there, does that mean they aren't? I think it's language we don't need. I think it can end after CPUD is what I'm trying to say.

MR. YOVANOVICH: Okay, it's your language, we'll take it out. Not yours, it's the county language.

CHAIRMAN STRAIN: Okay. On the site plan on Page 9 of 13, below the site summary table -- where did he go? I'm talking to a microphone over there.

COMMISSIONER SCHIFFER: Bob will answer.

CHAIRMAN STRAIN: Pardon me?

COMMISSIONER SCHIFFER: Come on, Bob. This is Bob's drawing, he can --

CHAIRMAN STRAIN: I can wait for him. It's not a problem.

MR. YOVANOVICH: I'm really bothered by this ad thing, and I've got to --

CHAIRMAN STRAIN: Well, use the microphone, Richard.

MR. YOVANOVICH: I've got to ask a timing question. If we were to continue this hearing and do another NIM, can I have a January 22nd, I think it is, BCC date? Or the February.

It's in the executive summary. Does anybody remember right now?

MS. DESELEM: I think it's February 22nd.

MR. YOVANOVICH: I think it's February 22nd.

MR. BELLOWS: I can confirm, it is the February 22nd.

CHAIRMAN STRAIN: Okay.

MR. YOVANOVICH: I just think that might -- I'm going to pay for the ad, I'm going to do the meeting, the NIM for free. I think that this isn't right for my client to give up the .6. I just don't want to lose my BCC date.

CHAIRMAN STRAIN: I have no problem --

MR. YOVANOVICH: And I want to make sure that we can make that happen. But can we resolve all issues other than that so when I go -- I know that -- and obviously the public may come and raise the FAR issue, but I'd like to know if it's an issue for the Planning Commission to do that FAR, the height of 55 feet for office. I just want to know if there's any Planning Commission issues subject to the public showing up. Because I don't want to go do this if the Planning Commission's already going to tell me they don't like it. I don't want to continue something if there's a feeling of the Planning Commission that those development standards bother you.

CHAIRMAN STRAIN: Richard, the height issue, I'd like to know, is Tree Farm Road the same height as you're asking for here?

MR. YOVANOVICH: We're actually lower than Tree Farm PUD.

CHAIRMAN STRAIN: Okay. Your site plan where you produced a large building in the back and three buildings in the front, I didn't have any objections to that site plan. So if that's the basis for your coming forward but now you want to clarify it so it can be legally sufficient, I don't see a problem with it. I'm not saying it's going to get approved, I'm just saying that we have other issues to deal with, we --

MR. YOVANOVICH: Well, I want to get through all of those, if we can.

CHAIRMAN STRAIN: Well, the consent, the review of that NIM meeting is going to be crucial, but you're going to have another --

MR. YOVANOVICH: But again, I have --

CHAIRMAN STRAIN: -- one you can clarify.

MR. YOVANOVICH: -- another one I can -- I want to clarify any issues, but I don't want to spend my client's time. It's not going to cost him any money, but any time if I come back and I did all of this for naught because the Planning Commission doesn't like the .6 FAR or the Planning Commission doesn't like the 55 feet. That's all I'm asking you.

And I understand that if there's huge public outcry against that, you reserve the right to include that in your consideration. But I don't think there's going to be a big issue. There were five people at the NIM. I really -- I think it's a non-issue, but it's a technical issue that I want to fix.

CHAIRMAN STRAIN: Well, I think Diane brought up a good point earlier. She said a good thing to put here would be a hotel. ACLF's and retirement communities are also good things. They're quiet neighbors, they generally do a good job in Collier County.

My -- and we can poll the Planning Commission informally, subject to --

MR. YOVANOVICH: I understand.

CHAIRMAN STRAIN: -- all this criteria. Nothing's permanent. But I didn't have an objection to your site plan. And if there was a hotel in the back with the three units in the front like you've shown here, and if that took up the square footage to the extent you're talking about with the FAR, I didn't have -- I don't think I've got a problem with it, Richard.

MR. YOVANOVICH: And I think there's flexibility, though, Mr. Strain, to modify that plan, to combine it into a little bit -- a larger building. The building itself, but still within the same development standards --

CHAIRMAN STRAIN: I think you need to define --

MR. YOVANOVICH: -- maybe a hotel or something.

CHAIRMAN STRAIN: I think it's critical for you to define the maximum square footage in all the buildings, including the FAR build-outs --

MR. YOVANOVICH: We'll do that, we'll put it in there.

CHAIRMAN STRAIN: -- and that's the package that we're not seeing here today. It's what we thought we had. But now we realize we don't have it. When you get that full package together, I mean, I expect I would think a hotel/motel in the back of this -- anywhere on this property would be a good thing.

MR. YOVANOVICH: Right.

CHAIRMAN STRAIN: Because this is a high activity center. It's where commercial's supposed to go, it's where these heavy uses are supposed to go.

But, now, keeping them compatible is the key. And that's going to be dependent on how much commercial square footage or how much buildable square footage you're going to come back with.

MR. YOVANOVICH: And I understand that. And we already know that 135 of retail and office seems to be okay. If we went to an FAR -- and again, it's somewhere around 300,000 square feet if you calculate it quickly in your head for hotel or a CCRC. I'm just asking if the magnitude of those numbers right now scares anybody off from the Planning Commission. Because that's what you're asking me to tell you, how many square feet it could be.

CHAIRMAN STRAIN: Brad?

COMMISSIONER SCHIFFER: Rich, I think the thing you might want to clear it up with is don't use FAR. There's two problems with that: Is people can't picture what that really means, and people can't picture what area on the ground you're even talking about.

So why can't you come up with some maximum square footages for those two uses?

MR. YOVANOVICH: Well, I can, I'll just do the .6 times whatever, and I'll put that number in there instead of --

COMMISSIONER SCHIFFER: Well, then it's going to be like 200 something thou and it's going to scare the willies out of everybody, so --

MR. YOVANOVICH: But it's -- okay.

COMMISSIONER SCHIFFER: So, I think, you know, get some reasonable numbers. There are. Because when you really read this, what you mean here is that you can build -- what you intended to do, you could build 135,000, that's comfortable, and/or you could build the group facilities, reducing --

MR. YOVANOVICH: Right.

COMMISSIONER SCHIFFER: -- by your little equation.

And even though it says here group care, you also meant retirement would be part of that, correct?

MR. YOVANOVICH: Right, we'll fix --

COMMISSIONER SCHIFFER: So you should add that to the --

MR. YOVANOVICH: We will.

COMMISSIONER SCHIFFER: And/or a hotel at .6.

So you really could put those three uses. And the .6 could be really hard. So I think the .6 is a variable where you should actually define I think a number.

MR. YOVANOVICH: But again, and I'm not arguing with you. What I'm saying, Mr. Schiffer, is you're looking at a 23-acre site. And if we were to simply put 200 and something thousand square feet of development on a 23-acre site as a hotel or CCRC, I don't know why the community would be upset. Although that square footage sounds like a lot, it's on a 23-acre parcel. That's awfully small.

COMMISSIONER SCHIFFER: A 23-acre parcel with half of it in preserves. So, you know, you can take that density, and that's --

MR. YOVANOVICH: But I haven't taken the density. I was --

COMMISSIONER SCHIFFER: And there's a -- scaling the objects, the buildings. When you take half your property off of buildable area, that number is crunched on a smaller piece of land.

MR. YOVANOVICH: Correct. Like we do everything.

COMMISSIONER SCHIFFER: Right.

CHAIRMAN STRAIN: I think Brad hit on a good point, us trying to understand an FAR and a sizing is important. I think you'd be better off with the square footage.

But also, Richard, there's a lot of projects in this county that are built out to a lot of square footage. Give us some examples that you're comparing yourself to that are projects that are appealing. We might -- that will give us a visual to feel more comfortable with what you're proposing. I think it would help your argument is all I'm saying.

MR. YOVANOVICH: I understand. I hear you. Again, I'm just -- gut feeling, I'm saying, is anybody telling me there's no way you're going to convince me yet what that .6 yields on a square foot number.

CHAIRMAN STRAIN: I'm not at that point.

Is anybody on this commission steadfast against that?

COMMISSIONER SCHIFFER: I think the problem is, and I'm an architect, I can't picture that until -- and if

I do, in other words, I start taking .6 times the gross area of the site --

MR. YOVANOVICH: But I'm not asking for that.

COMMISSIONER SCHIFFER: -- I've got a huge building. And I've got another huge building with a hotel/motel. I mean, I've got a convention center, I've got a huge group care thing, and I've got some commercial left over. So you can max -- I mean, I think obviously a hotel is only going to be so big for that site, and you could give us that number. Obviously the group care is only going to be so big. Leaving it as a variable is what's the scary part of it. Even to me who deals with those variables.

CHAIRMAN STRAIN: And I only have one other issue that I think is pertinent for you to know before you come back. That's a small reference on the site plan. I started on that, Page 9.

MR. YOVANOVICH: I'm sorry, I didn't mean to interrupt you.

Which Page 9 of --

CHAIRMAN STRAIN: Page 9. See where it says the word site summary, the box in the bottom?

COMMISSIONER EBERT: Uh-huh.

CHAIRMAN STRAIN: And down below there's some verbiage. The one that says maximum development intensity, and it says 135,000 square feet of office and retail development, along with other permitted uses. I just don't know if you need the words along with other permitted uses.

Now, ironically it takes a different meaning after the explanation we've had here now. Because when I asked what other permitted uses were, I was told it was things like the preserve board walks and stuff like that. But I think what you meant by that now is this FAR issue. But Richard on --

MR. YOVANOVICH: I know, we know where we are. We're going to fix it. I'm going to fix it. I'm going to fix it, okay? I just -- I'm going to fix it.

CHAIRMAN STRAIN: Okay.

MR. YOVANOVICH: I've said that. I just want to make sure that if I'm spending time and effort fixing it, I'm not going to be back in the same place.

CHAIRMAN STRAIN: I don't think you're in a bad place now. I think we would have done a lot of stipulations and conditions. But it's a matter of just seeing what the reality is when you come back, so --

Ms. Caron?

COMMISSIONER CARON: Yeah, just back to your table here, four, group care facilities and hotels. Well, how do they relate to the height?

MR. YOVANOVICH: They have the same height.

COMMISSIONER CARON: But we don't know what the height is yet.

MR. YOVANOVICH: We need to make that clear that the -- we'll take care of that. And it will have to be -- I need to look at it and see if I need the -- I'm probably going to need more than two stories, but I don't know what I need. I'll get you a development standard for that.

CHAIRMAN STRAIN: Okay.

COMMISSIONER MURRAY: For a hotel, two stories?

MR. YOVANOVICH: I'm sure -- I've not seen -- I can't think of one that's only two stories.

COMMISSIONER MURRAY: That's what --

MR. YOVANOVICH: I mean, I know I'm going to need more than two. I don't know if I need four. Maybe I need the four. I'll probably come back with the four, but I don't want to put --

COMMISSIONER MURRAY: I would say that you should probably reference --

MR. YOVANOVICH: We will.

COMMISSIONER MURRAY: -- each of the categories, and that would make it a lot clearer for all of us.

MR. YOVANOVICH: We're going to need to add that category.

CHAIRMAN STRAIN: And Richard, all these changes, just make it real clear in the neighborhood informational meeting so that we flesh it out real good this time.

MR. YOVANOVICH: We will. We learn.

COMMISSIONER SCHIFFER: Mark, one comment?

CHAIRMAN STRAIN: Go ahead, Mr. Schiffer.

COMMISSIONER SCHIFFER: On stories, is it -- Rich, I mean, I'm not against not even telling us how many stories. I mean, you're going to give us a maximum of volume. How you play around with the stories; with

mezzanines you can trick the stories anyway. So to me I think defining the maximum geometry is the appropriate thing. The stories could trip you up.

CHAIRMAN STRAIN: You mean as far as a maximum height for zoned and a maximum height for --

COMMISSIONER SCHIFFER: Right. I think the height's important. How he does -- and there is like I said tricks with stories with mezzanines too. So how many stratas he has in that height I think is irrelevant.

CHAIRMAN STRAIN: I would tend to agree. We have a zoning document that relies on height, not stories. Height's a real good way to look at it.

MR. YOVANOVICH: And the only times I really think it really becomes an issue is when you have a residential neighbor right next door to you. There's always been a concern if you have a second or a third floor could people look in the back. So I think in this case we don't have that issue.

But, you know, I'll take -- if it's okay with everybody, I'll take the reference to stories out and just leave the height as it -- you know, a maximum zoned height and a maximum actual height.

CHAIRMAN STRAIN: Okay, Ms. Caron?

COMMISSIONER CARON: Well, I mean, I think your point is well taken. That's why we had used stories was because this is going to be up against Mirasol, which is residential. And yes, there may be a road there, but I don't know what -- if there's four stories against a single story, then that might be an issue for the future people who actually live in these places.

You also have a situation to the east in that mixed PUD. There's going to be people living there. So -- and I don't know how it compares, because I didn't look up the Tree Farm --

MR. YOVANOVICH: You know, and I don't know. And my thought is, if you're willing to live in a mixed project where you have retail on the ground and you're above the retail, are you really going to be overly sensitive to having potential retail next door to you if you're willing to live above it, or --

COMMISSIONER CARON: Maybe not.

MR. YOVANOVICH: -- even a hotel? I'm just saying, that's -- and we talked about this --

COMMISSIONER CARON: Yeah.

MR. YOVANOVICH: -- I just think that that's compatible.

COMMISSIONER CARON: And I think it probably is in this particular case. But I was just relating back to what you were saying, the reason we had always done it was because we wanted to protect residential people living on either side of these projects. So --

CHAIRMAN STRAIN: Okay, are there any other comments anybody wants to make before I assume Richard's going to ask for a continuance?

COMMISSIONER EBERT: I think all this is -- we just have to reenter everything and start over again.

CHAIRMAN STRAIN: Well, when the new NIM's done and we get a new application, we'll review it right from scratch, yeah. And hopefully all the stuff we brought up today will have been effected or been modified, if need be, in the new document.

Ms. Homiak?

COMMISSIONER HOMIAK: So the limited hours and outdoors amplified music and all that you do later on?

CHAIRMAN STRAIN: Well, they'll come -- he said that they would put something in there for outdoor amplified noise, we talked about that. I mean, we talked about a dozen different things I'm assuming somebody on their team made notes about so that the cleanup gets as comprehensive as possible.

Is that where you're at?

MR. YOVANOVICH: That's my expectations.

CHAIRMAN STRAIN: So Richard, do you want us to vote or do you want to ask for a continuance?

MR. YOVANOVICH: I thought I kind of had asked for the continuance.

CHAIRMAN STRAIN: I haven't heard the words yet, so let's just get the record clear.

MR. YOVANOVICH: I thought I had asked for the continuance as we had discussed so I don't lose my February 22nd, BCC date. And it seemed like that would work for everybody.

CHAIRMAN STRAIN: Okay. And Ray, I would ask that staff try to work this into the schedule so that BCC board date is not missed.

MR. BELLOWS: That would have to be a January Planning Commission meeting, since Kay will be out in

December.

CHAIRMAN STRAIN: Okay, well that's -- I mean, December's booked pretty bad anyway, but that will give you time to have that NIM before Christmas and then January we have the CCPC meeting and a consent after that and then you still make the board date.

MR. YOVANOVICH: No, I agree, I think we could probably make the first meeting in January for you, that would give us the second meeting for the consent --

CHAIRMAN STRAIN: Right.

MR. YOVANOVICH: -- which would fit the schedule.

CHAIRMAN STRAIN: Okay. Then if -- Ray, you're comfortable with that?

MR. BELLOWS: Yes. There's really not a lot of additional staff review involved in this, just that Kay will not be here in December. So we can do a January Planning Commission and then the February BCC.

CHAIRMAN STRAIN: Okay. Everybody to --

COMMISSIONER CARON: Motion to continue.

CHAIRMAN STRAIN: Motion made by Ms. Caron. Is there a second?

COMMISSIONER SCHIFFER: Second.

COMMISSIONER MURRAY: Second.

CHAIRMAN STRAIN: Second by Mr. Schiffer.

Any discussion?

(No response.)

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

COMMISSIONER SCHIFFER: Aye.

COMMISSIONER AHERN: Aye.

COMMISSIONER MURRAY: Aye.

COMMISSIONER EBERT: Aye.

COMMISSIONER KLEIN: Aye.

COMMISSIONER HOMIAK: Aye.

COMMISSIONER CARON: Aye.

CHAIRMAN STRAIN: Aye.

Anybody opposed?

(No response.)

CHAIRMAN STRAIN: Motion carries 8-0.

MR. YOVANOVICH: Thank you.

CHAIRMAN STRAIN: It was productive, although not final.

MR. YOVANOVICH: We didn't get all the way there. We'll get there.

CHAIRMAN STRAIN: Thank you.

Okay, the other items on today's agenda was continued.

***Anybody have any old business?

COMMISSIONER SCHIFFER: I have one.

CHAIRMAN STRAIN: Mr. Schiffer?

COMMISSIONER SCHIFFER: And it's to Ray. He's doing some paperwork.

CHAIRMAN STRAIN: Ray, you have a question.

COMMISSIONER SCHIFFER: Ray? I think, and based on this hearing and the past hearing, it really would be clear to make it obvious as to what people can develop. There are a lot of times where we have multiple uses and they really can overlap each other. So I think the confusion we had today, we've had that it in the past and we've had it in the past and it hasn't come up that when they do put other uses in there the fact is that they can be overlapping each other or along with and stuff like that.

MR. BELLOWS: I think in this case my understanding, when I was reviewing this with Kay, was that the cap would apply for the commercial retail uses. And then for every acre they subtract out of that commercial project and build an ALF or some other community facility that's part of this group housing or is allowed by the PUD, you subtract that commercial square footage.

But that's not the intent that was conveyed in the advertising, that was the problem with this situation.

And I understand the concern with the Planning Commissioners that when you're reviewing these things you're not sure what is the actual maximum impact when they're mixing apples and oranges under the list of permitted uses.

And my recommendation is any time someone has a group housing/group care type facility, whether it's an ALF or anything related under that, that we create a separate category, not mix those with the commercial uses. Because those are going to fall in a different cap versus the general floor area ratio that's allowed in the LDC for group housing.

COMMISSIONER SCHIFFER: And Ray, the --

CHAIRMAN STRAIN: Just a minute, Mr. Murray.

COMMISSIONER SCHIFFER: -- in the development standards, that's not what it said. It clearly said that it had a maximum of 135. It clearly said, and essentially I'm adding it, but it's on -- Mark said, like he said, it's on the chart, on the drawing, along with group housing along with a maximum of .6. And there was a ratio to remove it.

It also didn't say retirement, so theoretically they could have made an argument that that didn't include the retirement. And then along with a hotel without a reduction of any acreage for the commercial.

So it was pretty clear what they wanted in that chart. So I think we just have to be not worded that way.

MR. BELLOWS: Yeah, we'll discuss it with all the planners, not just with Kay, and we'll make sure that as we proceed in the future with similar mixed use type of projects that we separate out these noncommercial retail/office related uses that generally fall under the maximum square footage that they're providing and studying as part of their traffic study. And if they are allowing a portion of that property to be converted to some group housing then we have that conversion ratio. And I thought that's what we typically use, but it's just not clear how the impact is, and we'll make that clear.

COMMISSIONER SCHIFFER: Okay. And also, you know, another thing you can study, that a parking garage that would obviously have to start supporting these large numbers isn't part of the description, part of the mass, it isn't counted as part of the area, correct?

MR. BELLOWS: Freestanding parking garage would --

COMMISSIONER SCHIFFER: My understanding it isn't --

MR. BELLOWS: -- not be counted towards --

COMMISSIONER SCHIFFER: In other words, you said you could have 135,000 square feet. That doesn't include the parking that's required for that. If you built something that big, you would have a parking structure also on that site.

MR. BELLOWS: Yeah --

COMMISSIONER MURRAY: Which begs the question about the elimination of the word structure in there.

COMMISSIONER SCHIFFER: But let me --

COMMISSIONER MURRAY: I don't know if a parking garage is a building.

COMMISSIONER SCHIFFER: I forgot what -- hold on, I had another point.

But go ahead, Bob, you can go, I'll catch up on it.

COMMISSIONER MURRAY: No, my comment was when you think about the activity center where you want to concentrate the effort, 135,000 square feet of retail alone, that's the way I looked at it, might be rather small or a bad use of that space where the space was intended all along to be utilized for more.

So it clearly -- I went with the 135. I didn't dig any deeper, my bad, but --

MR. BELLOWS: That was the impression I had in reading the document and discussing it with Kay is that that was the maximum.

But the group housing is not a commercial type of -- it's a community facility use as provided in our LDC and falling under group housing.

And we typically allow those uses in residential districts, and we have a conversion ratio of about approximately three to four units per acre for every acre converted from residential to an ALF type use.

And this was kind of the similar process. For every acre that they're converting from commercial to an ALF, we subtract that square footage. The trip generation from ALF is far less than the commercial retail, but when you start mixing the ability to have a combination of commercial retail/office space and they're going to try to maximize that 135,000 square feet, plus somewhere else on the site they're going to put an ALF, that's where that conversion ratio becomes a big part of this that you're subtracting that square footage.

So in my opinion there was not going to be an impact when you start subtracting that. And from a planning standpoint, I think we were covered. But where we weren't really covered is how it was advertised and what could be misleading -- someone's perceptions of bulk that results from this.

COMMISSIONER MURRAY: I think the presentation was not covered because of the 135.

MR. BELLOWS: I think the real issue is the bulk of the development. If you mix the ALF and the commercial, you're going to get a reduction in commercial square footage, but you're not necessarily going to get a reduction in bulk based on the ALF and the .60.

CHAIRMAN STRAIN: Brad?

COMMISSIONER SCHIFFER: And Ray, I found the point.

And also using floor area ratio, we're only using it for these ALF's.

MR. BELLOWS: That's what the LDC provides.

COMMISSIONER SCHIFFER: But it provides like a number of .3. So essentially aren't they always increasing a higher number?

MR. BELLOWS: Through a PUD they're asking --

COMMISSIONER SCHIFFER: And we're not discussing that as a deviation from the LDC at the time.

So first of all, I don't think it's a good idea to mix ALF, certainly not a good -- obviously everybody got tricked here. You got tricked, I'm sure the public got tricked.

If you're going to insist on using FAR, which I don't think they should, you should provided in parenthesis the number that that means. So if he saw that the .6, the way they're doing is up and close to half a million square feet for a hotel, half a million square feet for that, then let everybody deal with that.

In other words, is the floor area ratio a way to hide a number, is it a way to keep flexibility for a number, what is it? And I definitely think that if they want to use it, you've got to tell us what that maximum number could be.

MR. BELLOWS: From a planning perspective, the reason staff went to a floor area ratio in the first place was because of differing types of living arrangements allowed through an ALF from independent versus dependent care. Or you might have kind of a multi-family type arrangement or dorm type of arrangement where you might have six different individuals living in a larger room type of setting.

So you really couldn't calculate that very easily. And we used to, before we went to floor area ratio, calculate beds in regards to density of an ALF. But that didn't really tell you how big the building would be. And floor area ratio at the time we adopted it gave you a sense of bulk of the building.

COMMISSIONER SCHIFFER: Right. But it doesn't -- I mean, in this case this would be a huge thing. So I do think that if they insist on staying with it, then require in parenthesis what that number is so that the boards and the public realize what they could be up against.

MR. BELLOWS: Yes. And I think we've done that to a certain extent in the past when the projects are all ALF. The one off of Orange Blossom Road where we had a kind of a footprint of the building, you got a sense of what that building was.

The problem is when you have these mixed use PUD's where they're kind of speculating, they don't have an end user in mind and they want this flexibility. And that's where you get a general sense of -- the floor area ratio gives you a certain -- if they do a five-acre site then a .60 over that five-acre site you get a general sense of what that could be, plus the maximum height standards and setbacks.

CHAIRMAN STRAIN: Ms. Caron?

MR. BELLOWS: But it is difficult when you have a mixed use project.

COMMISSIONER CARON: Well, I think too this ever creeping number on the FAR is what was originally done so that when you were combining independent and CCRC and having the full range, that allowed those independent units to be larger. It wasn't to increase the density on things, it was to allow.

So when we're working with speculation, as this clearly is, there's no project here, and we're working not with a master plan but with a master sketch -- and we probably should call them that -- we probably should require that they go back to the .45 FAR as well. I mean, we allowed this creep for something that was supposed to be specific and now it's just morphing into every last one of them.

MR. BELLOWS: That was debated with staff when the issue was first raised a couple years ago when a PUD wanted to vary from the .45 that's specified in the LDC. And in discussing with Susan Istenes, the zoning director at the time, we felt that that was regulating intensity of use and kind of like being found consistent with the

Growth Management Plan in regards to residential density or intensity. We're not quite qualifying that as a deviation from like a setback or a landscape buffer requirement.

So we treated it as an intensity and note that they're going from a .45 as allowed in the LDC to a .60, which will allow for a more intense project and a greater in bulk.

So we treated it that way other than a deviation. But we can revisit that and call them deviations.

CHAIRMAN STRAIN: But if it is a deviation from the requirements of the LDC, shouldn't it be listed as a deviation?

MR. BELLOWS: Well, like I said, we weren't treating it that way.

CHAIRMAN STRAIN: No, no, I don't think you get the choice, do you?

COMMISSIONER SCHIFFER: No.

CHAIRMAN STRAIN: Because a deviation is a deviation. If we're not consistent -- like if you put a road in that's not 60 feet wide and we do 40 or 50, while that's practical and everybody accepts it, and it's almost a policy that we accept it, we still list it as a deviation. So why wouldn't we list this one?

And by the way, if you did that, it may discourage people from keep asking the greater number. Because they know they've got to go through additional hoops to figure out how to explain it.

So why don't we look at it like that?

MR. BELLOWS: Yeah, like I said, we just felt it was an intensity issue of the project. But we can do that. We'll make that change in our procedures.

COMMISSIONER SCHIFFER: Mark?

CHAIRMAN STRAIN: Yes, sir.

COMMISSIONER SCHIFFER: But look at what you -- we did the .6, we thought that worked, but that was for standalone ACLF's. This one's on site with other buildings.

So what's happened is again, this is another example of the stealth code that we don't see is the stealth code has become the de facto standard, even when you're mixing it with other buildings.

So I think yes, a standalone ALF maybe .6 makes sense. But along with a hotel with .6, where did the .6 for that come from? And mixed, you know, with commercial uses on it.

So I think that you've got to be careful with the stealth code if it starts to become de facto standards.

CHAIRMAN STRAIN: And Kay, it's unfortunate that Richard didn't stay for this part of it. I understand, though, why he didn't. We got in -- this is another tangent to that project.

You might want to explain to him our discussion here so that he's aware of it. I don't want any more surprises from either side if we can help it when he comes back.

COMMISSIONER MURRAY: Especially the .45.

MS. DESELEM: Is it your direction then that you do want this done as a deviation if they want to go to the .6?

CHAIRMAN STRAIN: I think it should be done --

COMMISSIONER SCHIFFER: How can you not?

CHAIRMAN STRAIN: -- as a deviation. I don't know why we would want otherwise.

MS. DESELEM: As Ray said, it has been practiced before just to include it in the property development regulations as what they're proposing to develop their property with. But we can -- I can so direct him to do it as a deviation.

CHAIRMAN STRAIN: Okay, thank you.

John?

MR. PODCZERWINSKY: Yes, sir, transportation question for the Chairman.

With the change that is being proposed here, do you wish for transportation to take a second look at a revised TIS, or should we remain in the same vein that we're in with the current trip cap?

CHAIRMAN STRAIN: If the trip count is not going to be exceeded, I'm not concerned with it. I think the trip count you have put in there, we've already accepted that. And if they're willing to stay with that trip count, why waste anybody's money on an additional TIS?

MR. PODCZERWINSKY: Agreed. I just wanted to clarify and make sure.

COMMISSIONER SCHIFFER: John, let me ask a question, though. And Rich brought up a point we're going to do this forever, so let's discuss this forever. Not with this specific, let's not have the hearing.

But essentially what you're going to be able to do now is you're going to establish maximum trip counts.

MR. PODCZERWINSKY: Yes.

COMMISSIONER SCHIFFER: And you're going to let them adjust the counting with updated ITE documents, right?

MR. PODCZERWINSKY: Yes, that's right.

COMMISSIONER SCHIFFER: So in other words, you're going to say it's fixed with what we have today or they can use -- as the world gets smarter with transportation count, they'll take advantage of that; is that right?

MR. PODCZERWINSKY: Yes. As -- if we're framing that in the reference of the ITE manuals, the Institute of Traffic Engineering, as those are updated throughout the years, they take into account usually more data points for their studies. Oftentimes it's more just a refinement of the trip generation per square foot for a given type of development or per thousand square feet for a given type of development.

That's not to say that in the future the trip generation rates themselves per thousand square foot would go up or go down. Those sort of things are -- we hope that they hold relatively steady. And they have for things like this sort of zoning where it's shopping center as a use. That trip generation rate has held relatively steady between the last few versions of the ITE manuals that give us our natural averages that we work from.

The problem that I have with the question that you pose is will we update their maximum. And maybe I might need to restate this here.

Are we comfortable adjusting their maximum trip generation rate as the rates adjust over the years? No, I'm not comfortable with that.

If we say a maximum of 500 trips for a given development, I think we should stick with that, even if the way to get to 500 trips, the rates change. I think 500 is 500. Otherwise -- and Mr. Bellows can correct me if I'm wrong, but I think we may be struck with revising PUD documents --

COMMISSIONER SCHIFFER: No.

MR. PODCZERWINSKY: -- every time the ITE documents change.

COMMISSIONER SCHIFFER: And I didn't mean changing that number, I meant changing the calculation to show that number.

Would they also then have the ability, should we give them the ability, because we don't want -- you know, we want people to take advantage of a guy could bring a bus line in, a guy could do a lot of stuff.

So would we be able to take advantage of actual counts? So in other words, you've got your -- the book, the ITE's a standard, it's essentially an estimate when they build the building and in reality they can get real data.

MR. PODCZERWINSKY: It's possible, but it's very costly at this point. The technology is available, it's just not cost efficient to do updated to the day trip counts.

COMMISSIONER SCHIFFER: Well, not to the day, but you know where I'm going is that designers might be able to maximize or minimize the access to the site and still have it function. And it would be nice to reward them in this.

Okay. But, you know, the cap should be the cap, and how they get to it, they have options.

MR. PODCZERWINSKY: Yes.

CHAIRMAN STRAIN: Jeff, did you have a comment?

MR. KLATZKOW: Yeah, it's my understanding, John, is that we're going to start limiting development by trip counts? Is there an LDC provision that gives you standards and criteria for this?

MR. PODCZERWINSKY: At this point there are no standards or criteria for that. But there is an LDC reference. And Mr. Strain, I may refer to you for this one.

CHAIRMAN STRAIN: Yeah 4.07.02.B, external relationships. The PUD shall provide protection of the development from potentially adverse surrounding influences and protection of the surrounding area from potentially adverse influences generated by or within the PUD.

I think that opens up all of the concurrency issues that we would want to bring into play, including traffic. So if we limit traffic counts, we're protecting the surrounding area for potentially adverse conditions.

MR. PODCZERWINSKY: I think also section two of that LDC ordinance, the one right above the one you read is also applicable. Where it talks about nonresidential square footage.

COMMISSIONER MURRAY: Not specific enough.

MR. KLATZKOW: I don't think you have criteria to look at here, sir. I mean, you may want to think about

suggesting to the Board codifying this --

COMMISSIONER SCHIFFER: Yeah.

MR. KLATZKOW: -- as a general principle. Just a suggestion, not a --

CHAIRMAN STRAIN: No, it's -- Jamie, it's yours. I mean, if Nick was here, he'd have to deal with it, so I -- does the board have any objection to seeing that as a stronger language?

COMMISSIONER SCHIFFER: No, I think -- I definitely think it should be. And I definitely think landowners/stakeholders should have a part of this conversation. Because essentially you're going to start limiting the value of land based upon traffic.

MR. PODCZERWINSKY: From a staff standpoint, my recommendation to Jamie would be that we update the TIS guidelines as time and money allows, staff time and funding allow.

CHAIRMAN STRAIN: But the limitation is only to the extent that the applicant states it. That's the truth in advertising that we imposed a long time ago. If an applicant says, I'm only going to put 1,000 trips on the road, therefore I qualify, fine, you're limited to 1,000 trips then. We didn't volunteer that, they did.

COMMISSIONER SCHIFFER: Yeah.

CHAIRMAN STRAIN: If that's what they're going to say and volunteer, we should hold them to what they say. This isn't a place to play games. We're dealing with a lot of concurrency issues out there.

COMMISSIONER SCHIFFER: I mean --

CHAIRMAN STRAIN: And whenever one guy gets and expands on beyond what he's supposed to have it stops the other development, the other progress, the other economic benefits from going forward because he mislead us. And so --

COMMISSIONER SCHIFFER: Right. I see the wisdom in that. And he does take too much out of the checkbook that we're supposedly working against.

CHAIRMAN STRAIN: How does it -- I mean, Nick's got this checkbook concurrency. It would be useless without this application, so --

MR. PODCZERWINSKY: After some staff discussion here, staff, you know, recommends that we'll be glad to work with the County Attorney's Office with any suggestions you guys have.

CHAIRMAN STRAIN: I would suggest you look into it and see if there's a way to get it accomplished. And then come back and let us know.

MR. PODCZERWINSKY: Right.

MR. FRENCH: Next meeting.

CHAIRMAN STRAIN: Anything else under old business?

***New business?

(No response.)

CHAIRMAN STRAIN: Nobody from the public's here.

Chuck, did you have something you want to add, you're the only public member here.

Okay, then motion to adjourn.

COMMISSIONER AHERN: Motion.

COMMISSIONER SCHIFFER: Just one question before that. What is discussion of agenda addenda? Item 13 on our addenda. What is that, we just discuss --

CHAIRMAN STRAIN: It's the trivial comments we just talked about. The side bars.

COMMISSIONER SCHIFFER: I like trivial so I'll go with it.

CHAIRMAN STRAIN: Ms. Ahern made a motion to adjourn.

COMMISSIONER EBERT: Second.

CHAIRMAN STRAIN: Seconded by Ms. Ebert. We're done.

November 18, 2010

There being no further business for the good of the County, the meeting was adjourned by order of the Chair at 10:32 a.m.

COLLIER COUNTY PLANNING COMMISSION



MARK STRAIN, Chairman

These minutes approved by the board on 12-6-70 as presented or as corrected .

Transcript prepared on behalf of Gregory Reporting Service, Inc., by Cherie' R. Nottingham.