

October 21, 2010

TRANSCRIPT OF THE MEETING OF THE
COLLIER COUNTY PLANNING COMMISSION
Naples, Florida
October 21, 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 (Absent)
Melissa Ahern
Donna Reed-Caron, Acting Chairwoman
Diane Ebert
Karen Homiak
Barry Klein (Absent)
Paul Midney
Bob Murray
Brad Schiffer

ALSO PRESENT:

Jeffrey Klatzkow, County Attorney
Nick Casalanguida, Growth Management Division/Planning & Regulation
Ray Bellows, Zoning Manager
Thomas Eastman, Real Property Director, CC School District

ACTING CHAIRWOMAN CARON: Good morning, everybody, and welcome to the October 21st Collier County Planning Commission meeting.

If you'll all rise, we'll pledge.

(Pledge of Allegiance was recited in unison.)

ACTING CHAIRWOMAN CARON: Good morning. We have to muddle through today. Chairman Strain is out sick, so we will just try to plod along as best we can.

Ms. Homiak, will you do the roll?

COMMISSIONER HOMIAK: Sure.

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.

COMMISSIONER MIDNEY: Here.

COMMISSIONER HOMIAK: Ms. Caron.

ACTING CHAIRWOMAN CARON: Here.

COMMISSIONER HOMIAK: Mr. Strain is absent.

Ms. Homiak is here.

Mr. Murray.

COMMISSIONER MURRAY: Here.

COMMISSIONER HOMIAK: Ms. Ebert.

COMMISSIONER EBERT: Here.

ACTING CHAIRWOMAN CARON: And Mr. Klein is absent.

ACTING CHAIRWOMAN CARON: Yes, I believe he had mentioned that at our last meeting, so we knew he was going to be -- he had a prior commitment before accepting his Commissioner position.

***Any addenda to the agenda by anybody?

(No response.)

ACTING CHAIRWOMAN CARON: I have nothing.

***Planning Commission absences. Our next meeting is November 4th. Everybody going to be here as far as we know? Good.

***And now we have approval of minutes. And we have several here. We have August 25th EAR, August 27th EAR, September 16th regular meeting, and the September 20th AUIR.

Does anybody have any notes on any of the -- everybody's okay?

I would just note that on September 20th, it's Ms. Ramsey, not Mr. Ramsey. But other than that -- Mr. Schiffer, did I hear you rumbling?

COMMISSIONER SCHIFFER: No, I'm sorry.

ACTING CHAIRWOMAN CARON: How about making a motion?

COMMISSIONER SCHIFFER: I was rumbling but -- move to approve the minutes.

ACTING CHAIRWOMAN CARON: Do I have a second?

COMMISSIONER HOMIAK: Second.

ACTING CHAIRWOMAN CARON: All those in favor?

COMMISSIONER SCHIFFER: Aye.

COMMISSIONER AHERN: Aye.

COMMISSIONER MIDNEY: Aye.

COMMISSIONER MURRAY: Aye.

COMMISSIONER EBERT: Aye.

COMMISSIONER HOMIAK: Aye.

ACTING CHAIRWOMAN CARON: Aye.

Thanks.

***BCC report, Ray?

MR. BELLOWS: There were no land use items heard on the October 12th BCC meeting.

ACTING CHAIRWOMAN CARON: There will be no Chairman's report because we don't have a Chairman. ***Which brings us to consent.

Mr. Bosi's up first.

MR. BOSI: Mike Bosi, Comprehensive Planning.

As I provided within the agenda item package number 8-A, the recommendation memo from the Planning Commission to summarize the September 20th special meeting for the AUIR, I believe that I entailed (sic) and summarized the recommendations of the Planning Commission to the BCC within all the components of the AUIR.

An additional component I provided to you was the updated transportation section that has been modified, based upon the impact fee reduction that was approved by the Board of County Commissioners --

THE COURT REPORTER: I'm sorry, I think your mic. is off.

MR. BOSI: Mike Bosi, Comprehensive Planning.

ACTING CHAIRWOMAN CARON: And Mike, do it slower this time.

MR. BOSI: Yes, ma'am.

As I provided within the distribution pack for agenda item 8-A, there was a summary memo of the recommendations that the Planning Commission had provided during the September 20th special meeting on the AUIR. All the components I believe have been summarized as accurately reflected by review of the minutes.

The one area that there is additional information, it's the updated transportation section. At the last meeting in September, the Board of County Commissioners had adjusted the transportation impact fee by a 42 percent reduction, and it had a corresponding reduction within the transportation overall CIP program. That updated AUIR section will be provided to the Board of County Commissioners during their November 10th special meeting for the AUIR, the CIE adoption.

Any questions or corrections that are needed within the memo?

ACTING CHAIRWOMAN CARON: Anybody have any?

Go ahead, Melissa.

COMMISSIONER AHERN: I had a couple of questions on the transportation AUIR. I'm not sure if there's anyone here.

MR. BOSI: That was provided -- that was provided as an informational piece. Because we are not hearing the AUIR, I'm not sure how far we can get into it. What would be more appropriate I believe is when we hear the CIE. The CIE is also based upon that information that's contained within that supplemental packet. And that's where the pertinent discussions I believe should be had, because this is the consent agenda.

But those items and those questions can definitely be addressed at the CIE portion.

ACTING CHAIRWOMAN CARON: Well, in point of fact, Mike, we did reserve the right to discuss this -- both in terms of the AUIR, as well as with the CIE --

MR. BOSI: The recommendation that was provided was you reserved the right to modify the recommendation based upon the updated CIE information. And so with that recommendation, and consistent with that recommendation, during the CIE you can make that action or make those approvals and it will be retroactive in terms of reflected in the AUIR record.

ACTING CHAIRWOMAN CARON: Thank you.

COMMISSIONER SCHIFFER: I do.

ACTING CHAIRWOMAN CARON: Mr. Schiffer.

COMMISSIONER SCHIFFER: And Mike, it's on potable water. In there -- and it's discussing the dissenting vote. And as the dissenting vote, I was thinking, could you add non-county utility providers. Because the intent was those county residents provided service by the City of Naples. I mean, I'd rather you say that.

MR. BOSI: I can make that clarification.

ACTING CHAIRWOMAN CARON: Good. Do I have a motion, then?

COMMISSIONER SCHIFFER: I will move that we accept this memorandum as being what we did in a meeting with the changes that we made.

COMMISSIONER HOMIAK: Second.

ACTING CHAIRWOMAN CARON: Thank you, Ms. Homiak.

All those in favor?

COMMISSIONER SCHIFFER: Aye.

COMMISSIONER AHERN: Aye.

COMMISSIONER MIDNEY: Aye.

COMMISSIONER EBERT: Aye.

COMMISSIONER HOMIAK: Aye.

ACTING CHAIRWOMAN CARON: Aye.

COMMISSIONER MURRAY: Sometimes Ray gets it, sometimes not.

THE COURT REPORTER: I'm sorry, what was the vote?

COMMISSIONER MURRAY: I'm sorry, but I've been trying to hear. The two of us are having struggles here. There was a vote --

ACTING CHAIRWOMAN CARON: I'm sorry, I didn't realize that.

COMMISSIONER MURRAY: There was a vote for approval of the AUIR, as offered.

ACTING CHAIRWOMAN CARON: Yes.

COMMISSIONER MURRAY: All right, I would go along with that, I'll say yea.

COMMISSIONER MIDNEY: Can you hear now?

COMMISSIONER MURRAY: No, you have to talk into the microphone. See, we should be able to get it through this speaker and we're not getting it. There's a button on that thing there that works.

ACTING CHAIRWOMAN CARON: For the television audience, we're just kind of waiting so we can get our microphone issues squared away. Thanks.

COMMISSIONER MURRAY: If you get it, we're going to know it immediately.

All right, well, I just ask Mr. Schiffer if he could talk a little louder. He's got great tones, but I can't hear them.

ACTING CHAIRWOMAN CARON: Is it better, Mr. Murray? Are you able to hear?

COMMISSIONER MURRAY: I'll struggle with it. They'll get it fixed at some point. It's not functioning yet. Thank you.

ACTING CHAIRWOMAN CARON: Okay. Because I don't want to proceed if you can't hear. I mean --

COMMISSIONER MURRAY: Well, I will struggle -- but I'll pipe up if I can't hear.

ACTING CHAIRWOMAN CARON: Okay, thank you.

Then you're all set on that --

MR. BOSI: Sure, thank you.

ACTING CHAIRWOMAN CARON: -- Mike, thank you. and we are on to CU-2008-AR-14078, the Cemex Construction.

Does anybody have any questions on that consent item?

(No response.)

MR. DEMPSEY: Good morning, Madam Chair. For the record, I'm Will Dempsey from 821 Fifth Avenue South, representing the petitioner, Cemex Construction Materials of Florida.

I can confirm that we've reviewed --

(Speaker was duly sworn.)

MR. DEMPSEY: We've reviewed the materials that were prepared by staff following the last Planning Commission hearing. Can confirm that the approval document, the stipulations and conditions attached to the approval accurately reflect the outcome of the last hearing.

ACTING CHAIRWOMAN CARON: Thank you. Anybody here have any questions?

I just have one. The life of the mine was stated to be 35 years; is that correct?

MR. DEMPSEY: Yes, ma'am.

ACTING CHAIRWOMAN CARON: That's not reflected anywhere in this resolution. Should it be? And I'm asking that of staff.

MR. DEMPSEY: And that's actually the expected life expectancy of the mine, Ms. Caron.

ACTING CHAIRWOMAN CARON: Right, I understand.

MR. DEMPSEY: The actual life expectancy of the mine is going to depend on market conditions, the volume of sale. The mine could wrap up sooner than 35 years if the market is hot. It could last a little longer than 35

years --

ACTING CHAIRWOMAN CARON: Right, I fully understand that. But I would ask the County Attorney's Office, should a final date be stated so that the conditional use would have to be renewed if it went beyond 35 years? Wouldn't we want to have the ability to re-review this --

MR. KLATZKOW: In 35 years?

ACTING CHAIRWOMAN CARON: -- after 35 years?

MR. KLATZKOW: I'm not sure that I personally see the point in that. But if that's something that the Planning Commission deems pertinent, it could make the recommendation.

ACTING CHAIRWOMAN CARON: That's fine. I don't have anything -- you know, I don't have any dog in the fight, I just was asking a question.

So you don't --

MR. KLATZKOW: No, no, what I'm saying is it's your prerogative.

ACTING CHAIRWOMAN CARON: Yeah, okay.

MR. DEMPSEY: If I might, Madam Chair, such a stipulation would be unusual in the context of a mining operation. Obviously history has some relevance on this approval. And we're not aware of any mining operation, any conditional use mining approval that is subject to such a time limitation.

MR. KLATZKOW: Well, I know of one mine that has a number of conditions for the approval. And was Jones mine. So that's not quite so. I mean, you can put conditions on it if you so choose. But I don't really --

COMMISSIONER MURRAY: My thought is this, that it's already in the record. It was addressed in the record. And whether or not that record is attended to the resolution is another question, which is your point, I think.

And there was also a reservation in there that they desire that should they need it, further time, that they could come back seeking that. That was also in the record.

So I'm comfortable. The people 34 years from now will have that struggle if they have to amend it.

ACTING CHAIRWOMAN CARON: All right, then, do I have a motion for approval?

COMMISSIONER SCHIFFER: I will make one. I move that we accept this as representative of exactly what we did in the hearing.

COMMISSIONER MURRAY: Second.

ACTING CHAIRWOMAN CARON: All in favor?

COMMISSIONER SCHIFFER: Aye.

COMMISSIONER AHERN: Aye.

COMMISSIONER MIDNEY: Aye.

COMMISSIONER MURRAY: Aye.

COMMISSIONER EBERT: Aye.

COMMISSIONER HOMIAK: Aye.

ACTING CHAIRWOMAN CARON: Aye.

Thank you.

MR. DEMPSEY: Thank you.

ACTING CHAIRWOMAN CARON: ***Now we are into our advertised public hearings.

And first up is PUDA-2007-AR-11961, Sonoma Oaks Mixed Use Planned Development.

Mr. Yovanovich, the floor is yours.

COMMISSIONER MURRAY: Ex parte?

ACTING CHAIRWOMAN CARON: Yes, I would like you to swear everybody.

(Speakers were duly sworn.)

ACTING CHAIRWOMAN CARON: Now, disclosures. We'll start with Melissa.

COMMISSIONER AHERN: None.

COMMISSIONER SCHIFFER: None.

COMMISSIONER MIDNEY: (Shakes head negatively.)

ACTING CHAIRWOMAN CARON: I spoke with Mr. Yovanovich briefly.

COMMISSIONER HOMIAK: I spoke to Mr. Yovanovich too.

COMMISSIONER MURRAY: And I had a conversation with Mr. Yovanovich.

COMMISSIONER EBERT: None.

ACTING CHAIRWOMAN CARON: Go ahead.

MR. YOVANOVICH: Good morning. For the record, Rich Yovanovich, on behalf of the petitioner.

With me I have several people that can answer any questions that I can't answer. Todd Dubovy with Bessemer Trust is the owner's representative, as is Rick Armalavage and Mark De Sabado. Margaret Perry with WilsonMiller-Stantec is the professional planner on the project. And Dave Wheeler is the transportation consultant on this project.

I've put on the visualizer the zoning map and the location map.

This property is approximately 37-and-a-half acres. It's already zoned the Sonoma Oaks MPUD. It's located on the west side of Collier Boulevard, just north of Vanderbilt Beach Road.

The current zoning permits 112 residential dwelling units and 120,000 square feet of commercial office uses.

The purpose of today's proposed amendment is actually to correct the residential density based upon the acreage that exists within the residential parcel from the 112 units that were previously approved to 114 units and to add senior housing such as independent living units, assisted living units and skilled nursing units as a permitted use on the residential portion of the project.

The maximum number of senior housing units that can be approved or built on the residential portion of the project is 456. There's a conversion formula in the document that says for each four senior housing units, you give up one, I'll call it regular, residential unit. So there's a conversion formula in there. So the maximum that you could do -- if we did a totally exclusively senior housing project would be 456 senior housing units on the residential piece of the property.

The development standards table has been revised to include appropriate development standards for the senior housing units. The maximum zoned height would be 61 feet and the maximum actual height would be 69 feet for the senior housing units.

I'm going to put the master plan up next. So I'm talking now to the area labeled R on the master plan.

We've included a minimum setback of 200 feet for any buildings that are greater than 51 feet in height from the western boundary, which is the Black Bear Ridge subdivision within the Wolf Creek PUD. For buildings greater than 51 feet in height.

And we've also included a 100-foot setback for a prohibition for buildings being oriented parallel to Black Bear Ridge.

These setbacks came about when we were having discussions with the developer of Black Bear Ridge, and we've carried those forward in our neighborhood information meetings and as conditions for the senior housing project.

I've spoken to a few of the Planning Commission members, and in those discussions a common question that was asked was regarding the development standards for what I'll call regular multi-family within the project, not the senior housing. A couple questions were raised regarding the height, and another question was raised regarding the minimum unit size.

Not to take you through the long history of what we were going through but at one time -- and we start the amendment process it was in 2007, I believe. The market actually was still pretty good for residential at that time and prices were still pretty high. We were considering doing an affordable housing project on this site, and actually had had a NIM on regarding doing affordable housing, which would have allowed us to get some bonuses.

So those development standards that you see in the multi-family section actually got carried forward from when we were considering doing multi-family as an affordable housing project.

We have gone back and looked at if we were to do just a regular multi-family product, which would be the 114 units. We do not need the height or the minimum unit size that we had previously included in the table if we were going to do an affordable housing project.

So we would be prepared to go back to the original multi-family development standards. And really, the major change is you would have a zoned height of 45 feet for the regular multi-family that was the original standard in the original PUD, and a minimum unit size of 1,000 square feet. So for plain multi-family, we would go back to those development standards.

We've also asked for a modification for the detached single-family to go from a six-foot side setback to a five-foot side setback, which results in a minimum building separation instead of the 12 feet to 10 feet. The thought is there is a lot of popular product that's being sold in Lely Resort, in Autumn Woods and in Verona Walk that have

these standards. And we would like the ability to have that type of product in this community. So that's the reason we requested the change from a six-foot side setback to a five-foot setback to allow us to offer that type of product that's popular in other communities.

For the commercial parcel we added a few business services, such as advertising agencies, adjustment and collection services, credit card services. We've added medical and dental labs as an allowed use. We've added miscellaneous health and allied services as an allowed use. And we've added on the commercial portion also the ability to do senior housing. And that's a common allowed use in the commercial zoning districts.

There would be a point six floor area ratio for the senior housing on actually both parcels, both the residential and the commercial parcel. But we've added that as an allowed use.

We've kept the height the same in the commercial, which is 42 feet zoned height, but we've allowed for the ability to have two-story uses on the commercial parcel instead of just single-story uses on the parcel.

When we started this process of amending the PUD, it was our goal to not change the transportation impacts that were associated with the original PUD. We simply wanted to add uses that would be allowed but not increase the traffic intensity that was allowed under the original PUD.

So as you review the TIS we've provided you, we analyze what were the traffic impacts related to 112 residential units and 120,000 square feet of commercial office uses. And under that TIS, we had 583 new trips. And as you look at the formula, you have more trips than that, but there's internal capture and there's a formula you use. So basically the net new trips that resulted from the original PUD was 583 new weekday p.m. peak hour trips. And that was the most intense hour, or use.

We have kept that commitment in the PUD that we're moving forward with in the development standards commitment. So whatever we put on this property, however many single-family, multi-family senior housing units or commercial uses that go on this property, we're still capped at the same 583 p.m. peak hour trips that you originally approved along with the PUD. We're just asking for some additional allowed uses to try to attract an appropriate use on this property.

We've had a couple of NIMs, but the most recent NIM involved the senior housing aspect of it. I didn't really receive any negative comments regarding putting senior housing on this property if we're able to attract a senior housing provider. It's a compatible use to the single-family to our west, to the proposed single-family to the north, to the fire station to the north, to the Mission -- I think it's Mission Hills shopping center to our south.

So we believe it's definitely a compatible use with what surrounds us, and frankly will hopefully be a welcome use to -- as that area develops more, there's a lot of rooftops out there, and as the community ages, we think this is a good location for senior housing.

Your staff is recommending approval. We're requesting that the Planning Commission recommend approval of our request to the Board of County Commissioners.

And that's an overview of what we're requesting. We can answer any specific questions the Planning Commissioners may have regarding our petition.

ACTING CHAIRWOMAN CARON: Go ahead, Bob.

COMMISSIONER MURRAY: Are there -- you said that the floor area ratio is point six-four, I think.

MR. YOVANOVICH: Point 6.

COMMISSIONER MURRAY: Just so I'm clear. I think that was a slip of the tongue, but that's minor.

With regard to the commercial area, if you were to put in the -- just to verify now, if you were to put in the assisted living or the others, you would still be limited to the 42-foot zoned height there in the commercial?

MR. YOVANOVICH: Yes. Oh, no, no. On the senior -- for senior housing for the commercial standards, we would be allowed the same development standards as far as height goes on the commercial piece, which was --

COMMISSIONER MURRAY: That's what I thought would be the case. Okay. Well, the documents as you know relate to just what you had offered in the first instance. Did you prepare a modification document to show the new offerings, as it were?

MR. YOVANOVICH: Well, the -- really, the only changes we would make is if you go to Page 8 of your document, that's Exhibit B-1.

COMMISSIONER MURRAY: Yes.

MR. YOVANOVICH: There would basically be two changes. Under the minimum floor area, under multi-family, that would go to 1,000 square feet. And then where you see height under -- you would have, instead of

61 feet zoned height or 69 feet actual height, that would be 45 feet zoned height and I think 55 feet actual would be an appropriate number there. And we didn't have actual heights in the last PUD, we only had zoned heights in the original PUD. But that 45 feet is consistent with the original Sonoma Oaks PUD document.

COMMISSIONER MURRAY: That would be the same as the clubhouse height then?

MR. YOVANOVICH: Correct.

COMMISSIONER MURRAY: Are you -- should this be approved, you would -- would you not offer a document that at least consent that would reflect all of --

MR. YOVANOVICH: Yes, in your consent agenda we would come back with those two changes to the development standards table.

COMMISSIONER MURRAY: Thank you.

ACTING CHAIRWOMAN CARON: Any other --

COMMISSIONER SCHIFFER: I have a question.

ACTING CHAIRWOMAN CARON: Go ahead, Mr. Schiffer.

COMMISSIONER SCHIFFER: Just to get the unit count. On the residential property you can have the what, 456 would be the maximum number of --

MR. YOVANOVICH: Senior housing units.

COMMISSIONER SCHIFFER: -- senior housing. On the commercial it would be solely limited by the floor area ratio.

MR. YOVANOVICH: Floor area ratio, correct.

ACTING CHAIRWOMAN CARON: And you can do both senior housing and commercial, so you're not limited -- if you do the senior housing, you're not taking away any of the commercial?

MR. YOVANOVICH: That's correct. But remember, we're still capped by our overall trips of the 583 that was approved in the original PUD.

The reality is we will not be able to do all 120,000 square feet of commercial and, you know, a point six floor area ratio of CCRC on the commercial piece. And in fact we will not be able to do 456 senior housing units and the full 120,000 square feet under the trip cap of 583.

So there will be an adjustment to one of those two standards when we come forward, it's just -- it's an allowed max of each of those two uses. But reality is we won't max out both, because that will exceed the 583 net new trips that we've capped ourselves under the PUD document.

ACTING CHAIRWOMAN CARON: Go ahead.

COMMISSIONER SCHIFFER: Just one question. How do you see mixing the use of senior living with the commercial? I mean, this is a mixed use PUD. How do you see the sites being developed?

MR. YOVANOVICH: Are you talking about if we were to just -- on the same site or are you talking about the R?

COMMISSIONER SCHIFFER: Do you see commercial first floor and then three stories above it of --

MR. YOVANOVICH: I don't think that we would do that. I don't think we would have that type of a development. I mean, they probably -- I mean, we haven't really designed anything that would put both, but I would imagine there would be some separation of uses.

I don't think this would be a -- maybe the market would allow that. I don't know, Mr. Schiffer, if the market would really want senior housing above retail. I don't see a senior housing Mercato really coming about. I don't mean that to be flip, I just -- but I don't know, who knows what people may want in the future. Maybe that is a concept they would like.

COMMISSIONER SCHIFFER: It might be a good idea.

Okay, thanks.

COMMISSIONER EBERT: Donna?

ACTING CHAIRWOMAN CARON: Go ahead.

COMMISSIONER EBERT: I have a question. Rich, how many senior housing has been zoned in the last five years?

MR. YOVANOVICH: Well, I'd like to say I've done all of the zoning in Collier County but I haven't, so I -- and I have not gone back and looked at every rezone. I could tell you the projects that I've been involved in that allow senior housing as a use. I believe the Taormina PUD, which I did within the last year or so, which is down on Santa

Barbara Boulevard and Davis Boulevard allows it as a use.

Will it ever be built? I do not know.

I was recently involved in the Sienna Lakes PUD, which is on Orange Blossom. That project is exclusively a CCRC project. So that's the only exclusive CCRC use that I've recently done. And that's on Orange Blossom and between Livingston Road and Airport Road. So there's quite a distance separation from both of those projects from this piece.

I did another independent living project on Vanderbilt Beach Road, a smaller one on Vanderbilt Beach Road right by Wilshire Lakes. That's another one that's just independent living.

And then there's one, the old Szabo Nursery, which is on U.S. 41, that one would allow independent and assisted living units together in the same project.

So those are ones that I have personal knowledge of. I have not had a chance to go back and look at all the other zoning that's happened in the last five years.

But again, what we're looking for is what does the market want. If the market says this is an appropriate location to put senior housing, then senior housing will come here. Just like on the PUD's that have asked for senior housing on the use, again, the market's going to dictate if that use is actually developed or not developed.

COMMISSIONER EBERT: Well, it just seems that every one lately is for senior living, and I thought maybe you wanted to get all the residents in Collier County in senior living places, because you just did another one.

And you're right, Szabo was run right next to my church. But you just did another one where you're asking for the old Toll Brothers on Immokalee Road.

MR. YOVANOVICH: Correct, we haven't done it. We're in the process. And you're right, I mean --

COMMISSIONER EBERT: Everything is senior housing, is --

MR. YOVANOVICH: Commissioner Ebert, we go through cycles of what is the -- what is the market asking for as far as potential uses in the community. And again, the market will decide whether any of these other projects actually become senior housing products or not.

I mean, I equate it to -- first of all your Comprehensive Plan allows senior housing to be an allowed use anywhere in the urban area. Just like it allows residential uses to be allowed anywhere in the area. So I think you'll see more and more PUD's coming through with the full range of residential uses, and the market will dictate which ones of those or which one of those will actually be developed.

I mean, we have tons of residential PUD's that come through and not all of them are going to get built on the same schedule. The market will dictate what the product mix is. I think you'll see more and more of that because it is a popular potential use on property, as people age and that need goes there. Eventually we'll hopefully all live long enough to want to live in that type of --

COMMISSIONER EBERT: Do you know how many have been built in the past five years?

MR. YOVANOVICH: None of the projects that I just spoke of have been built in the last five years. Sienna Lakes was probably approved, I think it was last year, as was Taormina. I think they were both '09 projects. Szabo may have been in '08. So they're all fairly -- they're all fairly recent, you know. They're all in that time frame of they were started when the market was still pretty good and then, you know, the market as we all know has slowed a little bit. So I'm not surprised that they're a little behind on their hoped-for start dates.

COMMISSIONER EBERT: Okay, thank you.

ACTING CHAIRWOMAN CARON: To Ms. Ebert's point, we are going to end up in this county with CCRCs on every corner, as we have Walgreens or CVS, the way things are going.

COMMISSIONER SCHIFFER: But Donna, maybe that's a good -- I mean, if this becomes the baby boomers' dying grounds, it will be good for the economy.

ACTING CHAIRWOMAN CARON: Well, we're certainly trying.

On your standards table --

MR. YOVANOVICH: Which one?

ACTING CHAIRWOMAN CARON: The -- well, both of them.

MR. YOVANOVICH: Okay.

ACTING CHAIRWOMAN CARON: You have -- well, I'm seeing two different things for the CCRCs, and it's 61 and 69, is that correct, on the residential portion?

MR. YOVANOVICH: Yes. You're talking about Exhibit B-1 now, just so you and I are on the same page.

Yes, ma'am.

ACTING CHAIRWOMAN CARON: B-1.

On B-2, it's listed two different ways. One is 61 and 65. And the other is 61 and 69.

MR. YOVANOVICH: Thank you for catching that. It should be -- they should both be 61 and 69.

COMMISSIONER SCHIFFER: Where is that, Donna?

ACTING CHAIRWOMAN CARON: On the commercial B-2 exhibit. It says maximum building height. It says 61 and 69.

Go ahead.

COMMISSIONER SCHIFFER: Rich, out of curiosity, where do you come up with eight feet more for the actual? You know I don't believe in putting the actual in, but just out of curiosity --

MR. YOVANOVICH: Unfortunately we have no choice but to put actual in now.

We've done some preliminary layouts of -- is this actually a site that would be -- or can we give building types of people who develop CCRCs would want. And based upon other product type that's out there, those are actual numbers based upon product that's out there.

COMMISSIONER SCHIFFER: But you know my concern is that it's going to end up causing flat roofs instead of the beautiful roofs that we have, just to -- because you can hit the height with a flat roof. So that's not what you're doing, saying oh, we're going to have a flat roof and that's just the overrun of an elevator or --

MR. YOVANOVICH: No, I think that it -- we've addressed that a couple of ways with -- and remember, I'm not allowed to use tippy-top.

COMMISSIONER SCHIFFER: Right.

COMMISSIONER MURRAY: You can here --

MR. YOVANOVICH: I can but I --

COMMISSIONER SCHIFFER: It's your use of tippy-top that causes problems.

MR. YOVANOVICH: No, actually I was told I have to use tippy-top in truth in advertising because people want to know exactly what the top is, so -- we'll have to -- we've done parapet roofs to basically give the appearance of not -- to not have a flat roof, if you will. Although that's technically a flat roof from a measurement standpoint. But the parapet puts a nice little roof treatment up there.

And we could also do -- and help me on the terminology, I'll just call it a regular roof, if that's the right way, where you measure it to the midpoint of the roof, we would have that flexibility.

COMMISSIONER SCHIFFER: Thank you, Donna.

ACTING CHAIRWOMAN CARON: Okay, I just wanted to on Page 9 and 15 of B-1, residential development standards, under number two, you were going to change the second line to all buildings.

MR. YOVANOVICH: That's fine.

ACTING CHAIRWOMAN CARON: Okay.

MR. YOVANOVICH: You're right, we did talk about whether that meant all buildings. And it does mean all buildings.

ACTING CHAIRWOMAN CARON: So it will read all buildings within 100 feet have to be oriented -- cannot be oriented parallel.

Any other questions for Mr. Yovanovich before we go to staff?

(No response.)

ACTING CHAIRWOMAN CARON: You're off the hook for a few minutes anyway.

MS. DESELEM: Good morning. For the record, my name is Kay Deselem, I am a principal planner in zoning.

You have received a copy of the staff report with the revised date at the bottom of 10/5/10. And the staff report goes into the typical detail of a staff report, explaining who the property owners and applicants are, explaining the requested action, giving you information about the geographic location as well as providing the location map for you so you can see where the property is in relationship to the rest of the county and what the adjacent zoning might be.

Further details are provided in the purpose and description of the project on Page 2 of the staff report, continuing on to Page 3 where you will see a discussion about the surrounding land use and zoning.

The growth management discussion is on Page 4. Staff has gone into detail about the requested density and

finding of consistency with the Growth Management Plan land use designation.

On Page 6, you have a discussion about the transportation element of the Growth Management Plan and a discussion about the Conservation and Coastal Management Element.

The conclusion of the Growth Management Plan discussion is on Page 7, finding that -- or recommending that the petition be found consistent with all applicable elements of the Growth Management Plan.

Staff's further analysis begins on Page 7, going into environmental review, transportation review, providing comments from Utilities staff, Emergency Management, and Parks and Recreation staff.

The zoning services review comments begin on Page 8. And staff has tried to do an in-depth analysis showing the proposed differences between the existing PUD and this amendment.

There is one deviation that is being requested as part of this approval, and that deviation was approved in the original PUD, and they're carrying it forward as part of this.

Beginning on Page 11 you will find the PUD findings wherein staff is providing the findings to support their recommendation. And those continue on Page 12 with the rezone findings, which again support staff's recommendation of approval for this petition.

In summary, staff, as I've said, is recommending approval, finding that we recommend that it be found consistent with the Growth Management Plan.

And if you have questions, I know there is somebody from transportation here, as well as myself to respond to questions you might have.

COMMISSIONER MURRAY: I have a question.

ACTING CHAIRWOMAN CARON: Questions?

COMMISSIONER MURRAY: Just to make a verification, the change that was offered this morning by Mr. Yovanovich having to do with this change in standards, he's consulted with you in this matter and you're aware of it completely?

MS. DESELEM: Yes, those are acceptable to staff.

COMMISSIONER MURRAY: Okay. And you anticipate either you will produce a document that reflects all the new detail and/or I think on their Page 9, I guess it is, just reviewing that, the standards, that's dated September 27th, unless I'm in error, which I probably am, looks to me at least first blush that they've already said that they would go with the 1,000 feet for single-family and then the 750 for multi-family. No, that needs to be changed to 1,000, correct?

So that is the one that needs to be adjusted.

But you also need to, if you're going to provide the document as you have in your summary on Page 8, I would think you'd also want to provide that at consent.

MS. DESELEM: Staff and the applicant as well as the County Attorney's office do a combined effort to come up with a revised PUD document that reflects the changes.

COMMISSIONER MURRAY: That will be fine, as long as we have a clear and concise statement.

MS. DESELEM: Yeah, I show changes on Page 8 and nine and ten.

COMMISSIONER MURRAY: Yes. Okay?

MS. DESELEM: That is correct. And staff is in agreement with those changes.

ACTING CHAIRWOMAN CARON: Anyone else, questions for Kay?

(No response.)

ACTING CHAIRWOMAN CARON: Kay, these may -- it looks like at least the first one will require John's comments, John Podczerwinsky's comments. But you had given me a copy of an e-mail from Mark Strain with questions regarding this PUD. So why don't we get into those now, since they're directed at staff.

MS. DESELEM: I don't know that they're directed at staff. They were sent to staff so that they could be brought up today. But I think a lot of them will require the response of the petitioner, with the exception of --

ACTING CHAIRWOMAN CARON: I haven't read the whole thing here.

MS. DESELEM: The first one I think is --

ACTING CHAIRWOMAN CARON: But the first one specifically says John Podczerwinsky, so --

MS. DESELEM: Yes, that one is definitely a Transportation Element. And if -- we haven't read those into the record or anything but I can ask John --

ACTING CHAIRWOMAN CARON: Well, I'll read them into the record.

MS. DESELEM: Okay, so I'll ask John to come up so he can respond.

ACTING CHAIRWOMAN CARON: Good morning, John. Let me just read these questions, that we do have it on the record.

It says John Podczerwinsky's statement in the staff report saying this project has no additional impacts seems erroneous when one scenario that I think could occur is that they could have 114 residential units, 120,000 commercial, and CCRCs up to a point six-four on the commercial.

The reason I think this is pertinent is because the only conversion for CCRC is in the R tract. And there is no conversion, just an add-on, in the C tracts.

I would suggest that if this use is intended to stay in the C tract, then either a new TIS is needed showing the worst case scenario, or they provide a conversion in the commercial as they did in the residential.

As far as this being somewhat protected by capping the traffic count, that still leaves us with a TIS that is inconsistent with the standard policy staff has applied for all rezones, and that is to look at the worst case scenario. For a clean record, this PUD, it would seem, should have a TIS to match the uses.

MR. PODCZERWINSKY: Yes, ma'am. I do have a copy of the letter and this question.

Taking a look at the traffic study, I do recognize that there has not been a conversion factor between the 120,000 square feet and the CCRC units that could be allowed in its place on that tract C.

After a brief review of this last night -- and I'm going to put an exhibit on the overhead here and I'll show you.

Okay, what I did was I took a look at the existing shopping center trips that they have in tract C, which you'll notice there towards the top, they came out with roughly 480 total two-way adjusted trips that would be adjusted for internal capture and pass-by.

Adhering to the 120,000 square foot limit, assuming that that is the maximum you guys could have under the point six FAR in tract C, and then making the assumption that you would have roughly 700 square feet per CCRC unit, I calculated that out --

ACTING CHAIRWOMAN CARON: I'm sorry, say that again.

MR. PODCZERWINSKY: Looking at 120,000 square feet, which is the maximum that they've looked at for shopping center in tract C, okay, and then making the assumption that is the maximum square footage that they're allowed under the point six FAR, and Rich can -- that's not it?

Well, these are very round, rough numbers. These are estimated numbers for me. I had to come up with this last night real quick just to make sure that we had this analysis in there.

Using that 120,000 square foot basis and giving us a rough conversion to units, CCRC units, and assuming about 700 square feet per CCRC unit, we came out with about a maximum of 171 units that they'd be able to fit in there.

In any case, what that came out to when I did the trip generation for 171 units, potential units there, it came out to about 70 total two-way trips. And my understanding with the FAR cap, and also the trip generation cap, as long as both those are adhered to, there is no way they would exceed 583 p.m. peak hour trips off-site.

They would be able to have both uses allowed within tract C, from my understanding, but they wouldn't be able to exceed the total trip generation that has been approved. And Rich is shaking his head yes that they are adhering to that trip cap and the FAR cap.

MR. YOVANOVICH: Again, I tried to address this in my comments. What we've said is for the entire project, which is 37-and-a-half acres, give us 583 adjusted net new peak hour weekday trips. Here's the laundry list of things we would like to put on the property, but we will never exceed those 583 net new peak hour trips.

So we think the comment that's addressed in number one is addressed by that cap. You don't need a conversion formula, because the cap in the trips limits what we can place on the property. And as I said, I already know that I can't -- because of that cap which is based upon today's zoning, I already know I cannot do the full 456 senior housing units on the residential and the full 120,000 square feet on the commercial. I already know I'm not going to do that.

So I'm going to have to give up something. I'm either going to give up commercial retail and max out the senior, or I'm going to reduce the senior and -- to max out the commercial. More than likely there's going to be a combination of the two. I'm going to reduce -- there's going to be a reduction of one of those.

And that's why we think Mr. Strain's comment number one is actually addressed in that cap. We didn't address the worst case scenario because we didn't want a worst case scenario, we wanted it to be consistent with the

existing zoning today.

And we shouldn't be penalized for voluntarily capping ourselves from a worst case scenario. And that's what the intent was with those numbers.

And I hope that that satisfactorily explains that I can't ever go above 583, so I don't really need a conversion formula because I've already taken care of it in the cap on trips.

ACTING CHAIRWOMAN CARON: Go ahead, Mr. Schiffer.

COMMISSIONER SCHIFFER: And it's on this -- and it's really Ray for staff. Ray, is this going to be something you're going to be able to track, because this is going to come in in multiple projects. You're going to have to keep some sort of a matrix or an inventory as to where the trips are generated, right?

MR. BELLOWS: For the record, Ray Bellows.

As the project develops, they'll be coming in with site development plans. And as part of that process there's a concurrency review and a traffic study submitted at each stage, and that's how we would track and monitor.

COMMISSIONER SCHIFFER: Okay, good.

And then, John, would they be able to benefit from mass transit if it's out there? I mean, obviously if people are using buses and stuff, they should be able to take trips off with that, right?

MR. PODCZERWINSKY: There is currently no reduction for mass transit use that's allowed in the TIS. We analyze it as though there's no reduction for that. But yes, they would be able to take advantage of it.

COMMISSIONER SCHIFFER: If we start to analyze that way. I mean, we should encourage benefit of that, so --

MR. PODCZERWINSKY: Understood.

ACTING CHAIRWOMAN CARON: Anybody else? Questions, comments?

COMMISSIONER MIDNEY: I have a question.

ACTING CHAIRWOMAN CARON: Go ahead.

COMMISSIONER MIDNEY: So if we're not taking mass transit into account, why shouldn't we be?

MR. PODCZERWINSKY: I'm taking a look towards my supervisory staff and asking the question.

At this point really, we don't look at it because there's no reduction that's offered by the ITE Trip Generation Handbook, which is commonly used to calculate how many trips are generated on a site based on the uses that are allowed on that site.

At this point there has been no conversion ratio offered from ITE that shows a direct reduction that we could take from trip generation when considering mass transit as a use.

COMMISSIONER MIDNEY: It seems as though there should be.

MR. FEDER: I'm going to defer a little bit here, but in your reporting, it's going to be actual trips generated. So if in fact mass transit trips are utilized, that's going to reduce the actual trips generated, and that's how that would be taken advantage of.

So while you're not factoring that in to your initial costs as a review, as you're looking at the trips that are generated out of the project with these of each phase or successive development, that would come into account because it would reduce the number of trips generated out of the site, auto trips generated.

MR. KLATZKOW: So you're going to allow an increase in density based on buses?

MR. FEDER: If in fact they're utilizing that, or people are walking, bicycling, or doing anything where they're generating an auto trip, that would come into account in your annual reports, would it not?

COMMISSIONER SCHIFFER: And just on that also, John, it is a two-way trip we're talking about?

MR. PODCZERWINSKY: Yes, sir.

COMMISSIONER SCHIFFER: So theoretically this could be designed wisely enough to bus people into it, thus allow further benefit --

MR. FEDER: Theoretically, yes --

COMMISSIONER SCHIFFER: -- mass transit.

MR. KLATZKOW: Yeah, but you're not capping the density here this way. What you're saying is that if we get more efficient in transportation, this one particular development will be able to take advantage of that and increase their density.

MR. PODCZERWINSKY: No, it will be capped by the unit counts and their trip generation cap --

MR. KLATZKOW: Right, the trip generation could change based on --

MR. PODCZERWINSKY: It's based on calculated ITE trip generation rates. They're a common formula --

COMMISSIONER SCHIFFER: I think the leak would only occur if ITE starts to allow for it.

MR. KLATZKOW: Right.

MR. YOVANOVICH: Right.

MR. PODCZERWINSKY: Yes.

MR. KLATZKOW: But that's now becoming more of a policy question, are we going to allow that countywide or just for this development. I'm not saying it's bad policy, I'm just saying this is a little different from what I've heard in other developments.

ACTING CHAIRWOMAN CARON: Yeah, I think that's a very different statement than I've heard in the past as well. And I don't know, I don't think we're in a position to do that at this point.

COMMISSIONER SCHIFFER: I like the idea of projects benefiting from mass transit, I mean, so I really don't want to help a solution where they don't. Although there is an easy one, I won't tell you what it is.

MR. KLATZKOW: But usually you'll say, like for 100 acres you get four units per acre, so you're 400. And now we know what it is -- but whether or not you have buses, trains or planes. On this one, we don't know what it is.

COMMISSIONER SCHIFFER: For two reasons, one, it's the floor area ratio and it's the transit count.

MR. KLATZKOW: Right, exactly.

COMMISSIONER SCHIFFER: That density is totally the result of design, and good design will benefit it.

ACTING CHAIRWOMAN CARON: Which probably gets us -- maybe gets us here to this second question, or comment that says besides the FAR, a unit cap should be noted here that does not exceed the available conversion ratio.

MR. YOVANOVICH: That's fine. Our intent has always been that on the residential piece, our cap is 456. If we need to put a sentence in there that says, I think what Mr. Strain is, let's just say that clearly that one 114 times four is 456. That's fine.

ACTING CHAIRWOMAN CARON: Okay, let's continue on here.

Outdoor recreation. I'm gathering by this comment that he just would like items listed. It says just what is that and could we not put it as a list of items like tennis courts and swimming pools and tot lots.

His thinking is that the term, just that term without any definers is too ambiguous.

MR. YOVANOVICH: And actually, that term is in the existing Sonoma Oaks PUD and probably in a lot of PUDs because it's difficult to figure out what, you know, if I list bocce ball and I list horseshoes, if I've done that list and something new comes out, does that mean I have to come back and now amend my PUD. That's kind of a catchall.

I know we don't like catchall's but I don't know another way to address the situation where an outdoor recreational activity -- and they have to be customary to the types of uses we're asking for, which is single-family, multi-family and senior housing.

So I hope, since it's already there in the existing PUD, we can allow it to continue.

ACTING CHAIRWOMAN CARON: I don't have a problem with that myself. Anybody else have a problem just leaving it as outdoor recreation?

COMMISSIONER MURRAY: It should stay.

ACTING CHAIRWOMAN CARON: Okay, number 29. I'm guessing that has to do with uses here. This use -- this is an added use that needs to be amended per discussion in bullet one before.

Okay, I don't -- I'm not understanding. This is just a list of allowable uses.

MR. YOVANOVICH: I think that he believed, and again, I think what he was saying is he believes that we should have a conversion formula for CCRC units to commercial. He doesn't think the 583 cap is sufficient.

If you think the 583 cap is sufficient, I think this comment goes away. I think it relates to there should be a conversion formula, because item number 29, I believe, is the CCRC independent living, assisted living use.

ACTING CHAIRWOMAN CARON: It is, yeah. Okay.

I'm sorry, but I'm just trying to read ahead here so that I can --

COMMISSIONER SCHIFFER: Donna?

ACTING CHAIRWOMAN CARON: Page 4, it says needs cap as referenced in bullet number two. The last sentence here also is further good example of why a cap of 456 is needed over just a FAR calculation.

MR. YOVANOVICH: And we're fine with that. We thought we had addressed the cap. And it may be one

of those things I've talked about it so many times I didn't really -- I didn't put the 456 number in.

ACTING CHAIRWOMAN CARON: Well, the 456 number is -- the only place I've seen it is on the -- actually, it doesn't have it on either place.

MR. YOVANOVICH: Right. I think what we need to do is in the R tract we need to include a statement where appropriate that the maximum number of senior housing units is 456, based upon the conversion formula of four units for each one unit of --

ACTING CHAIRWOMAN CARON: But whether you're using it on either -- I think what's being said here is whether you're using it on either the commercial or the residential tract, it should not exceed that conversion ratio, which is 456.

MR. YOVANOVICH: No, I don't think so. Because Exhibit B one only goes with the R tract. So the footnote he's referring to refers to the development standards table for the R tract.

Then there's the development standards table for Exhibit B-2, which is the commercial.

So I think he was referring to on the residential we need to make it clear on the R tract we will never have more than 456 senior housing units.

ACTING CHAIRWOMAN CARON: Go ahead.

COMMISSIONER MURRAY: I'm just going to make a suggestion. You had that piece of paper that related the formulas, the calculations and so forth. Let me suggest that that be made a part of the evidence today, and that should help to qualify that information, I think, rather than it keep on coming up.

MR. YOVANOVICH: It's clearly part of the record. And I think we could take care of it with a simple statement probably in Exhibit A somewhere that makes it very clear that that conversion formula that we refer to in Exhibit A will yield a maximum of 456.

COMMISSIONER MURRAY: You may do that, but my suggestion is that, because I don't think that what you showed us on the overhead projector was part of the documents that we had --

MR. YOVANOVICH: Correct.

COMMISSIONER MURRAY: -- it was something you prepared --

MR. YOVANOVICH: We will take care of that, Mr. Murray, and put it in the document. You'll see it when we come back --

ACTING CHAIRWOMAN CARON: At consent.

COMMISSIONER MURRAY: Then I think that will satisfy a number of these questions that have been raised.

MR. YOVANOVICH: Right.

ACTING CHAIRWOMAN CARON: And the final question has to do with sidewalks on this master plan.

MR. YOVANOVICH: Right. And what the master plan allows for is the option to have only one sidewalk on the north-south road, the connector road, if you will, between Wolf and, I think that's Mission Hills Drive or Mission -- yeah, I think it's Mission Hills -- Boulevard.

So we would have the option to build a sidewalk on only one side versus both sides of that, is what the master plan would allow.

ACTING CHAIRWOMAN CARON: Does -- what about along the entry? And do you have to do sidewalks along Collier Boulevard?

MR. YOVANOVICH: If they don't already exist. I think they do. John, do you know if they already exist?

MR. PODCZERWINSKY: I don't have that for -- you know, that information for the record at the moment. However, I will tell you --

MR. KLATZKOW: There's sidewalks --

MR. PODCZERWINSKY: -- that the LDC will apply. And it would require, if there aren't existing sidewalks, which I believe there are, along Collier Boulevard, then they would be required in compliance with the code.

The allowance for the connector road between Wolf Road and Mission Hills Boulevard, again, would be deferred to the LDC, unless there's a specific deviation listed in the PUD.

And is there, Rich, a specific deviation?

MR. YOVANOVICH: Well, what needs to happen is -- it's on the master plan. We need to reference in the -- and when we ask for the deviation to go to 50 feet versus 60 feet, I think we need to add a sentence that says that we

can -- it's optional to put it on one side of the road. Because it's been on the PUD master plan. I guess it was not referred to in another portion of the document.

So, again, you know, you don't want to -- I feel like it's a little overkill with sidewalks. You've got one on 951, and do you really need that many sidewalks internal to the project.

ACTING CHAIRWOMAN CARON: I'll let other people comment first.

Go ahead, Ms. Homiak, first.

COMMISSIONER HOMIAK: The sidewalks, though, in the LDC, isn't it determined by how many -- I know in the residential, it's determined by how many units there are. If it's over four units an acre then you need them on both sides of the street.

MR. YOVANOVICH: No, I believe under the LDC, every road you build, right, is supposed to have a sidewalk on both sides, regardless of the number of units you have in your project. You'll see sometimes where we have projects that don't have units on both sides of the street and you'll see us come in and say hey, can we have a deviation, only put it on one side, because the other side isn't serving any residential uses.

So that's what we're saying, is in this particular case we've already got a sidewalk on 951 -- Collier Boulevard, sorry. Why do I need two more internal to the project for a total really of three sidewalks serving the commercial portion of this project. Give us the option of deleting one of those sidewalks. You already got the one on 951, we may just want to have one internal to this project.

COMMISSIONER HOMIAK: Even if there's going to be CCRC in the commercial, you're going to have one sidewalk -- connecting residential to the commercial it's going to be one sidewalk on that access road?

MR. YOVANOVICH: Correct, but if there's already a CCRC internal to the commercial, they're not going to be out on the north-south bisecting road, they're already within the commercial. So they won't need a sidewalk to get there.

If you're going from the residential, you take the sidewalk that's on the north-south road and take a crosswalk over to the commercial or over to the sidewalk if it's on the east side of the road. We've just simply asked for it as, you know, we feel like there's plenty of sidewalks in close proximity to get people to the commercial property.

MR. PODCZERWINSKY: I just want to also add that there is an allowance in the Land Development Code that allows sidewalks on one side of the road. If that is pursued by the applicant through the LDC, there are some special allowances that have to go with that. I think it's a wider sidewalk requirement if it's only allowed on one side of the road.

I'm not specifically familiar with the sidewalk code, but as my understanding --

COMMISSIONER HOMIAK: I understand I know there's different, you know, if this, then this -- you know, there's a lot of different scenarios to what goes where. But I just thought that there should be two -- sidewalk on both sides of all the streets in there, especially if it's a CCRC -- if you have assisted living and that type of thing. And the residential and the commercial I would think. But I guess it's all governed by the LDC the way it's written --

MR. PODCZERWINSKY: That's correct.

ACTING CHAIRWOMAN CARON: Go ahead, Mr. Murray.

COMMISSIONER MURRAY: I'm going to pursue that, because she actually asked the same question I was going to ask, but I want to pursue it a bit further, if I may.

Would you move the paper over to show the master plan, please.

And in that connection, the point that Commissioner Homiak makes, it occurred to me as well that you could have a CCRC sitting over in one or more of those commercial spaces. And then you have setbacks and you have landscaping and so forth.

In the areas that are deemed to be although in commercial they're residential in fact, there would be sidewalks surrounding the buildings, presumably. Then if they were walking and they wanted to walk, where all would they be walking toward if they were going west? I assume the map orientation is north-south. If they were going west, they would then be crossing the landscaping and then the road in order to get to a sidewalk?

Are you not following me?

MR. YOVANOVICH: I am. There would be a connection to the internal sidewalks that would get you to the external sidewalks.

Keep in mind, this deviation were -- a typical 50-foot wide public unplatted access easement applies to this and this.

COMMISSIONER MURRAY: Yeah.

MR. YOVANOVICH: Those are the only places it applies to. We're not asking for any internal project changes.

COMMISSIONER MURRAY: So why don't you go back to that again with the microphone and then we'll point out and I'll try to guide you so that I can understand it, at least.

Between the two C's, the two commercial tracts, in between there there's a road and those dashed lines, those are setbacks.

MR. YOVANOVICH: I'll tell you, I just got the sign from my client, we'll put them on both sides.

COMMISSIONER MURRAY: What a wonderful thing. Thank you very much.

COMMISSIONER SCHIFFER: John, this probably is a silly question, but I enjoy those too. If a guy did a trip within the thing, would that count in your study, I mean, if you had counters out there, or would it be stupid for them not to keep people out of their cars, wouldn't it?

MR. PODCZERWINSKY: That actually is counted as part of the first trip generation calculation. It's called an internal capture reduction. And what that is is just a reduction off of the raw trip reduction rate. So it's calculated --

COMMISSIONER SCHIFFER: So that's counted for already.

MR. PODCZERWINSKY: Yes.

MR. YOVANOVICH: And that's why we need to make sure that our cap refers to new trips, or whatever terminology John says, that's 583 new trips, based upon our calculation.

I think he wants to say it's 583 adjusted trips, instead of just -- and that would be added after the 583 to make sure we follow through how the calculation occurs in the TIS --

COMMISSIONER SCHIFFER: So the document now says 583 --

ACTING CHAIRWOMAN CARON: Oh, so now we're lessening that standard.

MR. YOVANOVICH: No, no, we're not. We're exactly what we had -- it has always been 583 net new trips, as based upon the -- correct?

MR. PODCZERWINSKY: Yes, sir.

MR. YOVANOVICH: That has always been the number. Because it would be unfair to --

COMMISSIONER SCHIFFER: What that does, Donna, is that prevents my stupid question from becoming a smart question. Because it would be internal capture, which is an adjustment.

COMMISSIONER MURRAY: Yeah, it would be like grandma on a Segway, wouldn't necessarily want to be counted as -- but it's internal capture, that's fascinating. So if there were a number of stores and she went back and forth to those stores, that's a trip each time, I guess?

MR. YOVANOVICH: But we're not penalized for that.

COMMISSIONER MURRAY: I would hope not.

MR. PODCZERWINSKY: That's correct, yes. That would be a trip between the mixed uses within the PUD.

COMMISSIONER MURRAY: How do we make that judgment? Do we put a county staff member out there with a clicker?

MR. PODCZERWINSKY: No, actually, we don't. We do ask for annual traffic monitoring reports where they do count their trips up through the time that the project is built out. They do not count internal trips. It's something that's relatively unquantifiable --

COMMISSIONER MURRAY: That makes sense to me. Thank you.

ACTING CHAIRWOMAN CARON: Anybody else have any questions?

(No response.)

ACTING CHAIRWOMAN CARON: Kay?

MS. DESELEM: Yes, ma'am.

ACTING CHAIRWOMAN CARON: In the surrounding area, in the area surrounding this project, is there any project with heights as high as 69 feet?

MS. DESELEM: If I may take a moment to look. I believe we tried to represent what the surrounding land use heights are. And to the north there's two-story and three-story right with a maximum of 45 feet high. To the east it appears to be 35 feet high. And I don't have the designation for the shopping center, for the Mission Hills shopping

center.

To the west with Black Bear Ridge it appears that there are 35 feet and two-story limitations, except that the multi-family can be 38 feet and two-story.

ACTING CHAIRWOMAN CARON: If they did this CCRC on the commercial portion, what are the setbacks for that?

MS. DESELEM: I've got to look. Hang on. According to --

ACTING CHAIRWOMAN CARON: So they can be 25 feet back?

MS. DESELEM: The external setback is from the roadways themselves, and it's 25 feet for Wolf, Collier and the loop road that they show.

ACTING CHAIRWOMAN CARON: Thanks.

Anybody have any further questions for either staff or Mr. Yovanovich or anyone of anybody's team?

COMMISSIONER SCHIFFER: Well, Donna, you know, this last thing, I mean, I'm not worried about the height. But if we do allow people living 25 feet off of Collier Boulevard, not cool.

So Rich, would it be a problem -- I'm not worried about the commercial, but could you -- would it be a problem pushing back off of Collier the residential type uses? I mean, I can't believe in your design that's important.

MR. YOVANOVICH: Why don't we say any senior housing component would have to have a minimum setback from Collier Boulevard of 50 feet.

COMMISSIONER SCHIFFER: That's better. And that's the -- under the category the ILF, ALF, that whole thing --

MR. YOVANOVICH: Right, we would have that as -- we would change that number from, I believe it says

--

COMMISSIONER SCHIFFER: Twenty-five.

MR. YOVANOVICH: -- 25. We would change that number to 50 from Collier.

COMMISSIONER SCHIFFER: For the sake of those residents.

MR. YOVANOVICH: I don't think we would have put them -- you're right, we need to put that -- I think that's a good catch.

ACTING CHAIRWOMAN CARON: Okay, if nobody has any questions, then I guess we're looking for a motion.

COMMISSIONER HOMIAK: There's speakers?

COMMISSIONER SCHIFFER: I'll do it if you want.

Oh, public speakers, yeah.

ACTING CHAIRWOMAN CARON: Actually, Cherie', yeah, you just said that to me. Were there any public speakers?

I think it was all just members of the team that stood up. If I'm not mistaken.

We don't have any slips.

MR. BELLOWS: Excuse me, I was working on something else. No, no speakers have signed up.

ACTING CHAIRWOMAN CARON: Try to stay with us, Ray.

Okay, I don't think we have any public speakers, so we're fine.

COMMISSIONER SCHIFFER: I'll make a motion, Donna. Subject to the comments we've made and recorded, I move forward PUDA-2007-AR-11961, Sonoma Lakes (sic) mixed use planned unit development with a recommendation of approval.

COMMISSIONER MURRAY: Second.

ACTING CHAIRWOMAN CARON: Okay, anybody want to make any comments? Okay, I'm not going to be supporting the motion. I think that 69 feet for these -- for the CCRCs is out of scale with the neighborhood.

I'm concerned about the -- what can happen on this floor area ratio in commercial combination and what that can actually bring us. I think the staff has tried with this maximum of 583 to keep it down to something manageable, but I'm not sure it's really going to work the way they think.

But I think that the CCRC portion of the project is out of scale with the neighborhood. So thanks for at least setting it back 50 feet off Collier Boulevard.

All those in favor?

COMMISSIONER SCHIFFER: Aye.

COMMISSIONER AHERN: Aye.
COMMISSIONER MIDNEY: Aye.
COMMISSIONER MURRAY: Aye.
COMMISSIONER EBERT: Aye.
COMMISSIONER HOMIAK: Aye.
ACTING CHAIRWOMAN CARON: And opposed.

So the motion carries 6-1.

MR. YOVANOVICH: I know you're done, but can I ask for a question about the objection? Was it for both portions of the CCRC or was it just the commercial portion? Your concern about the height?

ACTING CHAIRWOMAN CARON: Just the commercial portion. I believe you got the setbacks okay on the residential portion.

MR. YOVANOVICH: I just wasn't sure what the concern was, whether there was a concern on the residential. Thank you.

ACTING CHAIRWOMAN CARON: Okay.

MR. YOVANOVICH: Were you the second?

COMMISSIONER SCHIFFER: Bob Murray was the second.

COMMISSIONER MURRAY: What did I say?

ACTING CHAIRWOMAN CARON: You were the second.

COMMISSIONER MURRAY: Yes. Wish I could hear.

ACTING CHAIRWOMAN CARON: Thanks, everybody.

COMMISSIONER MURRAY: Jamie, Kady knows how to put that thing on.

MR. FRENCH: I've spoken with her, so I'm hopeful that she'll patch this in --

COMMISSIONER MURRAY: At a break?

MR. FRENCH: Right, at a break.

ACTING CHAIRWOMAN CARON: Why don't we take a break now and let that happen.

Cherie', it's only 15 minutes one way or the other. So why don't we take the break now, get this fixed so you guys can hear. It's too important. Thank you.

(A recess was taken.)

ACTING CHAIRWOMAN CARON: All right, hopefully this is working.

Ms. Ebert, can you hear any better?

COMMISSIONER EBERT: No.

ACTING CHAIRWOMAN CARON: No. Okay, so I guess it didn't work any better.

And Mr. Murray is not here, so I'm not sure whether his is working or not.

COMMISSIONER SCHIFFER: But mine -- none of them are working.

ACTING CHAIRWOMAN CARON: Good, Mr. Murray's back and he can tell us whether his is working for him.

MR. BOSI: Try it now.

COMMISSIONER MURRAY: Somebody has to speak into it for me to --

ACTING CHAIRWOMAN CARON: Mike, will you --

MR. BOSI: Testing, testing, testing.

COMMISSIONER MURRAY: I don't think so.

COMMISSIONER SCHIFFER: No, they're not. They would all work, Donna.

ACTING CHAIRWOMAN CARON: I think none of them are working at this point, so --

COMMISSIONER MURRAY: I agree.

ACTING CHAIRWOMAN CARON: So that means two things.

Good, I'm glad Kady is here. But it also means that everybody needs to speak slowly and distinctly so that people can hear and understand.

MR. FRENCH: And directly into the mic. as well.

ACTING CHAIRWOMAN CARON: Right into the mic.

Go ahead, Mr. Bosi, you may begin.

MR. BOSI: Mike Bosi, Comprehensive Planning. And I will reassume my personification -- or my persona

as the soccer coach of last night, so I will be loud and clear, hopefully.

Corby Schmidt, who was the coordinator for the CIE amendment, is not feeling well, so I am standing in his place.

I'm going to actually start this with the end of the process, just to clarify what we are seeking from the Planning Commission to the Board of County Commissioners. And that's the specific recommendations. And those are contained on Page 2 of the CIE staff report.

One we're asking for, to provide a recommendation for the school district CIP to be included in the FY10-11 scheduled capital improvements annual update by reference. The school board this past September had approved their capital improvement program which contains no new schools. And we're asking that to be updated by reference, as well as you'll see the text based amendment that is provided within your CIE packet that references the specific dates of that approval.

And then second is to provide that overall recommendation to transmit the CIE update and amendment to the Florida Department of Community Affairs.

Within the packet that I had provided, both the first five years, the Schedule A of capital improvements are provided and summarized, as well as Exhibit H, which is the six through 10 years, the outer years for the capital improvement programming.

From review of the tables, each of the components of the Category A facilities which make up and establishes our concurrency system are in line in what was approved for by this Board at the September 20th AUIR review, with one exception. And that one exception, as we noted earlier before, was the Transportation Element. And that transportation element has been adjusted based upon the Board of County Commissioners reduction in impact fees.

Mr. Norm Feder, the administrator for Growth Management, has indicated that he's here and prepared to make remarks in terms of the updated AUIR section and how that updated AUIR section reflects upon their Exhibit A and their five-year capital improvements.

With that, Mr. Feder.

MR. FEDER: Thank you very much, Madam Chairman, Commissioners.

I'll be fairly brief.

First thing I do, though, want to do is in the addendum, which is the AUIR, as modified in your package on Page 23, I need to correct an item on that, and then I'll go through very quickly to give you what's been done.

On Page 23 you should see Attachment E on the AUIR. If everybody's with me on that?

Unfortunately on the project dollars, that was not updated to the reduced level of the 239.6 that you'll see every place else as I'll show you in the AUIR and the CIE, that first item which shows a total of 193 million 63 should be 163,989,000. And that will be adjusted and cleaned up in the final item. And that does bring the program in balance as you'll see as noted in every other portion, to \$239,646,000.

The other thing I'll note on that same page is under the expenditures, the notes, expenditures are based on current unit costs, and it says and include utility relocates. That add, includes utility relocates needs to be removed. That's no longer the case. The action taken by the Board subsequent to our meeting previously with you was to reduce the transportation impact fee by 32 percent and to remove, and that is being worked on right now, about 10 percent, which was the utility relocation. And that will be handled by utilities. And they'll be coming back to the Board relative to their impact fees to address that.

So if I can, what I'll do is just go through the AUIR as I said very quickly with that noted correction.

On Page 17 --

ACTING CHAIRWOMAN CARON: Norm, you did want to also show that it's not a negative.

MR. FEDER: That is correct. The resulting change to make that figure at 163,989,000 for the project program commitments will bring the total expenses down to the 239,646,000 consistent with the revenues, therefore the balance, as you point out, Madam Chair, correctly, is zero. And we're taking out that clause relative to includes the utility relocates.

Thank you.

Again, going back to the AUIR, and as I said, I'm going to try and be brief, but I did want to at least show you what's changed.

On Page 17, which is the first page of the AUIR itself, you have major change, obviously it was impact fees. You now see 39,150,000, that's down from the prior 67,500,000, or exactly 42 percent reduction, which is the action

taken by the Board.

That brings the subtotal on resource down to 241,313,000. Previously of course it was that difference, 270,395,000. And of course that then that brings you down in balance when you take out the carry forward and reserve the negatives, to 239,646,000, which is the figure of the program as it stands now.

I won't hit anything on 18 unless you want me to.

Nineteen, we already talked about the fact that O&M has become a bigger and bigger concern for us. Not only is the capital program, as you'll see, very significantly reduced, we added a lot to the need for maintenance, and yet we haven't funded that, so it's sort of the double shot of issues.

COMMISSIONER MURRAY: I do have a -- Norm, on Page 19, really at the very bottom, and it's more -- we're more looking for you to give us a sense of rather than a specific answer, because there isn't any real absolute here.

But it talks before the level of standards, level of service standards already set at the lowest acceptable levels of D or E, operation and maintenance construction, level of funding needed to be increased or supplemented by additional revenues sources. You have safe operations and preservation of the network is to be attained commensurate with planned expansion.

How do you go about, with such a condition facing you, how do you go about setting up any kind of plan for operations and maintenance, especially now you put a 40 year cycle in order to recognize the totality that you have to deal with? But in reality you also have some things that are coming up at you. So how do you conceptually go about it? That's what I'm really interested in.

MR. FEDER: I'll hit it a couple of ways. First of all, the most direct answer is you become very responsive to problem areas as opposed to preventive maintenance. So that's the first thing that happens.

The broader answer to that is that you basically go after worst first. So for instance, as an example, pavement condition, basically you want -- it's graded pavement ratings on one through ten. And a ten would be just done, and done well, new pavement.

Basically that will last for a period of time. If it's an arterial, it's about six to eight years, I'd say seven years. If it's a non-arterial, they say 12 to 15, I'll say 15 to 20, but -- in that time frame.

So as you're looking at it, it'll stay 10, move down to nine very slowly, starts to move to eight. But then as it gets to about seven, and there's a lot of graphics on this the state's done and everything, as it starts to go to seven, it starts deteriorating fairly rapidly. And then you get down into conditions like you may see on Santa Barbara north of Golden Gate, about a four or five very quickly, and then it deteriorates beyond after that. And then you're into subbase and it's no longer a resurfacing, it's now a reconstruction.

So essentially what the state's process is, you try to go, and as you get into a seven or eight, you should have in your outer years of your program monies to resurface that to keep your investment.

From a practical sense now we're not able to work under that sort of a preventive maintenance. We're trying to make sure within the funds we have, and we added a little bit this cycle, in spite of everything going down, to resurfacing, as an example. But basically you're trying to go after the threes and fours, so nothing gets to a very bad condition.

Again, we enjoy a pretty decent condition compared to what you might see in other parts of the country, but we're trying to maintain that and not lose the investment. Repair the leak in the roof before you all of a sudden have structural issues and have to replace it.

COMMISSIONER MURRAY: Well, I'll just make a comment that I see your problem very clearly, I believe, and it is a very significant problem. You've been trying to address it now for several years. And I can say that while you're now almost all reactive, the proactive is just as important in getting some dollars for that.

I hope the Board of County Commissioners hears these words that you're offering, then they can react to it. That would be my thought. Thank you.

MR. FEDER: Thank you very much. I believe they are hearing. We're going to continue to raise it to them. The problem is the ability to react where the funding available to respond. And as I said, we'll continue to try and maintain the systems as best that we can with the available resources.

On Page -- I'm going to skip forward, unless you have it. Page 22 is the essence of what has changed. As you know, we're just about 30 million down on impact fees. We had to adjust to try and respond to that. We met with you previously. We were concerned since we only had two real construction projects in the outer years, years two

through five of our program, one being 41, 951, which has developer contribution money on it, as well as a SIGP state grant, as well as a state resurfacing project to the south of 41.

And we're going to take on that resurfacing with what they budgeted, which is now at a little over seven million, do the resurfacing and add the balance that we see that we can to the project at the intersection.

The other one was 951 from Golden Gate Boulevard where the prior north project ended down to Green that had 7 million in a trip grant from the state on it. Those are the only two because everything in our program now for capital is either impact fee or it is grant TCA money. We've had to move the other to maintenance. And so that's what we have in our capital program.

We were able to maintain both of those. The way we did it is shown to you here. Basically what we did in adjustment is we took some dollars out of our current Fiscal Year 11 budget. And that's where you see some negatives, which are unusual to see on this, but number 11 is already budgeted.

So you took two-and-a-half million out of -- the Santa Barbara-Polly project was completed, we closed it out, that gave us two-and-a-half million that fortunately we did not spend. We had it in there as an allocation if we needed it for change orders and issues. And we were very successful on that project and had those funds, so we've identified those and freed them up.

Additionally we've looked at both of the projects about to be let that are in ten and are rolling into 11. That is the Davis Boulevard from Radio over to 951, and 951 up to the Golden Gate canal. Those two projects, we're finishing the last of the right-of-way acquisition with the courts and working through a couple of issues with DOT on 951 so we can let the two projects together. And we'll get 20 million in reimbursement, which is reflected in the monies coming back to us.

Those two we now have better estimates on because we full planned and we're fairly confident that we can reduce the figures you see here, 2.7 million and 2.5, respectively, from what we had previously programmed on those projects.

And then lastly to note is Vanderbilt Beach Road, that right-of-way. We took out dollars not only in 11, but you can see throughout the program. We originally had in the prior 10.3 million in total. We now are down to actually, and it's an interesting item, I've never seen a total with a negative, but by taking out three million and not adding a lot in subsequent years, we've got a negative one million.

So you took 11 million out of there. You also took some additional monies out of the right-of-way on Golden Gate Boulevard. That was previously 8.9 million, it's 3.1 total now. And that gives you an idea generally. You took the right-of-way projects, we took current year dollars in savings from a prior project and were able to maintain both of those construction projects and both of the grant monies that would come in.

What have you done, back to the question. We already talked about the maintenance implications. The other part of that sentence that Commissioner Murray read was that it takes you a period of time to produce a capital project. So you try to keep a reasonable production cycle going. And what you've done is you've sort of borrowed against your year six, seven and eight and maybe nine ability to produce a project.

We're down, we've slowed, but we're up two-and-a-half percent on traffic. So a little bit looking at *deja vu* all over again. We're a little bit back to the early '90's where things had slowed, savings and loan crisis, other issues. We decided that we didn't have to build it, we've got plenty of capacity. We consumed it. By the time we decided maybe we consumed too much we have to do something about it, we had a huge backlog that we paid the last 10 years to get out of it.

I'm hoping we don't do that is the only reason I mention it to you. But we have funding constraints and we are where we are. So I'm just asking you to maintain those two projects, to maintain the grant monies. We are sacrificing by not moving ahead on production on other projects, basically your ability to be responsive, particularly past the five years of this AUIR.

As I said, I've got a correction noted already on 23, it's consistent with Page 22 in the CIE --

ACTING CHAIRWOMAN CARON: Norm, before you go on.

MR. FEDER: Yes, Chairman.

ACTING CHAIRWOMAN CARON: On Page 22, all of the things that you have taken out of your fiscal year 11 budget are starred. And the star says at the bottom, the asterisk refers to anticipated savings. But you know that these are actual savings, correct? I'm just --

MR. FEDER: Some are actual savings. The only one that's really anticipated, I'll call your attention to right

at the middle of that list, 60092 and 60073, Collier Boulevard and Davis Boulevard, we reduced 2.7 million and 2.5. That's because we have a very strong engineer's estimate. And based on what we had programmed there, we are comfortable that we can pull that back. But that one's anticipated.

The obvious reduction in right-of-way programming is a given. The monies coming back on Santa Barbara up at the top, 2.5 million, that's a given. We've closed out the project and identified those funds that can be freed up and used to keep those other two projects in the program.

So the only one that's really unanticipated, Madam Chairman, is the Davis and the 951, and we're pretty comfortable that we still have within the budget sufficient dollars to let those and be successful.

ACTING CHAIRWOMAN CARON: Anyway, that's about half of what you cut out. So in order for us to have a CIE, it has to be -- I mean, we have to know for the CIE that these are real dollars and they're actually going to be there or else we don't have a -- we don't have a --

MR. FEDER: Understood. And that's why you have contingency. And that contingency is in there to respond. What I will tell you, we're very comfortable that those estimates are solid. The only other prospect we had was to give up 7 million in trip funds on the 951 project in an outer year.

So I understand your concern. What I can tell you is I don't use always and never, because I found those don't work. But we're very comfortable with those estimates, and we wouldn't have put it out there if we weren't, because we agree with you, this is supposed to be and is financially feasible.

ACTING CHAIRWOMAN CARON: We're supposed to show specifically where the dollars are and how we're going to get there, so --

MR. FEDER: And I think this shows you that to be the case. I think we've shown that as the case, here. We have sufficient funding to address this program.

COMMISSIONER MURRAY: Just a question that comes up with regard to that. I know that -- I think it needs clarification sometimes. Change orders are not in your initial budget. Change orders are in fact something that's a discovery and a conclusion and then a request or demand for dollars to take corrective action.

So what we're looking at in the budget here, we're talking about solid engineering estimates, known pricing from bidders and contingency of a specific percentage so that if you do have some slop in there, to be able to work it. I think that you need to qualify that.

MR. FEDER: That is the major qualifier. We don't call it contingency within the project, but you do have an allocation for any change order issues that might come forward. And just like I said, as we were very successful, especially with in-house CEI in managing the Santa Barbara extension, that allowed us at the end to take what was almost three million of allocation for any contingency and two-and-a-half million of that we're able to now plow back into the programs.

So the projects as they are estimated do have in a level of, and I'll use that term contingency, in them, and I have some contingency in the program.

But yeah, your point is still well made, Madam Chairman.

ACTING CHAIRWOMAN CARON: My next question has to do with the other asterisk, which relates to an Arthrex repayment.

MR. FEDER: Yes. That has already been accomplished. That was done at the last Board meeting. Basically because they had qualified under the economic, or EDC program for jobs, and then decided not to do it when they qualified, they were going to get impact fee credits in various areas, including transportation.

We were then given general fund to cover that impact fee loss. And then when in reality they didn't go into the program, I didn't have the impact fee loss, I had to return that money. And so that's what that asterisk is referring to. And that's already taken into account in the program. And actually, it was done by the Board last meeting.

ACTING CHAIRWOMAN CARON: So what project are those dollars being assigned to? There's nothing.

MR. FEDER: There are no dollars that it's assigned to, it's just a reflection that that came out of my program. I had to repay that back and I have done that already. So it's not something out there that's a liability.

There was a question when we came to you at the last time that Arthrex was pulling out and therefore we had received some funds we were probably going to have to pay back. And so this is showing you that we have done that. That's the only reason for it.

ACTING CHAIRWOMAN CARON: Okay.

MR. FEDER: Barring any other questions, 23, I already noted the changes. And that pretty much reflects

through, I think you've seen all the other when we discussed. I'm happy to go over anything you'd like to.

And what I will tell you what we just reviewed is now, as you go to your CIE, which is the issue of the day, really, those numbers are directly reflected, the 239 total. And hopefully I gave you an idea how we got there. But everything else is consistent with the AUIR as it's been adjusted.

ACTING CHAIRWOMAN CARON: Anybody have any questions?

(No response.)

ACTING CHAIRWOMAN CARON: Okay, thank you, Norm.

MR. FEDER: Thank you very much.

COMMISSIONER SCHIFFER: Do we need to make a motion on that or anything, Donna?

ACTING CHAIRWOMAN CARON: I think you just do it at the end. Do you have to do it by --

MR. BOSI: No, no, the CIE -- the amendment is a wholesale recommendation and not by section by section. But it is one overriding motion.

And as I had mentioned within the -- Mike Bosi again, with Comprehensive Planning.

As I mentioned in my opening remarks, the transportation section is the one area where there was a deviation from the information in the numbers that were approved during the AUIR. But we can most certainly take any other questions that you would have on any of the components of the Capital Improvement Element.

ACTING CHAIRWOMAN CARON: Does anybody have any other questions?

Melissa?

COMMISSIONER AHERN: No, Norm answered my questions during break.

ACTING CHAIRWOMAN CARON: Anybody else have any questions?

(No response.)

ACTING CHAIRWOMAN CARON: I just have one. And it relates to the schools. There's an entire paragraph that you want deleted, or part of a paragraph that says updates to the CIP and the work program shall occur annually thereafter, all the way to the end where it says that the county is not responsible unless things are mutually agreed upon.

Why are we taking that out?

MR. BOSI: That's inconsistent with the actual, the Florida Statutes and the clarification that was provided within the Hillsborough County. We have just updated the information to accurately reflect what the statutes do require the county, require to capital improvement programming related to the school district --

ACTING CHAIRWOMAN CARON: So right now the school districts don't have any capital improvements on the horizon, so that's fine. But if they did, and if for some reason they failed to pay for those capital improvements, the county would be responsible, is that what this --

MR. BOSI: No, what this means is the school board is responsible for capital improvements that are contiguous to their site, as provided for within the statutes. And this elimination of this paragraph is just basically to be consistent with how the statutes read.

And just to give the Planning Commission another piece of information, we are currently updating the SBR, the school board review policy between the county and the school board, which clarifies and which is dictated by statutes and clarifies the responsibility of each parties within the capital improvement programming process.

ACTING CHAIRWOMAN CARON: Does anybody else have any questions on anything else in the CIE?

Again, I don't think there were any changes other than to transportation.

Go ahead, Melissa.

COMMISSIONER AHERN: What happened to the revenue for parks?

MR. BOSI: There is no revenue, other than interdepartment transfers. If you remember from the AUIR there is no actual expenditure of dollars. The way that the park acreages are being acquired is through interdepartment transfers --

COMMISSIONER AHERN: Impact fees? You're not going to collect any impact fees?

MR. BOSI: Impact fees will be utilized to pay prior debt.

COMMISSIONER AHERN: Right, but that whole -- all of that is missing.

MR. BOSI: That's traditionally not information that's provided within the CIE portion of the parks component.

ACTING CHAIRWOMAN CARON: It comes out, Melissa, just because there are no capital improvements.

MR. BOSI: Correct, thank you, Madam Chair.

ACTING CHAIRWOMAN CARON: It just shows in -- we find it in another --

MR. BOSI: Within the AUIR we show you with impact fees and how they're satisfying past debt obligations. Within the CIE, the state and the concurrency management system only requires us to allocate a revenue that is directed towards capital expansions.

COMMISSIONER AHERN: Okay. And my other question was we had discussed the values that were being used. It was based off of the 230,000 for the impact fees.

MR. BOSI: Those have all been updated with the -- to the books that are being provided to the Board of County Commissioners, it's now \$197,000, as well as the 2.7 acres per thousand population for regional park. That was part of their recommendation that the Planning Commission had offered in terms of adjusting the level of service.

Those have all been incorporated within the updated version that's going to be provided to the Board of County Commissioners on November 10th.

COMMISSIONER AHERN: The conversation that we were having, why we weren't using actual values. I mean, we purchased and the county currently owns these properties, why aren't we showing the value as what we actually paid for them, as supposed to an arbitrary impact fee analysis study value?

MR. BOSI: The impact fee study is not arbitrary. The impact fee study is based upon the actual values of the land within an inventory, and that provides us the average of the land acquisition holdings of the parks department to be utilized for purely an accounting process.

Whenever there's an acquisition, when that future acquisition is of the next parcel of land, we're not obligated by what's indicated within the impact fee or what's indicated as an average cost within the AUIR or a CIE, we're proceeding on fair market value. But we have to have a placeholder. That's a discussion that we've had for a number of times related to the AUIR.

And maybe I'm not understanding your question in relationship to the CIE component.

COMMISSIONER AHERN: My question is why aren't we using actual values -- what the land was -- Pepper Ranch that was purchased at \$13,000 an acre, why aren't we using that actual value as opposed to --

MR. BOSI: I guess the question is, where would you like to see that actual value applied? I'm not sure of the context of the question.

COMMISSIONER AHERN: You're given a value of \$11 million, 11.5, but we actually paid \$13,000 an acre, not \$230,000 an acre. So I'm trying to understand why we're representing the transfer at a value that's not realistic.

COMMISSIONER MURRAY: May I take a shot at that?

ACTING CHAIRWOMAN CARON: Sure, Mr. Murray.

COMMISSIONER MURRAY: If you recall, and I realize that it's very much of a struggle trying to capture this stuff, but the \$230,000, as they call it, is a placeholder. It's an arbitrary number that -- well, maybe not arbitrary, but it's a number that purportedly was derived by taking all of the purchase costs from throughout the entire county and coming up with a number. And we know that has changed.

But a book value of the properties, he's talking fair market value when they exchange it, I believe, as opposed to a book value, which is the purchase. And I'm not sure you can reconcile that on there. If they put the book value, it would then be different when they exchange it. That's my surmise.

So I'm looking to see if I'm correct in my assumption. But I can believe that since no activity is yet determined on the CIE, there's nothing to put down. So if it's the \$230,000 thing that's confusing, and it is, that's just a placeholder, it really has no real relevance to this.

Does that help?

COMMISSIONER AHERN: No, but that's okay. No, I understand the 230,000, I understand where it's coming from. My -- what I don't understand is what the intent of showing the higher value.

MR. WILLIAMS: You know, and gosh, we've been down this road before. For the record, Barry Williams, Parks and Rec Director.

And I'll try. And it is confusing. And if you're relatively new to the Board -- and I would say that all the Board members here have had this same discussion and the same concern. I don't know that I can offer more clarity, other than what's been spoken.

We do use it -- and with the CIE component we aren't spending any money. I would start with that. There is

no money being exchanged for these transfers that we're looking at.

When we're looking at the value of the transfer, though, and your question is why don't we choose to use the existing -- or the value that we paid, for example, Pepper Ranch. For us, I mean, what we're looking to do is to meet the requirements based on level of service on acres per 1,000 people. So the dollar amount doesn't really come into play. We use the 230,000, now 197,000, based upon past purchasing that we've made of property, and that gives us that average cost.

When we're looking at identifying potentially Pepper Ranch, a component for recreational use, we need to apply our recreational unit cost, that 230, or now \$197,000 an acre to reflect it. There is no money that's being exchanged. It is a placeholder. It is a recreational amenity now versus, you know, some other amenity. If, for example, we have another transfer with Rookery Bay, they may have paid an "X" amount of money for their property, but when we count it in our inventory -- and again, our focus is on the acres per thousand, not so much the cost -- but when we have to put that unit cost, we would still use that average unit cost that we have, that 197 at this point.

So it is confusing. It is -- you're asking very valid questions that I think all the Commissioners have asked over the years. And we've said the same thing. And I appreciate Mr. Murray's -- he's been paying attention, I can tell, so I appreciate that. I don't know that that helps you with your logic. And I think that's the challenge, it doesn't sound logical what we're doing, but --

COMMISSIONER AHERN: Correct.

MR. WILLIAMS: -- I offer that as why.

ACTING CHAIRWOMAN CARON: Go ahead, Mr. Schiffer.

COMMISSIONER SCHIFFER: And Barry, because it isn't logical what you're doing, here's what you really -- and we talked about it, we talked about it a lot. We're going to have to soon stop talking about it or develop punishments or something.

Do the level of service based on acreage, because that's the reality. Then if you need parks, you're going to have parks in different areas and they're going to have different land values and price them accordingly. To find one denominator acreage cost is not a logical process. It's not good for inventory. Because Melissa's right, it's not good for prediction of across-the-board purchase of new parks.

So I think you have to get this to where you do your level of service solely in acreage, and then when you need acreage, put price on the acreage based on where you need it and what it is you're buying. Then we can start to get a -- let me put it this way: We can stop wasting time on this acreage cost.

Enough said. No, you don't need to answer.

COMMISSIONER EBERT: Very logical.

ACTING CHAIRWOMAN CARON: Mike, you did not provide the parks update, though, you just did the transportation when you did the AUIR, right?

MR. BOSI: No, the updated parks section with the revised numbers was not provided as part of the -- as part of the distribution package.

ACTING CHAIRWOMAN CARON: Thanks. Might have been good just to note it though.

Melissa, did you have other questions?

COMMISSIONER AHERN: No, I'm all set, thank you.

ACTING CHAIRWOMAN CARON: We don't mean to cut you off.

I think since nothing else has changed here, we can just seek a motion.

And the motion, Mr. Schiffer, if you're going to make it --

COMMISSIONER SCHIFFER: Would be two motions.

ACTING CHAIRWOMAN CARON: -- is on Page -- yeah, is on Page 2.

COMMISSIONER SCHIFFER: Right. And should this be two motions, Mike, or should we blanket it?

MR. BOSI: You can just blanket it. I mean, you can make both statements and forward those as recommendations.

COMMISSIONER SCHIFFER: I move that we forward with a recommendation of approval the school district's -- that the school district's CIP be included in the Fiscal Year '10 to '11 scheduled capital improvements of the CIE by amendment by reference, and also again by approval that we adopt the CIE update and recommend sending it with approval to the Florida Department of Community Affairs.

COMMISSIONER MURRAY: Second.

COMMISSIONER SCHIFFER: You can clean that up a little bit.

ACTING CHAIRWOMAN CARON: That would be Cherie's job.

Thank you. All in favor?

COMMISSIONER SCHIFFER: Aye.

COMMISSIONER AHERN: Aye.

COMMISSIONER MIDNEY: Aye.

COMMISSIONER MURRAY: Aye.

COMMISSIONER EBERT: Aye.

COMMISSIONER HOMIAK: Aye.

ACTING CHAIRWOMAN CARON: Aye.

Any opposed?

(No response.)

ACTING CHAIRWOMAN CARON: Thank you, Mike.

COMMISSIONER SCHIFFER: Nobody seconded.

ACTING CHAIRWOMAN CARON: Yes, Mr. Murray did.

COMMISSIONER SCHIFFER: I can't hear Bob.

COMMISSIONER MURRAY: I was guilty of being away from my microphone.

COMMISSIONER SCHIFFER: Bob's soft voice. I missed the whole thing.

COMMISSIONER MURRAY: I apologize.

ACTING CHAIRWOMAN CARON: ***Now we are on to old business.

MR. WILEY: Does that mean I'm old?

ACTING CHAIRWOMAN CARON: Mr. Wiley, that's you.

MR. WILEY: Oh, that means I'm old.

ACTING CHAIRWOMAN CARON: You've got old business.

MR. WILEY: For the record, I'm Robert Wiley with your Land Development Services Department, with the Growth Management Division, Planning and Regulation Section.

We're going to resume discussion today on the Flood Damage Prevention Ordinance, what you have received in your package. There was a memorandum that accompanied the revisions to the ordinance that we discussed in our previous meeting on the 7th of October. We can go through that memo or, if you have no questions I will assume that you had gone ahead and looked at them and we can move forward from here.

Before we really go into our discussion, I did want us to try to go through just a little bit of a Power Point presentation, if we can, to get just a feel for what we're trying to really say about this thing. So if we can do that, I would appreciate it.

As we're talking about the Flood Damage Prevention Ordinance for 2010, this is just to give us a little bit of background basically to answer hopefully some of the questions that we were going through the last time. And just to give you a little bit of information, the picture you see on the screen and behind those title blocks, that's actually a Collier County picture. And that shows you a typical flooding situation in this particular location.

There were six paid flood insurance claims. This was from a rainfall of somewhere between six to eight inches in about a day to a day-and-a-half time period.

And so to give you a perspective on that, that is about half of the rainfall that you would be expected to analyze when you do the mapping for FEMA to establish flood zones.

So just a little background on that one to help us get through this.

What I want to talk about today is some of the history of the ordinance. We've been in the Flood Insurance Program since 1979. That's when we also adopted our first Flood Damage Prevention Ordinance, Ordinance 79-62. There's been several revisions through the years. In 1986 there was a major revision and a rewrite of the ordinance. That was 86-28.

And that's the basic ordinance we use today. We're using 86-28 as amended. And it has been amended several times as you'll see in the next bullet point there, '87, 1990, 2005 and then most recently just a few weeks ago in 2010 when we added the criteria into it for the minimum floor elevations in some of the older platted subdivisions where there are no designed stormwater management systems.

That whole section was put back. Actually, it was put into the Flood Damage Prevention Ordinance for the

first time. It had been in a different ordinance that we talked about, had been repealed, and we needed the language back in.

The current re-drafting of this Flood Damage Prevention Ordinance, it's based upon direction we got from FEMA and the insurance service office. Once every five years we get a field visit. They come and they look through our files, they talk to us, they actually drive all around the county. They review everything, including your current ordinance. And we were told specifically our ordinance is out of date, it must be brought into compliance with the current FEMA requirement. So we knew we already started the process, but we're continuing it on even as of today.

A question was asked, well, how do we use this ordinance? How does this affect the people of the county?

And primarily its effect you'll see in the development approval process for plats, SDP's, that's your site development plans, and building permits. And out of those three, most people really don't see it until it comes to the building permit level. Your designers for your SDP's, your plats, they're all addressing the issues. But really, it hits home with the individual builder when he applies for the building permit.

I've been a part of the standard county review process since '79. This is sort of an ordinance that is implemented in the background. It's not new information that we're bringing before you today as far as processing goes.

The staff when they recognize that a structure is within the special flood hazard area, they just know it has to be evaluated, it's just a part of the standard review that we're already doing.

And just so you'll know where to find it, if you went to Chapter 62 of the county's Code of Laws and Ordinances, that's where you would find the codified version of our current Flood Damage Prevention Ordinance.

So these are situations that we're, as I said, already using every day as applications come in.

Now, let's talk about the State of Florida model ordinance. And we sort of call it model just so you understand that it is set up in a generic format and there are places where you fill in the blanks.

We got it from the Department of Emergency Management. They actually e-mailed it to me. And it -- we've received two of them. And so we are using the most recent update, the January 29th of 2009.

We worked with the County Attorney office. What they did is they took that model ordinance and compared it line by line, word by word with our current ordinance 86-28 as amended, and they went through and simply did underlined/strike-out to show if you took our current ordinance what you would delete and what you would add to make it then exactly format up with the model ordinance.

Then they took that document, which I'll call it our basic document, they took the model ordinance and began to fill in the blanks, making it applicable for Collier County.

And one of the things that I want you to understand in the model ordinance that we have, our basic county version of the model ordinance applicable to the county, it does not include higher regulatory criteria. Even the state model ordinance had optional higher regulatory criteria built into it so you could automatically accept it if you wanted to. We did remove that.

Also, we replaced the penalties section for violation -- penalties for violation section to make it in compliance with what Code Enforcement's already using through their enforcement board. At least that's my understanding of what that language is. And I hope I'm not incorrect on that.

We also know that as we went through it, we were finding some things that we wanted to change, to clarify, so staff began to make some editing remarks. And those are what are in the balloons on the side of the document as you'll see through there.

The Floodplain Management Planning Committee reviewed it and made some comments, some changes. Those are noted. Also Development Services Advisory Committee, same thing. With the Floodplain Committee and with DSAC, they both did give a vote of recommendation forwarding it on for approval.

So that's what you're looking at today is that document.

How does this proposed ordinance relate to regulatory capacity with the current ordinance that we have? It does do a few things differently here.

It automatically adopts updated flood zone mapping when finalized by FEMA. Under the current ordinance we would have to go back and every time we receive a new map from FEMA we would have to come before the Board, amend our ordinance to adopt the new map. You have -- within the regulations of FEMA, you have up to six months to do that before you're found in noncompliance.

This puts an automatic adoption provision right in the ordinance. So as soon as the map is finalized, we adopt

it. That way we don't have to come back before the Board.

It updates the ordinance to use FEMA's definitions and programs requirements. And then also there are some areas within it, especially in the appeals and the variance section, that updates it to current county practices. That's some of the things now.

The next slide is interesting, where you see there are some areas where the proposed ordinance is actually of lesser impact than the current ordinance. And we talked about the first one here. The coastal high hazard area is now limited to the FEMA, the VE zones, instead of also all of the land seaward of the coastal construction control line established by the DEP.

Our current ordinance, it says both of those areas are considered as coastal high hazard. So it is a bit of a step-down here.

Pool construction is an issue. If you're building a pool within the VE zone, currently right now you have to attach that pool to a column or pile foundation. That's a local criteria that's being removed because it is not a minimum FEMA criteria.

And then final plats will not include flood zone lines on them. We have that in our ordinance. It's not required by FEMA. It is a higher criteria you can have in your ordinance. They encourage it but it is not required. So it's also been removed.

Increased impact deals primarily with the penalties --

ACTING CHAIRWOMAN CARON: Robert?

MR. WILEY: Yes.

ACTING CHAIRWOMAN CARON: Going to these lower standards, how does that help our county?

COMMISSIONER MURRAY: Good, because I was going to ask that.

MR. WILEY: Well, I'm not going to say that it helps our county, but neither does it hurt our county as far as FEMA is concerned.

To the individual property and the potential damage you can have, by lessening the requirement here, it does have the potential to increase damage to that individual property owner. But the owner always has the option to build higher than the minimum regulation.

COMMISSIONER MURRAY: I have a followup on that.

ACTING CHAIRWOMAN CARON: Go ahead, Mr. Murray.

COMMISSIONER MURRAY: Because that's the same question I had. Who-all made that decision that, for instance in the pool construction, which a pile foundation can stabilize that pool from complete collapse, who-all made the determination in the county that that should be removed?

MR. WILEY: After we brought the Flood Damage Prevention Ordinance before the Floodplain Committee, DSAC and the Planning Commission the last time and we received basically a very, very negative response toward it, and the direction I was given then was to go back and put together the bare minimum requirement removing all higher regulatory criteria. That was my direction. That's what I have done.

COMMISSIONER MURRAY: You received that direction from this Planning Commission?

MR. WILEY: I received that direction from my Division Administrator, following the discussions that were held before the Planning Commission when we were so negatively received by having higher regulatory criteria proposed in the model ordinance that we came with before.

COMMISSIONER MURRAY: I can appreciate the intent to try to satisfy the needs that we -- it's a fine line we have to find all among us to help our people. But just wondering, we may have taken all the flesh off the bone. I'm not so sure that that's ideal.

Now, you've given one example. There may be other examples where if we knew them we might have some view on that. Is that the only one that you've taken -- you said bare bones. I guess you must have taken others out too.

MR. WILEY: We did remove -- what you'll see here, we removed these three criteria that are in the current ordinance, because they were not required as a minimum by FEMA, they're considered as higher.

COMMISSIONER MURRAY: So it's only these three.

MR. WILEY: It is only these three, yes, sir.

COMMISSIONER MURRAY: That gives me a little bit better thought.

If we would -- if we would -- I know that it's up to, I presume would be architects and engineers to make that

judgment about a pool. But many times developers, when they want to get something done, their cost is a major consideration for them.

I guess you're just taking away that particular constraint where they must do that little bit more that would be helpful in the long term. I'm not sure that helps our community.

All right, I'll leave it to others to make comments because --

MR. WILEY: Let me also remind you, if the Planning Commission chooses to recommend to the Board that certain items be left in, we will take that forward. But we were going to the absolute bare minimum to make our ordinance conformable to FEMA. We can always increase it. FEMA would not object. But we just need some direction.

COMMISSIONER MURRAY: Thank you. I'm only one voice. I heard Ms. Caron make the comment, and it was the same thought I had, I think. So we'll see what happens.

ACTING CHAIRWOMAN CARON: Mr. Schiffer?

COMMISSIONER SCHIFFER: And Bob, are you through with this? Are you going to go into other areas like the building code, or is that it?

But anyway, let's assume you're not. The building code governs that pool also. So is there -- you know, there may be requirements in excess of our ordinance that would tie that pool down, which I believe there would be.

MR. WILEY: My understanding is that the only requirement is it has to be designed as a foundation that is able to withstand the buoyancy force as well as the lateral and vertical forces that will be exerted against it from the stormwaters in the VE zone. But it doesn't specify pile foundation.

COMMISSIONER SCHIFFER: But that would probably occur. And the pool will be designed, I'm sure, by the building code, so it won't go smashing into the neighbor's property and stuff.

MR. FRENCH: That's correct.

COMMISSIONER SCHIFFER: So, you know, I think maybe what's happening here is we're keeping regulations that are provided somewhere else in the state. We adopt the building codes and you get the credit for the building codes for that reason, for our rating. So it would really be those codes that would govern and can be changed easier than this ordinance, to --

MR. WILEY: Actually probably easier to change the ordinance because it is a local document versus the building code. But we can always -- in our ordinance we can put in criteria. Because this is a Flood Damage Prevention Ordinance, we can put criteria that would strengthen the requirements that would effectively strengthen the building code without it being declared a direct amendment to the building code, which is a very extensive process.

MR. KLATZKOW: We just rescinded our local Collier County code. There was Board direction to just go with the Florida standards and be done with these locals. So unless the Board directs to go back, I don't know what else to say.

ACTING CHAIRWOMAN CARON: I just had one other question for you, Jeff. Where it says here, coastal high hazard area will now be limited to FEMA VE, that is just for the floodplain ordinance, that does not affect other parts of our code where we define the coastal high hazard area and it affects all kind of other -- it affects transportation, it affects the density, you know --

MR. KLATZKOW: No, I view this as a standalone ordinance that doesn't bleed into the rest of the code.

ACTING CHAIRWOMAN CARON: It doesn't bleed into the rest of the code. Okay, that's very important.

MR. WILEY: That is correct. This is a separate definition for the Flood Insurance requirements that we had through FEMA and it's the same terminology but different -- as Jeff said, different parts of our county government have a different term for it. So this one is ordinance specific here.

ACTING CHAIRWOMAN CARON: All right, now we're on to increased impact.

MR. WILEY: Increased impact is the addition of higher penalties to reflect current code enforcement processing as it goes through. It is higher than what was in the State's model ordinance.

We have added in criteria for the Approximate Zone A. We never had an Approximate Zone A until 2005, and the 1986 ordinance could not have anticipated that. So there are criteria in here. These are the criteria that are within the model ordinance itself with the one exception we will talk about when we get there, and that deals with a minimum elevation. And we'll explain why we propose to make a change there.

And then what is not listed there but we had already talked about it before deal within the definition for

floodproofing. If you recall, we had some specific criteria to help identify and clarify what was meant by floodproofing. That's different that was in before. But you understand as we went through it why we did that, so everyone knows what is meant by floodproofing so that we all have a standard to design against.

From a fiscal impact, staffing costs, it's the same stuff we're already doing. We considered -- yes, sir.

ACTING CHAIRWOMAN CARON: Go ahead.

COMMISSIONER MURRAY: I just want to go back to the areas of increased impact. Penalties for violation. I recollect that there was a -- I think it was a little bit of a shock that ran through us when we heard \$1,000 a day, if I recall correctly. It was \$1,000 a day; am I right?

MR. WILEY: That is correct. That is the up to number.

COMMISSIONER MURRAY: Okay. Well, that strikes me as something a little bit subtly different than what we heard the last time. I thought it was straight \$1,000 a day the last time it was represented. Fair recollection.

But you're saying that's to reflect current code enforcement penalties. So that would be under their premise of incremental penalties associated with people who show a disregard for those.

How does that work when you're relating to an issue associated with flood? I'm trying to understand. This ordinance is a standalone, and we're going to adopt the most severe, apparently the most severe penalties. How do those penalties -- where would they be applied? After the flood, after the collapse of the pool, what?

MR. WILEY: They are -- no, what they have done, they are applied when they're in violation for being in non-conformance with our ordinance, which relates to the building code requirements. So you're given a permit and you do not build in accordance to that permit. That's why it is regulated through code enforcement. It is at the building permit when you find the failure to comply. That's where that comes from. It's not whether you flood or not, it's whether you build as you're supposed to.

COMMISSIONER MURRAY: I wanted to have that clarity, because that's very important to me as we try to distinguish between what will happen as opposed to what we need to do before. All right, thank you very much.

MR. WILEY: Just so you'll know, in the penalty section it says to be fined not more than \$1,000 a day. So code enforcement, that gives them up to the \$1,000 a day violation; is what that is referring?

MR. FRENCH: If I can, Madam Chair. We currently have a system of processes in place under the building official. But this would be the most extreme of cases to where we had complete disregard to the building code.

So if we determine that they have not adhered to the plans that were submitted, we would stop the work at that point. If they chose to either go forward with the work or if they chose not to correct or come to conformity, then at that point then it would become a code enforcement matter.

COMMISSIONER MURRAY: I don't have a problem with a major hit on anybody whom openly, you know has disregard for that. But when it was presented the last time, at least to this person, it seemed quite shocking, because it wasn't oriented in that fashion initially. Thank you.

MR. WILEY: From the fiscal impact section, as we said, there's really a neutral impact for staffing costs, because staff is already doing the work. With the reduction in the criteria it could result in some cost reductions for the applicant, should they choose to not design above and beyond the bare minimum from those identified above, those areas of lesser impact.

So your potential is there for reduction costs, but it's pretty limited in areas where that would be applicable.

With that, I'm ready for us to go into the discussion on the ordinance, unless you have any other questions.

COMMISSIONER SCHIFFER: Donna, I have a question on procedure.

ACTING CHAIRWOMAN CARON: Go ahead.

COMMISSIONER SCHIFFER: Last time we did this we went through 20 to 21 pages of then the best proposal. Since then, Robert, you went back and you revised those first pages and made some changes and stuff. You actually made some changes further on down too, past where we left off.

But what I would suggest we do today, could we continue where we left off and then not review the revisions Bob made, and then we'll come back and review the whole thing with a clear trail rather than, you know, go back to go and come back up to Page 22?

MR. WILEY: I would support that, with one little preface: That if you would look on your new document that you have, on Page 2 under Findings of Fact, which is Paragraph B. Under sub-paragraph number two, as a part of our discussion before Mr. Strain had been concerned about where it says: These flood losses are caused by the cumulative -- he was emphasizing he rather it be saying these flood losses may be caused by.

I have no problem making that change. That was not actually a change that I was directed to do but had subsequent discussion with Mr. Strain, and his preference is we change that. I'm good with that because it's not stating that absolutely this is it; it may be, and start listing options for us. So I actually prefer the may be language. If I get a concurrence and direction from that, I will also make that change.

COMMISSIONER SCHIFFER: Okay. And that will be shown on the next version that we review.

MR. WILEY: It would be shown on the version -- yes, sir, going forward.

Okay, with that, if we would go over to --

ACTING CHAIRWOMAN CARON: Twenty-one, I think.

MR. WILEY: Well, actually, it's now Page 22 because of the way the renumbering came about with some pages. It just happened to flip the page, just barely.

We were finishing up right at the bottom of Page 21, top of Page 22, on the building floor and slab minimum elevations for all areas of Collier County. And as we noted in the memorandum, this is one spot where we didn't make the change, so that the whole ordinance is not applicable to the whole county but only specified areas. This is the specified area with the addition of that for all areas of Collier County in that paragraph 16. So that was how we addressed you-all's issue, and hopefully that was agreeable to everyone else.

COMMISSIONER SCHIFFER: It was 16 what, Bob?

MR. WILEY: Well, it's on Page 22. It's sub-paragraph 16 where it says: Building floor and slab minimum elevations. Then we added in that text for all areas of Collier County.

If you recall, early on in the ordinance areas of applicability at the front of the ordinance we said was for all areas, including special flood hazard area. We took that back out, so now it would say it's for the special flood hazard areas or unless otherwise noted. This is the one area it was otherwise noted in.

ACTING CHAIRWOMAN CARON: I'm not looking at the same thing you are. On Page 22?

MR. WILEY: It's on Page 21. Page 21, the bottom of the page -- well, actually, the middle of Page 21. You have that paragraph 16, which flips all the way over into the top of Page 22 there.

ACTING CHAIRWOMAN CARON: All right, thank you.

COMMISSIONER SCHIFFER: And what you did in the newer version, the one that just came out with our packet, you killed the unusual conditions clause?

MR. WILEY: I don't understand that statement, sir.

COMMISSIONER SCHIFFER: If I go down, okay, we have paren 16. This is 5, I think B, paren 16, right? There's a -- there used to be an A --

MR. WILEY: It will be 5.A(16), but --

COMMISSIONER SCHIFFER: Okay. Go back to go. Hold on. It is 5.A, General Conditions, 16. It used to have an A and a B. Now it just has an A, correct?

In other words, in the newer version of 16 is not the same as the prior one.

MR. WILEY: Yes, sir, it is.

COMMISSIONER SCHIFFER: It is the same?

MR. WILEY: All we did on that very first line of sub-paragraph 16 where it says building floor and slab minimum elevations, we added in the wording: For all areas of Collier County.

COMMISSIONER SCHIFFER: And removed the word pad and stuff like that.

And then you eliminated -- the next thing, I have a paren A that says: Ground elevations. That's gone. Isn't -- I mean -- in other words, someone had to have worked on that paragraph.

MR. WILEY: Oh, oh, I see what you're saying there. Wow.

COMMISSIONER SCHIFFER: So things have changed here.

ACTING CHAIRWOMAN CARON: This is not the same.

COMMISSIONER SCHIFFER: I've got to admit, this process for this flood thing has been confusing. We last touched it, we were doing the CRA for the county, now we're doing just this.

MR. WILEY: I don't know why paragraph A is not there. Whoa.

COMMISSIONER SCHIFFER: And then if you go down to Roman numeral V -- and again, why do we use Roman numerals? But after V there used to be a Roman numeral VI. That I think has disappeared. A B cropped up from somewhere. And then you started going back to A and B. So something -- a little funky work here, but --

MR. WILEY: I have no idea what happened here. That was not supposed to be gone.

Can we go back to our document we had before then and we'll discuss the changes? I don't know why those paragraphs are gone. I don't know.

COMMISSIONER AHERN: I would prefer to stay with the DSAC as well, that's where all my notes and what I've --

MR. WILEY: That's where we were supposed to have no changes other than what I did, so -- I've got to figure out what I did.

COMMISSIONER SCHIFFER: So you think other than this, maybe a scrivener problem? Other than that there is no changes from this point on from the prior version we had?

MR. WILEY: There's not supposed to be, sir, unless something glitched that wasn't supposed to glitch here.

COMMISSIONER SCHIFFER: That makes life easy.

MR. WILEY: If we can, let's use our 9/1/10 DSAC approval draft. And then you'll understand from the memo that was here what changes I put in it.

I will have to go back and figure out why suddenly some paragraphs disappeared. I have no clue why they did that.

Well, with using the 9/1/10, September 1st of 2010, DSAC approval draft, that would put us on to Page 22 then. Okay?

With this particular page, the one thing I want you to note is in the nonresidential construction we do have a bolded note in brackets under sub-paragraph two, floodproofing to adjust the base flood elevation will result in a higher flood insurance premium rate for the structure because the Flood Insurance Policy requires a rating -- rating a structure at one foot below the floodproofing elevation.

Now, we had this in as a bullet point over on the side, a balloon point on the side for information. As we took it through DSAC, they directed us to put it into bold text right in the middle of the ordinance. And we explained to them the implications of this.

When a building is built, it's only required to be built with floodproofing. If you choose to use floodproofing as the building option, it has to be built with the floodproofing to the base flood elevation. But the insurance for that building, the first thing you do with a flood-proofed building is subtract one foot off the top. So it gets rated as being one foot below the BFE. Your cost of insurance increases dramatically.

I've got the spreadsheet set up here, you can give me any insurance number you want, I can put it through, but basically it's about a fivefold increase in your cost of insurance if you build so that you're rated one foot below.

DSAC wanted us to make the note in here. I can tell you that having a note in here is fine. It will meet minimum requirements. I'm not sure that a lot of people will be aware of it when it comes down to actually building, because as the plans come through for review, the model ordinance starts off with the direction -- or an assumption, I should say, that you're wanting to do for floodproof, you're required to be flood-proofed to one foot above the base flood elevation.

But technically that's a higher standard, so we removed it. I just want to make sure you fully understand what our ordinance says right now before we go forward.

COMMISSIONER SCHIFFER: Yeah, my opinion on that is I think you should require them to be one foot above it. I mean, first of all, we'll discuss some regulatory stuff above it. But if anybody built floodproofing and did not build it the top of that floodproofing to be one -- to be -- well, wait a minute. The top of that would have to be one foot above the base flood elevation. Why don't we just set it there so that that's not a confusion.

ACTING CHAIRWOMAN CARON: Yeah, so it's not an issue.

COMMISSIONER AHERN: The cost is minimal to go one more foot to floodproof.

MR. WILEY: This is where we really are very at a crossroads here on whether or not we consider it to be higher regulatory criteria.

COMMISSIONER SCHIFFER: Or stupid.

MR. WILEY: Well. Whether we want to make it optional or mandatory is really the issue here.

COMMISSIONER SCHIFFER: Let's make it smart. The smart thing is that it has to be one foot above the base flood elevation. And the intent is you're building essentially little dams to keep water out. So if there's wave action and stuff, water is going to come over those dams.

MR. WILEY: You would be making the whole structure so the water would not come through either the openings or the wall itself up to -- and the issue comes into the hydrostatic head you design against all those factors.

So it becomes a criteria that we want to make sure you're very comfortable going forward with it, do we make it optional or mandatory. The State wants it mandatory, but it doesn't have to be. I will follow your direction though.

COMMISSIONER SCHIFFER: But could you build -- I came in for a permit, could I get a permit to build my floodproofing to be exactly at the base flood?

MR. WILEY: Yes, sir.

COMMISSIONER SCHIFFER: And you would give me the permit.

MR. WILEY: Yes, sir.

COMMISSIONER SCHIFFER: And I go out the door, I build it, and then my insurance agent arrives at the completion of the project and he's the one who's going to disappoint me.

MR. WILEY: Yes, sir.

COMMISSIONER MURRAY: Why would we do this?

COMMISSIONER SCHIFFER: I have no problem making that a requirement.

ACTING CHAIRWOMAN CARON: It just seems to make sense.

MR. KLATZKOW: We don't know the fiscal impact. It mean, I don't know -- I understand what Robert is saying, okay, that your cost of insurance will go higher. But I don't know what the cost of construction is.

And before we can make a recommendation to the Board to go off of what's required and maybe above what's required, I think a fiscal impact analysis by the county is something in order. And then to take it back to DSAC for their review.

ACTING CHAIRWOMAN CARON: But Mr. Klatzkow, didn't Mr. Wiley just say that the State would like us to do that, they would like the higher standard? So is that part of their ordinance?

MR. KLATZKOW: No, what we're giving you is the minimum requirements. All I'm saying is that if we were to provide fiscal impacts to potential changes and then run them through DSAC, this Board could then make a recommendation to the Board of County Commissioners based on dollars and cents.

I mean, on one hand it's easy for a developer to do the minimum and then the homeowner has to pay the increased cost of insurance. But then again, if the home cost goes up tens of thousands of dollars, it may be worth paying the extra insurance. I don't know, because there's no fiscal impact attached to this.

ACTING CHAIRWOMAN CARON: So I guess at this point then I will need a consensus from this Board whether we think we should do a fiscal impact to find that out.

COMMISSIONER MURRAY: Well, it strikes me, if our County Attorney has suggested that's a way to go, I would have no problem going that way. But my first leanings of course would be to make sure that we don't undercut any future purchaser of a home or structure and let them get nailed that way.

But it makes sense to have a fiscal analysis, if that's doable. And I guess it's doable.

MR. WILEY: And I do need to clarify something for you. This is not for homes. You can only floodproof a nonresidential structure. You cannot use floodproofing on a residential home. So this would not be the individual homeowner, it would your businesses --

COMMISSIONER MURRAY: Even with stem wall? Even using stem wall, that's not considered floodproofing? The elevation --

MR. WILEY: That is not floodproofing, that is elevating above. Floodproofing says you put the lowest floor before the base flood elevation and then you hold water out.

COMMISSIONER MURRAY: All right. Thank you for the orientation. Then a fiscal analysis is absolutely required.

COMMISSIONER HOMIAK: If that's all we're talking about here is this specific one you're on, and it's all commercial. This is just for commercial?

MR. WILEY: It is nonresidential. Now we tend to think of commercial, but nonresidential would be anything other than a home someone would live in, from FEMA's definition. So they consider a hotel as nonresidential, they consider a church as nonresidential. Different things. So it's not --

COMMISSIONER MURRAY: Assisted living facility.

MR. WILEY: It's a non-living facility is what they consider, that's correct.

COMMISSIONER MURRAY: No, an assisted living facility is in the commercial.

MR. WILEY: Well, that is correct, it would be considered as nonresidential if they stay there for less than six months duration. That's correct. Some people do stay there for less than six months, so that's why they rate it that

way.

COMMISSIONER MURRAY: Help me out a little bit more then. If they were to build the structure intending for it to be an assisted living facility, I guess the assumption would be that it's for people intending to live longer than six months at it, and it therefore would quality and be required to build floodproofing?

MR. WILEY: They would be probably required to elevate it at that point and not allow floodproofing.

COMMISSIONER MURRAY: Not allow floodproofing.

MR. WILEY: Yes, sir.

COMMISSIONER SCHIFFER: In the residential component of it.

MR. WILEY: Right.

COMMISSIONER SCHIFFER: In transient, I think the building code is 30 days. In Collier, a good example of floodproofing is 5th Avenue where you see all the little screws on the wall where they're going to come in and put in protection along those openings. That's about the best example of floodproofing in Collier. Most everybody else gets above the elevation.

ACTING CHAIRWOMAN CARON: Melissa?

COMMISSIONER AHERN: Jamie, is there any way to address this issue actually at permit in form of a disclosure or something that people have to acknowledge?

MR. FRENCH: We currently are through building block. I would tell you that you do have residential-commercial settings. In other words, you have condominiums -- and commercial is anything that's considered more than two families.

So if you've got a -- so they're also not going to be able to do this type of floodproofing if you had an apartment building or if you had a condominium. Even though it comes in as a commercial inspection, goes through commercial fire plan review and all of those other items that a commercial permit sees, they would not qualify because that's full-time residential units.

But yeah, there is a disclosure form, if you will, that we are heavily promoting this. And we're currently getting feedback, because it's not something that we've done in the past. Especially when they're coming in even for remodels. We're saying okay, we'd like to see a finished floor elevation because we believe you're going to exceed the FEMA 50 percent rule, and you really need to be aware of this. Especially the land owner needs to be aware this -- property owner needs to be aware of the insurance stipulations that they may be facing.

COMMISSIONER MURRAY: Thank you.

COMMISSIONER EBERT: Robert, can I ask a question? Who worked with you on these FEMA maps? How much help did you get on this? Was this just your project?

MR. WILEY: Well, it's a totally separate subject but we can go there if you want to.

The proposed mapping that's being put up by FEMA, the preliminary DFIRM, the consultant the county hired is Tomasello Consulting Engineers, and so I was the project manager working with him, providing information, giving direction, helping them get through the process.

From FEMA standpoint they hired through -- their national service provider was Michael Baker, Jr. Corporation who also subbed out with Dewberry. So we had engineers from Michael Baker, we had engineers from Dewberry, we had our engineer, you had me, all of us working together to develop those preliminary mapping. And that is what is out for release now.

But it's a totally separate subject from this ordinance, just so you understand. They work together, but they are non-related as far as how you get from one to the other.

COMMISSIONER EBERT: Well, I'm asking because I was at the first FEMA at Saint John's, and I -- the map that was used is 10 years old. I mean, for the people with this new flood insurance that's coming up, and I understand we have time to go through it, but a 10-year-old map doesn't help residents out at all. In fact, I had a map done, and we have to call someone in for the whole community and -- because the map was so old.

And it's -- everybody, we were in an X Zone and now it has completely changed. So I would think we would get a more current map to do this. Are we going to change some of the things?

MR. WILEY: Well, what you're talking about is an item that we're going to be going to the Board of County Commissioners with on Tuesday addressing the new elevations that we have with the new LIDAR, which is Light Detection and Ranging technology, to develop topography. We are going before them on Tuesday asking for their direction on whether or not to proceed forward with additional remapping.

But that's totally separate from this ordinance, so I don't want to rabbit trail too far if we can stay on topic here.

COMMISSIONER EBERT: Okay.

ACTING CHAIRWOMAN CARON: Go ahead, Robert.

MR. WILEY: What should I do? Do we --

ACTING CHAIRWOMAN CARON: Do you want to do the fiscal impact?

COMMISSIONER SCHIFFER: It's a difficult fiscal impact, because it would depend on the design of the building, how many openings it had, tons of stuff like that, so --

MR. WILEY: Everyone's different.

COMMISSIONER SCHIFFER: -- everyone's different. It just goes -- I think it goes from smart to stupid. Do you do the smart thing or you do the dumb thing. So I vote smart.

So I would -- let's do a straw vote. I vote that we should make the requirement to be one foot above the base flood elevation.

ACTING CHAIRWOMAN CARON: I would agree.

COMMISSIONER MIDNEY: I would agree also.

COMMISSIONER AHERN: I would vote for the fiscal.

COMMISSIONER MURRAY: I would -- are you still doing a straw vote? I would agree, but I would put the other issue back because now I understand more clearly, as a commercial enterprise it could be significantly increased in cost. I think you ought to tie it to a fiscal analysis because every building being different, some might be considerably less, some might be considerably more. So if a fiscal analysis is workable, then that's probably what should be done.

ACTING CHAIRWOMAN CARON: I think we tried to do these before and the problem becomes getting -- as Brad said, all the buildings are different and then all the insurance companies don't want to give you rates. What did we try to get insurance rates for the last time? It may have been this.

COMMISSIONER SCHIFFER: Wouldn't it help, Bob, our rating, too, if we did this, our community rating?

MR. WILEY: It won't hurt it. Whether or not it will actually give us additional points, I would really need to think on that if that's sufficient to give us -- because what they generally do -- it's called -- you're talking about the issue of criteria for freeboard, and in freeboard would be everything --

COMMISSIONER SCHIFFER: No, no, don't bring up freeboard.

MR. WILEY: No, this is not where we're going, we're limiting this just to the floodproofing issue. So I don't suspect that it would help us tremendously, because we don't have really enough facilities where this would be implemented to account. Because they're going to prorate any increase above minimum as a proportion of this structure impacted. And that is a very minimal amount when you consider everything else, which is mostly residential in the county.

COMMISSIONER AHERN: Robert, was the reason DSAC wanted this note put in here based on cost? I remember a discussion about this, and wasn't that part of their concern?

MR. WILEY: Their concern, as I recall, was the fact that the person who builds it is probably not going to be the person who subsequently owns it. And so this is basically therefore, everyone who is building a building or purchasing a building, if they had the foresight to look into every ordinance that the county has, this ordinance in particular, they would see that oh, there's a note there that if I'm flood-proofed to only the BFE my flood insurance may go higher.

I guess you would -- if you had a very due diligence type person doing every purchase you made. But they just wanted it to be noted somewhere so that when it was built the person building it would be fully aware so that when they chose to sell the building it's up to them to disclose it.

COMMISSIONER AHERN: Right, but they didn't recommend making it mandatory for a reason.

MR. WILEY: They did not recommend making it mandatory. Again, their position was go with the minimum, put people on notice when they choose to build to the minimum.

COMMISSIONER AHERN: So cost wasn't really discussed.

MR. WILEY: Cost was not really discussed at that point, from what I recall.

ACTING CHAIRWOMAN CARON: I think it was put in there just to take them off the hook, you know, is what it amounts to. They can go back and they can say but, you know, it was right there in our floodplain ordinance,

your warning was there, and if you didn't look at it, too bad.

So I think it's a nice off-the-hook thing. I don't know that it actually helps anybody in reality.

So anyway --

COMMISSIONER SCHIFFER: What's the score?

ACTING CHAIRWOMAN CARON: I believe that most people said that they wanted a fiscal analysis; is that correct? If that's feasible.

COMMISSIONER MURRAY: If we're going to proceed making it mandatory.

ACTING CHAIRWOMAN CARON: So maybe you just need to check and see if that's even a feasible thing to do.

MR. WILEY: I'm asking for your direction, how do I go forward? Do I change it, go back to DSAC with a fiscal impact, back to you folks? What are you asking me to do?

COMMISSIONER SCHIFFER: Let me ask another question, Bob. If I built a building or have an existing building that's below flood criteria, you note that. Don't you note that in your data base?

MR. WILEY: No, sir.

COMMISSIONER SCHIFFER: No, sir?

MR. WILEY: It would be built as shown flood-proofed to that base flood elevation. That would be -- the permit would be approved for that.

COMMISSIONER SCHIFFER: For this building.

MR. WILEY: For the building, if you chose to --

COMMISSIONER SCHIFFER: It wouldn't be shown that it was built one foot below.

MR. WILEY: Well, we're talking here you have to floodproof at least to the base flood elevation. You could never --

COMMISSIONER SCHIFFER: So wouldn't this building not be classified as being flood-proofed?

MR. WILEY: It would not be able to receive an approved Collier County permit if you did not floodproof to at least the base flood elevation.

COMMISSIONER SCHIFFER: Right. But if I floodproof to just the base flood elevation, what you're stating here is that it's not classified as being floodproof for --

MR. WILEY: For flood insurance -- that is for flood insurance purposes, that is not for building permit purposes. And with FEMA you have to be very careful, they do make a distinction between what's permittable versus what they're going to charge you through the Flood Insurance Program to then insure that building.

COMMISSIONER SCHIFFER: So it would be -- okay, compliant building.

MR. WILEY: From the permitting standpoint, it would be considered as compliant, that is correct. From flood insurance, it just got a lot more expensive for you.

Now remember, not everyone has flood insurance. If you do not have federal dollars attached to this building in a form most commonly of a federally-backed mortgage, there's no mandate that you purchase flood insurance. That's why we consider this to be higher regulatory, because for the person building it they're paying cash for the building up front, there's no federal dollars attached to it, it would be a higher requirement than what they could at a bare minimum construct.

So that's where we get really into the situation do you really want to think for the future, for the benefit of who's going to own this in the future or what is the absolute bare minimum. As we've said, we stripped it down to the bare minimum, but we want to make sure you fully understand what this does.

COMMISSIONER SCHIFFER: Let me just read something quick out of the building code. It says: Construction standards -- I'm going to do this paraphrased. But the code specifically defers the authority to the local government by Title 44, CFR, Sections 59 and 60. So is this the ordinance they're referring to? Are they saying essentially we have the local authority to come up with what floodproofing is for our community, and the building code, you know, stands back from that?

MR. WILEY: Yes, sir.

COMMISSIONER SCHIFFER: And this is the ordinance we're writing today.

MR. WILEY: This would be the basis for how we review it, that's correct.

COMMISSIONER SCHIFFER: So if we don't say it here, it's -- as far as the building code, have fun.

MR. WILEY: That's correct. Whatever you say here is what the building code will implement, whether you

say at the BFE or one foot above.

COMMISSIONER SCHIFFER: I still think it's a good idea. The only reason I do is I can't come up with being the guy that would think it's -- here I want to build a building, oh, I want to save the cost of floodproofing that extra foot.

I guess if he's going to sell the building and he's value engineering it to the bone, he would go there.

COMMISSIONER AHERN: Or if he didn't have to have the flood insurance.

COMMISSIONER SCHIFFER: And he wouldn't get flood insurance. Anybody buying it doing due diligence would look at the insurance rates or hopefully catch this bolded clause. But anyway, we're stuck on it. It's not worth getting stuck on.

What was the tally of the score? Do a fiscal analysis and we'll think about it?

ACTING CHAIRWOMAN CARON: I would think, yes.

COMMISSIONER HOMIAK: This is including all condominiums basically too, right?

COMMISSIONER SCHIFFER: No, it wouldn't. Because if you had a residential thing on your first floor, you would have to get that above flood criteria anyway.

MR. WILEY: That is correct.

COMMISSIONER SCHIFFER: Let's say that you did a split-level, you could bring amenities down into the water if you wanted to, into the flood.

MR. FRENCH: A parking garage addition or something.

COMMISSIONER SCHIFFER: Yeah. So it really wouldn't hurt things anyway. Somewhere there may be a guy that wants to put the rec. area, the lounge or something into the flood zone. But if you're up there with the resi -- I mean, I don't think there's a lot of money to be saved for somebody to do this anyway, so -- anyway, have fun with the fiscal analysis.

COMMISSIONER MURRAY: He's not going to do anything other than what we tell him to do. We didn't get an answer to whether a fiscal analysis is even feasible. Perhaps no one in this room knows the answer to that.

I mean, I'm vacillating now, and I don't generally like to do that at all. And it's a struggle, because you do not want to encumber additional costs for people on the front end, but you don't want to get them hurt on the back end either.

Now, one thing that I keep on relating to is that my understanding of it is that over the years FEMA has raised the height of the floodplain, wherever the flood zone or whatever the heck you want to call it. Am I correct in that, they have raised that over the years, have they not?

MR. WILEY: Areas have raised, areas have decreased.

COMMISSIONER MURRAY: I love you, you make it so easy.

MR. WILEY: Most areas tend to see an increase as the studies come in. What we are looking at right now is the current map mostly has increases. Marco Island area actually had decreases from the '86 map to the 2005 in some portions of it. The preliminary DFIRM that is coming forward right now as a general rule along the coastline has decreases. But then you expand the area because of the rainfall analysis as you go inland.

So we're seeing increases as well as decreases in the proposed map.

COMMISSIONER MURRAY: Well, here's the thing. And if it ever -- if any of this ever becomes reality that the oceans -- you know, that the ice cubes are all going to melt and the oceans are going to rise, FEMA's going to raise the limit again. And while I may not be around to watch it happen, ethereally maybe, perhaps, I might be overlooking it, but I think it needs to -- it needs some consideration. I'm not sure that we have an answer. I certainly -- at this point I don't.

Because I think that the fiscal analysis makes sense, even a simplistic one. If you think of a fivefold, I think that's what you used, a fivefold increase in cost for insurance, if you fail to have that --

MR. WILEY: That's your annual premium.

COMMISSIONER MURRAY: Right. Over an amortized period, if you will -- wrong word amortized -- but over a prolonged period could be considerable. But then you have the other factors that some may not want to have insurance, et cetera.

So I don't know, I'm lost in that regard. That's certainly a difficult challenge.

ACTING CHAIRWOMAN CARON: I think it is pretty much the consensus of this panel that they would like to see it raised a foot. Because we don't have a fiscal analysis, it probably, as a first step, would be wise to go

back to DSAC and ask their opinion. Our opinion is we should do the smart thing and just raise it.

Is that going to cause a lot of angina, you know, here, or at DSAC or not? I'm guessing it probably won't.

So take it back there and ask them what they think and then you can come back to us and we can discuss it again.

They may be able to give you enough of a fiscal impact that it will satisfy the Board of County Commissioners in bringing it forward to them one way or the other.

And let's move on.

MR. WILEY: Okay, moving forward. On Page 23, there --

COMMISSIONER SCHIFFER: Let me move backwards on 22. Up at number one, you know, this requirement for the lowest floor, including basement, you and I discussed it. We gave the example of the Seventies sunken living room, the bottom of that sunken living room would have to be at flood. Where is that requirement coming from, Bob? What regulation?

MR. WILEY: That is the lowest point of the lowest living floor. That is how you define lowest floor elevation.

COMMISSIONER SCHIFFER: And that is coming out of what regulation?

MR. WILEY: That comes out of FEMA's regulation, sir.

COMMISSIONER SCHIFFER: If I wanted to check that, where would I go, just to make --

MR. WILEY: Wwww.fema.gov, and then have lunch with you, because it will take you a while to find it.

COMMISSIONER SCHIFFER: But it's hiding in there somewhere.

MR. WILEY: It is hiding in their definitions section.

COMMISSIONER SCHIFFER: I'll go hunt. Thank you.

ACTING CHAIRWOMAN CARON: Are we on to --

MR. WILEY: If you look on Page 9 of our definition, lowest floor means the lowest floor of the lowest enclosed area, including the basement. Because that's considered a living area.

Now we -- I only know of two basements in Collier County, and -- what? That's all I know of. And actually, I think both of them are within the City of Naples limits, so I'm not concerned about them, because that's their jurisdiction.

But generally speaking it's our living floor slab on grade. So that would be the lowest floor. And you go to the lowest floor is how you measure it. It's not just the door threshold.

COMMISSIONER SCHIFFER: And my grief is it has to be above the base flood elevation.

MR. WILEY: Yes, sir.

Shall we go to Page 23?

I really don't have many comments on Page 23. As we go through, do you see the balloons over on the side which describe why we made what changes we did and what additions are in here?

ACTING CHAIRWOMAN CARON: I was just curious as to why we cared if a basement area was temperature-controlled or not.

MR. WILEY: The concern you have is when you come forward with a building and you declare an area to be your lowest floor, but it really isn't, because you then enclose something, temperature control, AC, and then you turn it into living space, that is what this is to address.

ACTING CHAIRWOMAN CARON: Right, I understand us not wanting it to be living space. But what about air conditioned storage space? I mean, I see how it would be hard to write a --

MR. WILEY: Right, the issue here, and I'll give you a good example, is where you have your lowest floor of the house is for the living area and they put that at the BFE, at the base flood elevation. You have an eight-inch step-down going into the garage. The garage floor is below the BFE. And then someone converts that to living space. That's what you're not allowed to do by this. That's what you're making sure you understand.

ACTING CHAIRWOMAN CARON: So I couldn't just air condition my garage because I leave my car there for six months and, you know, I've seen them grow moldy.

MR. WILEY: If you choose to put the floor of the garage below the base flood elevation, you also have to have in there vents. Well, the vents are open to the outside. You're really not going to want to air condition it anyway unless you really like paying super high power bills.

COMMISSIONER SCHIFFER: Bob, this means air condition. Can I put ventilation? Can I pull air through

that space? I'm not temperature controlling it. So I guess I'm allowed to, correct?

MR. WILEY: You could just simply put a fan type system through it, you could do that, yes, sir.

COMMISSIONER SCHIFFER: That's climate controlled, Donna.

MR. WILEY: Okay. As we go forward, I really don't have many things to say about it until we get over to Page 26. So if someone has some other comments getting to there, we'll try to address them.

ACTING CHAIRWOMAN CARON: I just had a question on 24. It says under -- well, just as an example, under D.2, it says such housing when provided. I just wondered why you needed when provided.

MR. WILEY: This is language that was put in the ordinance by our Emergency Management staff for following a disaster and we get the FEMA housing that's coming in. They wanted to address all the situations that basically allow them to install different types, whether they be RV trailers, regular mobile homes, whatever they bring in here. So this is their language of when it's to be placed. I really can't address it other than show what's there.

COMMISSIONER SCHIFFER: And Donna, I think that's important that at a time like that that we're not fighting ourselves with our wrong ordinances.

ACTING CHAIRWOMAN CARON: No, I'm not trying to do that. I think that's fine. I just don't know that we need the words when provided. I think it refers to the paragraph right above it. And it says what they're going to provide.

MR. FRENCH: If I can, this language was drafted by Dan Summers' group over at Emergency Management. And I know that he did work with an outside contractor and FEMA directly.

There was some concern, primarily because FEMA takes a rule, or they take the position that if you're within a 100-year floodplain, no matter what the elevation is, they will not install any assets whatsoever.

That becomes problematic under the new floodplain maps that are -- or the now flood maps that are coming forward and some of their recommended maps. Primarily because then what happens is that then you're building these communities very far inland, and that's not what FEMA has -- that's not what the intent would be -- would be if you were going to create these housing type villages, they would be very close to the neighborhoods that they commute in, it would control traffic, it would keep kids in school and it would get the infrastructure back up and running much faster.

So that's the language that -- and I may stand corrected, but I believe that's the language that Dan Summers brought forward that he had worked out an agreement with FEMA in order for them to say, okay, so in the event that we agree, at least the county acknowledges that it's allowable.

COMMISSIONER SCHIFFER: They're also, Donna, doing a study of housing after a storm and weeding out code problems. This is obviously one of them that they want in there.

ACTING CHAIRWOMAN CARON: Yeah, no, I have no problem with the thrust of what it was saying, it's just --

COMMISSIONER SCHIFFER: The English teacher in you?

ACTING CHAIRWOMAN CARON: Yes.

COMMISSIONER SCHIFFER: I have a 25 -- Page 25 question, if it's appropriate.

ACTING CHAIRWOMAN CARON: Go ahead.

COMMISSIONER SCHIFFER: Bob, on seven you're discussing that projects have to be elevated no lower than the 100-year flood criteria. This is seaward of the coastal control line. And the building code covers that very carefully. And their wording is much better than yours.

You say elevated no lower than. When they discussed it, they're discussing that the forces from a 100-year storm. So you're not addressing the fact that it's really to the bottom of all the structural systems and everything that that thing has to be elevated to.

MR. WILEY: This is addressing within the coastal area, which is again right next to the VE Zone. And at that point you measure the bottom of the lowest horizontal member.

So this simply addresses elevation. FEMA through its requirements always requires that anything within the coastal high hazard area be designed to withstand the wave action as well as the wind action simultaneous to it. But the ordinance addresses elevating to a sufficient height so that the wave doesn't create the damage, it just passes beneath it.

Now, with the situation on a coastal construction control line, because that is a regulatory line and the DEP does regulate along that, it's not uncommon for their elevation to be higher than the FEMA elevation. That's what this

is making allowance for, whichever elevation you're coming to is higher, you have to at least elevate to that.

COMMISSIONER SCHIFFER: Okay. My question is I would just reference the code, the building code as it's clear on this. Clearer than your phrase.

MR. WILEY: In some situations what we actually do is we use the building code for permitting, but within our ordinance we're trying to use FEMA's language back to them instead of referencing a code that they don't know when it may change.

COMMISSIONER SCHIFFER: But I doubt the building code will defy FEMA in regulation, I mean, since FEMA is requiring you to meet the building code. So that would be a circle.

MR. WILEY: Just trying to clarify so we don't get into a circle here of one thing representing another that may change without you knowing it, so --

COMMISSIONER SCHIFFER: The impression I get in reading your seven is that I can put my floor elevation at the 100-year flood elevation. FEMA is saying no, I can put -- I have to protect all the forces or I have to put it someplace where all the structural systems are above that elevation.

So that's my only comment, just the wording of that.

ACTING CHAIRWOMAN CARON: Sounds like you may want to look at it, Robert. I don't know whether it is better or not. I don't have the language in front --

MR. WILEY: I'll talk to Brad separately to figure out what we can do there.

COMMISSIONER SCHIFFER: I'll give you the building code if you want. Just read the scope of that, it --

ACTING CHAIRWOMAN CARON: Just one thing above that where, the paragraph under six, it says located in areas of special flood hazard. If you go down in that paragraph, it talks about a regulatory floodway. And in the next paragraph it talks about a regulatory floodway.

Didn't we take regulatory out of everything? That was under your definitions, that floodways were floodways were floodways.

MR. WILEY: What we did in the definition on Page 10 is we leave the term regulatory floodway in as a defined term and it simply says see floodway.

ACTING CHAIRWOMAN CARON: Okay. But why in your text do you need to keep regulatory floodway in here? Why wouldn't you just say floodway?

MR. WILEY: I'm trying to duplicate the language we got from FEMA is what I'm trying to do here. So that's why we -- instead of having two separate definitions, we simply referred to the other one.

ACTING CHAIRWOMAN CARON: Fine.

MR. WILEY: I mean, I'll take your direction. I'm just trying to avoid --

ACTING CHAIRWOMAN CARON: Melissa, you have a question?

COMMISSIONER AHERN: Page 25, number eight. It looks like we're redefining accessory structures. And then we added multiple items under that. That's not part of the model ordinance, so is this not in excess of the minimum?

MR. WILEY: It is an addition for clarification for what we would consider under the Flood Insurance Program to be accessory structures. You'll find them referenced through FEMA as called appurtenant also at times when you get on FEMA's website.

It's additional criteria. It is not higher regulatory, it is more explanatory than anything else. It's not placing higher regs against anything.

COMMISSIONER MURRAY: I have a question.

ACTING CHAIRWOMAN CARON: Go ahead, Bob.

COMMISSIONER MURRAY: This regulatory floodway, see floodway, I'm assuming in a regulatory floodway may be a canal?

MR. WILEY: Well, since we do not have any of them in Collier County, it's easy to say, well, ignore the term. But let me try to explain to you what it is.

In a riverine situation, not the coastal surge, but from rainfall, typically you have enough topography to create a valley. We do not have that in Collier County. But we have very, very gradual sloping change in elevation. The regulatory flowway is that portion where you have the flow of the water, how much can you keep increasing the fill materials to pinch that flow of water down till you increase the height of the flood elevation by one foot?

That extent of squeezing in the system is the point where then you have the regulatory floodway is that

distance remaining.

Now, since we do not have them defined in Collier County and in our definition section, we say we don't have any regulatory floodways. We do not have them now, they are not proposed to be on the new map coming out by FEMA, simply because we are so flat.

The term really becomes needless. But I was informed by FEMA if we do not leave it in our ordinance, they will reject the ordinance. I don't follow their logic but I do follow their direction on this one. So that's why the term still stays in even though we will never use it, because it's a nonentity in the county.

COMMISSIONER MURRAY: I clearly understand you and it's a good explanation. And you've used the statement in here, I guess parenthetically, regulatory floodway, see floodway?

MR. WILEY: Yes, sir.

COMMISSIONER MURRAY: I guess that's just as good as saying hereafter, floodway. Okay, it's really moot isn't it. I mean, it's -- but it is, I suppose someone's going to have to explain it to someone again and again and again.

MR. WILEY: Yes, sir.

COMMISSIONER MURRAY: All right, thank you. You have no options.

MR. WILEY: Shall we move on? Okay.

As we get over onto Page 26, we enter into the subsection C, specific standards for A Zones without base flood elevations and regulatory floodways. This entire section has been added in. It's a part of the model ordinance. So it adds into what will become our ordinance, because we do have extensive areas in the eastern portion of the county which are -- they're called an Approximate Zone A. There is no base flood elevation identified with them, and they have some unique characteristics.

One of the situations you run into is that when you have a property which is five acres in size or larger or proposed to be subdivided down into 50 lots or more, whichever criteria you reach first, the developer is required to come up with a base flood elevation and have that approved by FEMA. So that can be fairly onerous for particular situations out there.

And so when we looked at how's the county going to regulate this in some situations, if you notice in paragraph number seven, or sub-paragraph seven, it's on the middle of Page 27, it says when the data is not available. Now, they're talking about flood elevation data from any source that the county can find. And these sources obviously have to be reliable sources. It can't be well, I picked a number off of the dice in my kid's Monopoly game.

But if you cannot find any information to establish a base flood elevation, then what do you do? So this is where we have some bare minimum default criteria for use.

Within the model ordinance it simply said to be elevated no lower than three feet above the highest adjacent grade. And this is where the term highest adjacent grade is important. That is the preconstruction ground elevation immediately adjacent to the proposed site of the building.

So that's before you put a fill pad down, before you start a stem wall, you go to your site and you measure what is the ground elevation. And in those areas that are the Approximate Zone A, you would then be required for our building permit purpose by the model ordinance to be three feet above that.

What we looked at was the implications that that may not be sufficient here in Collier County by the time you go through the process with the Department of Health, you design a septic system. And I do want to remind you these are areas generally around State Route 29 and further east, extremely rural, there are no public water and sewer systems out there, so you are going to be on septic and well. By the time you go through the process, our county engineer at the time, Stan Chrzanowski, recommended very strongly that we change that to be four feet to better comply with what is being built today.

Then we also took the consideration that some areas may be in a situation of a wetland, where you have wet season water table elevations above ground. So that's why we then added also the staph or the wet season water table elevation, whichever is higher. Because your highest adjacent grade may be below the water elevation at that point. That's the reasons for the change that you'll see here.

COMMISSIONER MURRAY: Good change.

ACTING CHAIRWOMAN CARON: Melissa?

COMMISSIONER AHERN: When you're calculating for your gravity flow, you have to meet the 42-inch separation from the limited layer, which is usually going to determine what your finished floor elevation is. And in

most cases it's higher than 48. So I'm not sure what the benefit of increasing the minimum from three to four is, because you're going to -- it's going to be what it's going to be.

MR. WILEY: It is going to be what it's going to be. We did not feel -- Stan felt we should at least go to four, because he says three gives somebody an option that they may think they have and they really don't. He was trying to get it to reflect more of reality of what they're going to have anyway.

I will also give you a little bit of information from the preliminary digital Flood Insurance Rate Map that FEMA has released. I did go along the eastern perimeter of our study area. And hopefully everyone understands we didn't map everything all the way to the east county line. We did have a boundary on it.

I went along that interface from the proposed AH Zones into -- and also some of the AE Zones -- into the current Approximate Zone A, because that's what will remain where we have not studied.

Typically what I was finding was elevations for the proposed flood elevation do have a water surface from two that -- you know, one-and-a-half to up to two-and-a-half feet. That was real common. I did find areas where there were places it was three-and-a-half feet.

So that made me feel even better that Stan had a right thinking at the time when he said go to four as a minimum because if we said three as a minimum, there are some areas that from the modeling it would show the water would be deeper than three feet above adjacent grade right now. So at that point I began to support him a lot stronger.

COMMISSIONER AHERN: To do gravity flow isn't the only option. So when -- in some of these cases you could be talking at a 65 to 70-inch finish floor elevation. So you still have an option of dropping the elevation and putting in a lift station.

MR. WILEY: That you do, yes, ma'am.

COMMISSIONER AHERN: So it seems like considering this really doesn't cover the majority of gravity flow situations, that really the extra foot is really putting an additional cost burden when it may not be necessary.

MR. WILEY: That's why we had our discussion and consensus among staff Stan was right, so that's why we did propose to change it. If you do not support that, if you give direction to lower it, that's what we will go to the Board with.

So far we have gotten support from the Floodplain Committee and DSAC to accept the four foot.

COMMISSIONER AHERN: I would recommend leaving it at the minimum.

ACTING CHAIRWOMAN CARON: I think you've got support from DSAC on this. I don't think there's anything --

COMMISSIONER SCHIFFER: They support it for?

ACTING CHAIRWOMAN CARON: Uh-huh, they support it for.

COMMISSIONER SCHIFFER: Do you remember any of that conversation?

MR. WILEY: We didn't really discuss it. We went through and nobody had any comments on it when they looked at it.

COMMISSIONER AHERN: Well, if you're not familiar with gravity flow systems and calculating elevations then you're not going to really know this doesn't reflect the majority of these cases.

ACTING CHAIRWOMAN CARON: Let's do this. We have our current engineer in the house, why don't we have him come up and weigh in on the issue.

COMMISSIONER SCHIFFER: Bob, while he's coming in, this whole --

COMMISSIONER AHERN: Saying again, FEMA, we're trying to minimize, and they're having it at three. But this is another example of where we're increasing it higher.

MR. McKENNA: Good morning. For the record, Jack McKenna, your Collier County engineer.

As was mentioned, Stan had reviewed this, and I have trouble finding reason to dispute it.

I think what we're trying to do is to provide information that people will use in defining their expectation of what they're going to be building to. It's true, if you had a grinder station or something like that you might have the ability to go lower.

What we might consider doing is putting that flexibility into the language, putting in a less condition in there, because that would be an exception. And I think it's a valid point that you're making there.

COMMISSIONER MURRAY: Good. That helps.

ACTING CHAIRWOMAN CARON: So you'll be working with Robert on revising some language?

MR. McKENNA: Yes, I'd be happy to do that.

ACTING CHAIRWOMAN CARON: Go ahead.

COMMISSIONER SCHIFFER: Bob, isn't (sic) these zones, especially the A Zones, aren't they areas of shallow zoning, which is a maximum of three feet? So why would this condition raise that?

MR. WILEY: In the Approximate Zone A there is no established base flood elevation. It can be anything. The situation, from the way FEMA evaluates, is they say we've not done a detailed study to establish an elevation but we have given a generalized look at the area and determined that it is highly susceptible in our opinion to inundation of land, flooding. So therefore they declare it to be the Approximate Zone A.

Then they leave the responsibility to the local community on the regulations to enforce it so that as permits are approved they are flood damage resistant. In other words, you are elevating above the flood elevation that have to identify and establish yourself.

COMMISSIONER SCHIFFER: We have areas of shallow flooding which are AO, AH Zones, right?

MR. WILEY: Yes, sir, those are not your Approximate Zone A, they are different. They have an established base flood elevation with them through a detailed study. This is areas outside the study boundary.

COMMISSIONER SCHIFFER: And you think they would be a higher elevation than that area of shallow flooding.

MR. WILEY: Well, all I was relating to you was along the current preliminary DFIRM that's been released by FEMA, as you compare the base flood elevation to the LIDAR elevation attached to it, which gives you your topography, there were some areas that as a general rule they were between one-and-a-half to two-and-a-half feet in depth difference.

The three-foot would appear to be close, but it gets you there. I did find some areas though where there was up to three-and-a-half foot of difference in elevation from the ground to the water surface elevation. So at that point I began to like Stan's proposal of four feet better because it covered -- and again, that's just at the edge. I really have no way to confirm anything out beyond that edge interface.

ACTING CHAIRWOMAN CARON: Okay, Cherie', it is noon. We have seven more pages.

Yes, how about that? And then we'll just plow through the rest of this after we -- let's take a 10-minute break and we can -- for Cherie' and then we can plow through the rest of it.

Good, 10 minutes.

(A recess was taken.)

ACTING CHAIRWOMAN CARON: Welcome back everyone. Thank you, Robert. Let's pick up where we left off, on Page 27.

MR. WILEY: We are on Page 27 and subsection D, specific standards for coastal high hazard areas, the V Zone.

So if you have any comments on that section, I will try to address them.

ACTING CHAIRWOMAN CARON: Essentially nothing changed in that section other than to name professional engineer or registered architect. Everything else seems to have been pretty much the same, right?

MR. WILEY: If you will look right at the very bottom line of Page 29, flipping over to the top of Page 30, you will see local criteria explaining some stuff that we're currently doing being added in. It will be sub-paragraph 13, accessory structures. Now, these are accessory structures within the coastal high hazard area.

ACTING CHAIRWOMAN CARON: For us it's Page 30.

MR. WILEY: Really, you see the text at the top of Page 30. Yes, you do.

COMMISSIONER SCHIFFER: I have a Page 28 question.

ACTING CHAIRWOMAN CARON: Go ahead.

COMMISSIONER SCHIFFER: In paren three you use this, and I'll read it from your revised. A professional engineer or registered architect shall develop or review the structural design specification and plans. That "or review" kind of takes us out of our practice act.

In other words, we're not allowed to -- you know, if Jamie did the drawings, I can't review them and certify them. I have to develop them myself. There is a process as a successor architect. In other words, if Jamie quit a job, there's a process in which I could take it over, assuming Jamie is an architect.

MR. FRENCH: That's a stretch.

COMMISSIONER SCHIFFER: But in other words, I cannot review the structural design of somebody else's

work.

So can you phrase it? And this kind of wording is in there quite a bit. I don't think a professional engineer can either. It's against our practice act, so --

MR. WILEY: The wording that you have here is not intended to reflect any difference than what the Florida law has for our current act under which we practice as engineers or architects. This is simply discussing the options that are there.

As you said, if you design a system and then you decide to move to Montana where we can't get ahold of you, and Jamie, who just got his architectural license last week, he got a good box of crackerjacks so we know where he got it.

COMMISSIONER SCHIFFER: He can --

MR. WILEY: Well, you know, we're using a good farfetched example here, but he could pick up the design

--

MR. FRENCH: Better pull out the org. chart.

MR. WILEY: Yeah, right. He could pick up the design and review it.

Now, he assumes at that point responsibility for the design after his review, do the signing and sealing on it. That is not any different as I understand from what Florida law allows.

But this is not intended for an engineer or an architect to simply look at something and sign and seal it. He is putting his license on the line at that point. This does not grant him any loss of responsibility when he signs or seals. I don't see the problem with the language as is here. It doesn't really conflict. It's not intended to say any more than what the current law allows right now.

COMMISSIONER SCHIFFER: So you're allowing an architect to come in, review a building, certify. Okay, maybe that works.

ACTING CHAIRWOMAN CARON: Anybody else?

(No response.)

ACTING CHAIRWOMAN CARON: Then we're on to 30.

COMMISSIONER MURRAY: I would -- he's leaving it hanging. Maybe that works. Does it satisfy you, or no?

COMMISSIONER SCHIFFER: Well, I mean, let's say a flood certificate. Who can do those, the floor elevation, the land surveyor, right?

MR. FRENCH: Professional land surveyor, correct.

MR. WILEY: Professional land surveyor is required by law to establish the elevation, that's correct.

COMMISSIONER SCHIFFER: Let's say that it's an older building and you want to get an engineer to certify it. That would certainly make sense. You could hire an engineer and he would, to the best of his ability, be able to do that.

I mean, the concern I'm trying to prevent is, and we have a problem in the profession, is an architect stamping plans prepared or studies prepared by somebody else.

MR. WILEY: This does not allow him to do that.

COMMISSIONER SCHIFFER: It allows him to develop, which I'm perfectly happy with, or review the structural design, specification and plans, you know, plans he didn't prepare, you're reviewing.

MR. WILEY: Again, this does not conflict, though, with the Florida statutes on their responsibility. So it's in there to allow, as you just said, the older building. You have to have someone do something and you can't get back to the original engineer --

COMMISSIONER SCHIFFER: We'll let it go. This won't allow somebody to do something they're not allowed to do by state law.

MR. WILEY: It will not, that is correct. It will not.

ACTING CHAIRWOMAN CARON: Brad, I think it doesn't, because the end of that sentence says in accordance with accepted standards of practices. So I think you're covered.

COMMISSIONER SCHIFFER: Yeah, yeah.

ACTING CHAIRWOMAN CARON: Or I think the county's covered.

MR. WILEY: Now we are at the top of Page 30 where we are referring to some of the discussion or text on accessory structures. Were there any concerns about what's stated here?

COMMISSIONER MURRAY: Yeah.

ACTING CHAIRWOMAN CARON: Go ahead, Mr. Murray.

COMMISSIONER MURRAY: This is again all permitting. This is in permitting, not in looking back on something. Let's say you had an accessory structure in excess of 100 square feet and it was as a result of flooding, while the example is here, and it's broken down, replacement has to be in excess of 100 square feet; is that right?

MR. WILEY: Well, why would it have to be in excess? If you look at B, it says the maximum allowable size is 100 square feet. So it would have to be less.

COMMISSIONER MURRAY: I'm sorry, I had it backwards in my question. I apologize. And that question was in error then.

COMMISSIONER SCHIFFER: Questions, Donna?

ACTING CHAIRWOMAN CARON: Go ahead, Mr. Schiffer.

COMMISSIONER SCHIFFER: In A you're using the word disposable. Is that what you -- I mean, in building codes we have a concept of frangible, which is something that -- you know, like we do explosive sheds, they can be blown apart. But what's a disposable building?

MR. WILEY: It's going to be a very minimal low cost construction. You know that when a storm comes through it's going to get torn up, and you know it's not going to be designed to withstand the force of the storm coming in.

COMMISSIONER SCHIFFER: Then maybe the frangible is something -- would be a better word. Because that essentially means that it can be -- you're not going to try to protect it.

MR. WILEY: As I understand from frangible, it's designed to specifically break up into certain sizes. This one just simply says it won't survive is what we're saying by disposable.

COMMISSIONER SCHIFFER: Okay. But disposable I have, you know, the act of throwing away somehow is in that -- for me. But anyway, it's --

MR. WILEY: If you'll notice the word is in quote marks too, to help sort of understand this is a cheap building. I don't want to identify any particular person who may sell this building, so I'm avoiding names.

COMMISSIONER SCHIFFER: Right. And they would argue about the disposable word.

MR. WILEY: At this point it really becomes the discussion that your Building Official looks at. This language came from them. This is what they are using right now.

COMMISSIONER SCHIFFER: Who?

MR. WILEY: The Building Department.

COMMISSIONER SCHIFFER: Okay. Detached garages are not allowed in V Zones. But, I mean, that could be the garage to a high-rise or something that -- what does that really mean?

MR. WILEY: That's exactly what that means.

COMMISSIONER SCHIFFER: So in other words, you build a high-rise development in the V Zone, you have to attach a parking garage?

MR. WILEY: Your garage would be a part of your building or it would not be allowed to be built as a garage with enclosed sides and all. It would have to be -- you could have a carport.

COMMISSIONER SCHIFFER: You're not saying enclosed sides, you're saying a garage.

MR. WILEY: Right. But I said it would be -- you think of a garage as an enclosed space. It has to be a part of your building. Then that then allows you to determine what enclosure you can and cannot have. And in the VE Zone, as you know, it's supposed to be open so the water can go through. So they're simply saying you cannot have a separate detached garage building sitting there because that would be a blockage for the flow.

Now, you could have an open carport where the roof has the lowest part of horizontal member at or above the BFE, but you could not have a detached separate garage building.

COMMISSIONER SCHIFFER: And you're also saying that it's only 100 square feet and cost 2,500 bucks, so --

MR. WILEY: That is a separate type of situation here. Those are separate individual shed buildings you want to have. It's not the same as calling it a detached garage.

COMMISSIONER SCHIFFER: The following standards are required to regulate accessory structures. They all don't apply. In other words, you don't want a 100-square-foot with garages.

MR. WILEY: Right.

COMMISSIONER SCHIFFER: So you're talking about the big parking garages. And they can't be standalone? I mean, I'm not really worried about it because we can mess around with canopies and trick you into thinking it's part of the building. But, you know, but there are standalone parking garages in V zones in Collier.

ACTING CHAIRWOMAN CARON: But they're open.

COMMISSIONER SCHIFFER: Oh, they're definitely open. But it's a -- well, he didn't say enclosed. If he wants to clarify that, he can -- detached enclosed garages might make sense then. They have to meet the requirements of a building.

MR. WILEY: They have to meet a building requirement, that's correct.

COMMISSIONER SCHIFFER: So I don't see why -- but I guess you're -- it's late, let's not hang on that. I'll bow.

ACTING CHAIRWOMAN CARON: Does anybody have any questions on Page 31?

(No response.)

ACTING CHAIRWOMAN CARON: This gets into variances and the appeals board and appeals procedures.

COMMISSIONER MURRAY: I have a --

ACTING CHAIRWOMAN CARON: Do you have questions?

COMMISSIONER MURRAY: I do have one quick question.

ACTING CHAIRWOMAN CARON: Go ahead.

COMMISSIONER MURRAY: On 31, under C, appeals procedure, under 4-B, what's the difference between an administrator's decision or a determination?

MR. WILEY: If you go and look, earlier in the ordinance it talks about the floodplain administrator being able to make a determination on the structure's location as to which flood zone it is in or out of. So those are the areas, those are his determination decisions. And I'm not sure there is a huge difference in the language between the two terms.

But basically decisions are, as I've looked at them from the standpoint of for permitting purposes, determinations are for opinions of making a judgment call on a location.

And Jeff, please clarify if we need to change the wording here, but I don't really see an issue between using the two words. Whichever way you choose, though.

COMMISSIONER MURRAY: I do think it provokes questions that may not be necessarily needed to be provoked.

MR. KLATZKOW: Where did you get the language from, Bob, on this? I'm talking about the entire section.

MR. WILEY: You know, I don't remember if I got it from our current code on how we place an appeal before the BZA or not. I don't remember, Jeff, on exact locations.

MR. KLATZKOW: Because that's sort of what I'm getting at. If this language is our current language, then I'm okay with it. If this is brand new --

ACTING CHAIRWOMAN CARON: Why don't we check that.

MR. WILEY: I got it somewhere.

MR. KLATZKOW: Well, yeah. Probably out of the same crackerjack box.

MR. WILEY: Well, you know, it could be. I don't eat crackerjacks --

MR. FRENCH: That one wasn't a fine quality --

MR. WILEY: I got the cheap box, right?

ACTING CHAIRWOMAN CARON: So you're going to get back to us on that and check that language. Because it should be the same as the language we're currently using.

MR. KLATZKOW: If it's the same we already have now, we've worked with for years, I'm okay with it.

ACTING CHAIRWOMAN CARON: Does anybody have anything else?

COMMISSIONER SCHIFFER: What pages, Donna?

ACTING CHAIRWOMAN CARON: We're on 30 and 31. Actually, 31. Those are the variance procedures. And Robert's going to check the language to make sure it's consistent with what we've been using, are currently using.

So this was just adding the section because we need to give people an appeals and a variance procedure, so --

COMMISSIONER SCHIFFER: Bob, actually it is the 31, because I'm looking at the new version.

The Board of Zoning Appeals, going after the technical data, isn't there a way in FEMA that you can appeal some of the technical issues?

In other words, the regulations that you put in here you've always said come from FEMA. So would it be the BZA that would actually be trying to vary from those?

MR. WILEY: If you were going to go through any kind of a variance procedure, it would be a variance typically that's complying with the minimum requirements for that zone. But any other particular regulation, I'm not following what you are asking --

COMMISSIONER SCHIFFER: What's the technical -- in other words, all the technical criteria you pulled out of FEMA documents.

MR. WILEY: That's what we use, yes, sir.

COMMISSIONER SCHIFFER: The Commissioners didn't come up with, you know, it has to be one foot above the whatever. So anybody trying to vary that, wouldn't they go to the source of those technical documents for a technical variance?

MR. WILEY: If you're trying to have a variance based upon some technical criteria, that's the call that we make. And if we do approve any kind of a development that varies, even if it's so directed by our Board of County Commissioners through the Board of Zoning Appeals, if we choose to make such a variance, we've got to note that. And then we do have to tell that to FEMA. It does get reported to them.

COMMISSIONER SCHIFFER: And obviously we're putting technical requirements in by this review. But you're saying that if they want to vary from it, they go to that. Okay.

It's not quite on Page 31. Can I go to the next page?

ACTING CHAIRWOMAN CARON: Yeah, 32, yeah.

COMMISSIONER SCHIFFER: It would be 32. And I'm going by the prior H. What does that really mean, that one of the criteria is that the relationship of the proposed use to the Comprehensive Plan and flood? I mean, that's the reason their -- I just can't get to come up with an example of where that would be available.

MR. WILEY: Let's use an example, and I hope I'm correct in this. But where we have a conservation area and it happens to be in an AE flood zone and you have an applicant coming in and they say I want to build docks. Could they do that?

Whether or not a Comprehensive Plan would allow that intensity, these are areas where you get to make judgment calls. It's within your floodplain. Your plan doesn't really support building -- and I hope McDonald's is a correct use here, but I'm thinking of a very highly intense type of development for traffic potential impacts. You're going against what your Comprehensive Plan says, you're trying to build a variance to not even comply with the minimum requirements of your floodplain. So you're having to evaluate. Do you have a legitimate right to grant variance for situations such as this?

I don't see it happening in the county. But remember, FEMA's language addresses everywhere in the nation and everyone has to duplicate it, so --

COMMISSIONER SCHIFFER: I think that's okay.

COMMISSIONER MURRAY: Are we on Page 32 yet?

ACTING CHAIRWOMAN CARON: We are.

COMMISSIONER MURRAY: I have a question. Under I, where we talk about limiting it, it's actually at the very end on Page 33, possible such temporary waivers or exemptions following a disaster housing effort shall terminate within 18 months of issuance.

I recognize the desire to minimize the involvement, but I do know that in a number of situations it's been several years where some of these temporary housing facilities have been established, and they cannot do anything much.

So 18 months is a good target to shoot for, but based on the information that's available, and FEMA is probably a good resource for that, is that reasonable?

What do we do if it's after 18 months, come in for a meeting with the Commissioners?

MR. WILEY: In that particular situation, if you notice what it says, that it shall terminate within -- it's where possible such temporary waivers shall terminate within 18 months.

If you go beyond that 18 months, it would come back to the Board for the extension. It would not have to be abandoned, but you would go through an extension process. The purpose here is to make it very clear when the

Board is issuing this variance, this is never to be intended to be interpreted as allowing permanent use for this.

COMMISSIONER MURRAY: I appreciate that.

MR. WILEY: So you give an 18 month, which is from the standpoint of FEMA in the overall perspective of them working with our Emergency Management staff, they were the ones that were working with them to come up with 18 months, knowing what is a typical situation they go through.

With FEMA you do have the 18-month provision in there. And at that point they really start shutting it down and telling people you've got to leave this temporary housing.

Now, it doesn't always happen, because there is a legal process to go through and it does extend it, but they start shutting down at 18 months.

COMMISSIONER MURRAY: Okay. I have no quibble with it. Just that based on knowledge, general knowledge that in many instances the emergency situations have not been cleaned up after 18 months --

MR. WILEY: And you can extend. This is not precluding negotiating to extend it.

COMMISSIONER MURRAY: And I appreciate it. So that's not going to be a problem that this ordinance then by inference alone suggests that we go back to the Collier County Commissioners and seek some kind of an extension as appropriate.

MR. WILEY: You would go back to the Commissioners to seek the extension, but it would allow them to do so.

COMMISSIONER MURRAY: I don't know, does that have to be spelled out, or by strong inference?

MR. WILEY: I don't think it would have to be spelled out here, because it simply says where possible. And that I think would give us the ability to then grant extensions beyond 18 months.

COMMISSIONER MURRAY: And this is a matter big enough that would not be any individuals being, quote, unquote, picked on. It would be something that we'd instigate, the county.

MR. WILEY: Yes, sir, through the Emergency Management Department. They would be right on top of it.

COMMISSIONER MURRAY: Okay, thank you.

COMMISSIONER SCHIFFER: Donna?

ACTING CHAIRWOMAN CARON: Go ahead.

COMMISSIONER SCHIFFER: Bob, this is, I think it's 32, conditions for variance. It says here these are the conditions in which we can offer a variance. It says here that it only can be on a lot size of one-half acre or less.

So that means we write all this code and it's only for little lots that we can apply this?

MR. WILEY: For the variance, yes, sir.

COMMISSIONER SCHIFFER: So all this writing we just reviewed only applies if you have a lot one acre or less?

MR. WILEY: This is when you're choosing to construct a building, you're wanting a variance. You're wanting to construct the building and get a variance to the minimum requirements. Then to do so, under FEMA's guidance they say it must be on a lot of that particular size or less, half acre or less.

And I'll tell you where they're coming from is in their criteria that they use, you've got to show what is unique about the property that requires a variance to allow reasonable construction. That's where they're looking from the standpoint, if you've got more than half an acre, there's going to be no reason FEMA can figure that you could justify what is so unique that you could not build in some other fashion on it and be in compliance.

And remember for FEMA and their criteria, cost is not a consideration.

COMMISSIONER SCHIFFER: So the only variances that the BZA will be looking at for new construction are on the lots under one-half acre.

MR. WILEY: I'll give you an example of one of the conditions where a variance is allowable. Now, remember, the difference between desirable and allowable is drastic. You have a vacant lot in an old subdivision where everybody has built years ago, they're pre-FIRM, meaning the houses were built before the first Flood Insurance Rate Map was ever established. So they were built very low.

Now you're coming in and where the floor elevations for all of the houses on the entire street, everybody's got their little quarter-acre lot, and everybody's sitting at an elevation of six, and the base flood elevation is 10.

Now, you can apply for a variance to knowingly build your house down at that elevation six so your house does not stand out like the beacon in the whole subdivision and you can comply. They don't recommend it, but you could in that situation. That's what this is addressing. You are the unique last remaining type situation here.

COMMISSIONER SCHIFFER: But isn't that -- that's only what they're addressing. So that's the only variance you're allowed; is that right?

My question really isn't focused on that. It sounds like this is a variance of the base flood elevation too. And there's a lot of other requirements.

But if these are the conditions for variances that have to be met, if your project doesn't meet paren one, you can't apply for a variance; is that right?

MR. WILEY: That is correct. Let's say it this way. You cannot --

COMMISSIONER SCHIFFER: What's ironic is that the --

MR. WILEY: You can always apply. You can apply. The county can always choose to grant the variance. The local entity, the local government has the ability to grant a variance. They can find yes, we grant it.

Now, when you choose to grant the variance, you do so in contradiction to what your ordinance tells you to do. At that point you do put your participation within the Flood Insurance Program at risk.

COMMISSIONER SCHIFFER: I mean, my point is the irony is we have all these pages for variances, which probably a half acre of pages, and the only variance you can go for is the ones that meet paren one, which is a half-acre site.

MR. WILEY: They are specifying very clearly, there's a unique situation that you would qualify for a variance; that is correct.

COMMISSIONER SCHIFFER: I've got to be missing something.

ACTING CHAIRWOMAN CARON: This is only for new construction. So there should be no reason that you would have to seek a variance. It's new construction. So you should be meeting all the guidelines, Brad. This is not --

COMMISSIONER SCHIFFER: And substantial improvements.

But you're right. I mean, you have a tiny, tiny, you know, the eye of a needle option for a variance.

MR. WILEY: Yes, sir.

COMMISSIONER MURRAY: I need to make a --

COMMISSIONER SCHIFFER: As outlined by 10 pages.

ACTING CHAIRWOMAN CARON: Yes, Mr. Murray.

COMMISSIONER MURRAY: Yeah, I remember -- I don't remember how many -- couple of years ago, several years ago, we had a lot of rain and we had people who were out in the Estates who were getting flooded that had not been flooded before. And they have fairly large tracts of land.

And the issue when it was qualified further, concern was expressed that as people continue to build, the nonpermeable surfaces keep on squeezing the water to smaller and smaller areas.

And it seems to me you made the statement, a blanket statement, which I understand, you tried to make a point. But under those circumstances where those lots are -- there may be no place on that two-and-a-half acre lot that you could satisfy that on a half-acre portion. I mean, are we counting the lot or are we counting what?

I'm trying to understand. The way I understood that initially was that it's a half-acre lot, period, end of story. So that would mean that all of Golden Gate Estates doesn't qualify, right?

MR. WILEY: That's what it would mean. Now, relating that to the past situation, Golden Gate Estates was either located, the western portion of it had some Zone X. The majority of Golden Gate Estates was Zone D. Neither of those areas are within a special flood hazard area. So therefore the whole issue of a variance is not even applicable, because this is where you're trying to vary from the established flood elevation.

Now, as we move the flood zones forward into the preliminary DFIRMS that are out where there is a great expansion because of rainfall analysis for flooding, and you now have the AH zone, that would move out into the Estates. And that's the good situation you're looking at.

Once a base flood elevation is established throughout the Estates, and of course the Estates being very large the elevation does vary, we all understand that, with the slope of the ground. So then if someone wanted to come in and propose to build a floor elevation below the established elevation that's out there, that's when they would be coming for a variance. They would apply for a variance.

The criteria says to approve the variance you had to be a half acre or less in size. Right off the bat would eliminate them for the proper approval of the variance. Can the Board approve it? A decision of the Board with the votes, they can say approve. But they would be in violation of their ordinance. We would then have to report the

variance as approved by the Board of County Commissioners.

If FEMA then decided that it was an improperly approved variance, that's when we would put our flood insurance program participation at risk.

The basic word is you avoid approving variances unless there is clear conformance with the very tight restrictions that FEMA has for them.

COMMISSIONER MURRAY: I understood everything you've said. But what jumps through my poor brain here is that when you go further east you have 25-acre and greater parcels. Then you get to Immokalee and you may have some smaller tracts. You know, I'm just wondering, are we setting ourselves up for failure or is FEMA setting us up for failure in that regard?

And I'll end it with that. Because if you're telling me that the language is a requirement of FEMA, and we can take issue with it but apparently it will do us no good, then I would have to withdraw my comment.

But I tell you, it seems very strange. It doesn't seem to comport with what reality is for us.

MR. WILEY: In what way?

COMMISSIONER MURRAY: Just my view.

MR. WILEY: Okay.

If you would look on Page 33, near the middle of the page, it's in paren four, the statement that has been added in there by the floodplain management planning committee. DSAC did review it and had no comment on it. It says: No variance shall be issued for unpermitted work.

And this is the issue where someone without an approved building permit goes and constructs something and then it is discovered that this was built, usually it's through a code enforcement action is how this comes to light.

What we're saying is by putting this language in here the Board of County Commissioners through the Board of Zoning Appeals would very clearly have stated there was no approved building permit for it, you have no proper basis then to grant the variance.

That was a very strong statement put in there by the Floodplain Committee. DSAC looked at it and they left it alone. I want to make sure you understood what was here.

In discussions with Mr. Strain, he did have some concerns about just that. And Jeff, I'm probably going to blow the terminology, so please clear me up on this. He's asking about a due process of law, does that eliminate some consideration. It's my understanding from talking to Jennifer White that it would not eliminate that because they had done something without seeking permit approval and obtaining permit approval.

So can you clarify that?

MR. KLATZKOW: You got two issues, Bob. One is we lost a lot of permits over the years, so we've got a lot of structures out there that may have been permitted and we don't have the records for, and that's problematic with this language, okay.

The other issue is you build something without a permit, we can make you take it down. It's as simple as that.

So, you know, putting language in no variance shall be issued for something that's unlawful, I don't know why you really need to put it in there. But it's okay by me.

But your big issue here is we simply have lost a lot of records over the years for the older structures. And I'm not sure how you're going to handle that.

COMMISSIONER SCHIFFER: And let me add a third problem, is you bought a house and three owners ago they did something without a permit. You really wouldn't know that. I mean, if you're sleeping in the garage there might be a clue, but --

MR. KLATZKOW: Yeah. But really, having said all that, Bob, we have this variance procedure now, don't we?

MR. WILEY: We do, sir.

MR. KLATZKOW: Okay. And how many times in the last 10 years has the Board approved a variance under these procedures?

MR. WILEY: For unpermitted work considerations?

MR. KLATZKOW: No, no, no, for this entire -- for any variance under the flood issues.

MR. WILEY: I'm going to guess, okay. Understand this is a guess, because I know there is a listing of approved variances, and it's in the filing system we have within the county's network. I'm thinking we're in the range of about a dozen, maybe 15 variances that have been approved by the Board of County Commissioners.

I will tell you the most -- and that's going back quite a few years --

MR. KLATZKOW: No, I'm saying over the last 10 years.

MR. WILEY: Oh, the last 10 years I'm not aware of anything --

MR. KLATZKOW: Of any --

MR. WILEY: -- that I can think of.

MR. KLATZKOW: We don't do it. The reason we don't issue the variances, Robert, is because this would hurt our rating system.

MR. WILEY: We got very serious about our participation in the Flood Insurance Program --

MR. KLATZKOW: Which is why we had to build a bathroom on stilts, because -- well, really, because, you know, we thought about going for a variance, but it would impact the county's rating system, right?

MR. WILEY: Well, we have not applied for that particular restroom yet, sir. We did have discussions about it --

MR. KLATZKOW: We did have that discussion.

MR. WILEY: We had -- yes, sir.

MR. KLATZKOW: Okay, we got this entire procedure here that we never use.

MR. WILEY: This is a procedure that we do have people coming to us, asking for flood variances. If I was in a preap. meeting just yesterday with one.

MR. KLATZKOW: But we've never issued in the last 10 years.

MR. WILEY: We have not issued that I'm aware of variances in the past, that's correct.

ACTING CHAIRWOMAN CARON: I think you can leave the language just as we --

MR. KLATZKOW: Exactly.

COMMISSIONER SCHIFFER: What's the advantage of putting that in?

ACTING CHAIRWOMAN CARON: Deal with it when it comes up. I mean, I do think you have a --

MR. WILEY: It was a statement that the committee felt very strongly about. So at their direction we put it in. If you wish to take it out we can. I just want some direction here.

COMMISSIONER SCHIFFER: The only strength is if, you know, somebody would try to do something without a permit, this would be a way to punish them. But we -- Jeff's right, we get them some other place.

MR. WILEY: Well, the situation that --

MR. KLATZKOW: Send the van after them.

MR. WILEY: Let's use the illustration that you mentioned and it does hit home --

COMMISSIONER SCHIFFER: The garage --

MR. WILEY: -- the garage, where they convert the garage into living space --

COMMISSIONER SCHIFFER: And now it's below.

MR. WILEY: -- without a permit. And it is below the base flood elevation.

For them to be able to clear up the code violation, they would come seeking a variance to the Board of County Commissioners. The Board could say yes, we understand the situation, okay, and they would approve it.

This would preclude the Board from doing that. They would have to hold tight to the line that you inappropriately modified your structure. Whether we want to have that strong a restriction is the question.

COMMISSIONER SCHIFFER: And wouldn't that come about when they're actually trying to remedy the situation that they enclosed the garage without a permit? So they start with that. And that's one big problem why people shouldn't enclose the garage, because normally the builder sets it right at the flood criteria of the house. And in the old days the garage had to have that step down.

MR. WILEY: Yes, sir. You can bring it up to code for wiring, things of that nature, but you really have difficulty with this. If you put that stipulation in, it would preclude it from being acceptable. They would then have to take those improvements out and turn it back into the garage as was originally designed.

MR. KLATZKOW: Can you apply for a variance, Bob, for old construction, or just new construction?

MR. WILEY: Basically you apply for the variance for new construction you're proposing. If you do have something that is deemed to be in violation, you could apply for the variance, yes, sir, you could. We rarely see it. Mostly it is for new construction, the applications that I'm aware of. But in this particular situation, if you were cited and it was found that your garage floor was below BFE --

MR. KLATZKOW: Or just say a variance may be issued for old construction or existing construction.

MR. WILEY: It says a variance may be issued for new construction and substantial improvements. The decision is was that a substantial improvement to your house when you converted your garage.

COMMISSIONER SCHIFFER: And the clause below says that if you did that conversion without a permit, don't come to us, you're --

MR. WILEY: You could not seek a variance for relief from the requirement to elevate that up. So basically that would say you'd have to go in your garage and bring the floor elevation -- living space now, since it's no longer a garage -- bring your floor elevation up. It would not require you to not use it for living space, but you would have to raise the floor.

MR. KLATZKOW: Just for clarity, are we allowing after-the-fact variances?

MR. BELLOWS: That's what that seems to prohibit.

MR. WILEY: This is pretty much what this is prohibiting. That's what this is doing is prohibiting an after-the-fact variance.

MR. KLATZKOW: So if you've got existing structures, you can't get the variance.

MR. WILEY: That's what this would preclude.

MR. KLATZKOW: Unless you're substantially altering it, in which case it's like new construction.

COMMISSIONER SCHIFFER: If you were applying for a permit to enclose your garage and you didn't want to raise the floor, you would come into this permit process and if you're not that big a site, you can do it.

MR. WILEY: That would be correct.

COMMISSIONER SCHIFFER: I mean, you know, let's not come up with ways to reward people for enclosing the garages. I mean, people hire people to do it correct and they tend to raise the floor. So there's no reason to go out of our way to make it easy for somebody not to do it right.

MR. WILEY: The question is do you want it to state that here?

COMMISSIONER SCHIFFER: I agree with Jeff, it goes without saying here.

MR. WILEY: But do I leave it in or I take it out?

COMMISSIONER SCHIFFER: Well, I think, you know, the biggest point Jeff made is we don't have control of all the permits. So, you know, we live in a world where you're guilty until you can prove yourself innocent on the permit problem. So when you're in that hole, how can you have a statement like that fairly?

I mean, this is the only place in the legal system where you have to prove your innocence. And if we have a county that lost a bunch of records, that doesn't make that any fun. So I would recommend taking it out.

COMMISSIONER AHERN: I agree.

ACTING CHAIRWOMAN CARON: Taking it out?

COMMISSIONER MURRAY: You can argue an affirmative defense if the county doesn't have your records.

COMMISSIONER SCHIFFER: Well, then we have an unnecessary argument. So let's take it out for that reason.

You know, when Code Enforcement -- I've seen Code Enforcement's hearings about people enclosing the garage. I've never heard them discuss the flood elevation. I don't even know if they look for it. That would be the best example of where you would have been eligible and you're not, so --

MR. FRENCH: In order for them to be able to get a C.O. on that if they did unpermitted work, they're going to have to bring up the finished floor elevation anyway.

COMMISSIONER SCHIFFER: Right.

MR. FRENCH: And there is an affirmative defense as well as an unpermitted work or permit after-the-fact process in place, and the Board has addressed that in the past in our fee schedule.

So it makes no difference simply from the permit process in regard to this. We have already addressed this within the -- as far as the building code goes. But that would only be for those areas with defined flood elevations.

Now, in the Estates years ago when they were undetermined, there was no way to make that determination. If someone enclosed their garage they did so without a flood elevation certificate, because it wasn't required.

COMMISSIONER SCHIFFER: But Robert, didn't the crown of the road measurement exist for a long time?

MR. WILEY: It has existed for a long time.

COMMISSIONER SCHIFFER: So they had a regulation back then.

COMMISSIONER AHERN: Eighteen or 24 inches above.

MR. WILEY: Which is still the language today.

COMMISSIONER SCHIFFER: Right. But I mean, it wasn't like they were in no regulation land.

COMMISSIONER MURRAY: I have -- if you want to add to this craziness, under F it says the issuance of a variance to construct a structure below the base flood elevation will result in increased premium rates, increased premium rates, for flood insurance up to amounts as high as \$25 per \$100 dollars.

Facing that, I mean, first of all it says you can get a variance by that. Should you get a variance you're going to pay the piper in your insurance costs. But we have rules that say you can't build, you can have it below the base flood elevation. So tell me where I am on that.

MR. WILEY: Okay, let me explain the situation. And I cannot tell you where, I cannot tell you the who, but I will describe the situation.

A few years ago an owner chose to build a house. He sought and obtained a variance to build the house below the base flood elevation. And he was fine with that. He even got his letter of notification.

The issue really came to light when the next person bought the house. That person's flood insurance policy exceeds \$40,000 per year. They found that out after they closed. But they had an approved variance, which did meet the criteria. Small lot size, other adjacent houses. There was nothing the new owner could do about it.

So that shows you the impacts that variances can have down the road also.

But let's go back up to the other one. No variance issued for unpermitted work, is it the consensus to strike that or leave it? So I know what to do.

COMMISSIONER AHERN: Strike.

COMMISSIONER SCHIFFER: Strike.

ACTING CHAIRWOMAN CARON: You want to strike it?

COMMISSIONER MURRAY: I see -- if I have it correctly, if something wasn't permitted, it gets caught by code or some other fashion. They say bring it up to code. And then I don't think it's a variance anymore, it becomes a permanent.

MR. BELLOWS: They'd have to get after-the-fact building permits then meet the code requirements. But if they don't want to meet code requirements in regards to base flood elevation --

COMMISSIONER MURRAY: But don't we have one Jim Dandy expensive penalty if they don't want to meet code requirements?

MR. BELLOWS: In regards to the flood elevation. Then they come in for the variance.

COMMISSIONER SCHIFFER: Just the cost of the variance is penalty enough. I mean, it's not an easy process. But they could still come before the Commission and be denied the variance too, based on the circumstances.

MR. FRENCH: If they seek voluntary compliance, it's no different than a new permit coming forward. The only time that you would find that it would be punitive is if there was a finding against them by the Code Enforcement Board or the Special Master. And you're absolutely right.

COMMISSIONER MURRAY: Yeah. And they'd be -- assuming they could have flood insurance they'd be getting a double or triple whammy because they'd be fining them and they would be paying an extraordinary premium.

MR. FRENCH: That's right.

COMMISSIONER MURRAY: I'm not sure that that has any real clear relevance then, no variance shall be issued for unpermitted work. I think it's a statement of fact that is already understood, correct? And it's in our LDC that way, is it not?

The key question I guess is in this particular ordinance do we want to cite issues that are clearly understood or hopefully clearly understood within the realm that we normally work in? Which is land use planning and zoning and so forth.

I don't know. I could have it taken out of there. I can't see a downside if we take it out of there, that's my problem. I'm hoping somebody can tell me I'm wrong.

ACTING CHAIRWOMAN CARON: Well, this is new language. It's not been a problem in the past. I don't see the need for it. I think we've been handling these things right along, and handling them well, and not approving a lot of variances for things that are unpermitted. I mean, obviously we're just not doing that. I mean, I can't even think of an example where that's happened.

COMMISSIONER MURRAY: I think it should be removed.

COMMISSIONER HOMIAK: I think take it out.

COMMISSIONER MURRAY: It's nice from an education point of view, but I don't see that it proves anything.

ACTING CHAIRWOMAN CARON: If one comes by us in another month, though, I'll be having a fit.

MR. WILEY: Okay, continuing on then.

Are there any more questions between now and the end of the ordinance?

COMMISSIONER SCHIFFER: I'm done.

ACTING CHAIRWOMAN CARON: Are you done?

COMMISSIONER SCHIFFER: I'm done. Unless there's something in here about lunch, I'm done.

ACTING CHAIRWOMAN CARON: What about this side of me? Anybody else have any questions? Mr. Murray, Ms. Ebert, Ms. Homiak?

MR. WILEY: Now, were there questions related to the changes from your first hearing where we referenced them within the memo that was attached to this one? And then, again, I apologize for whatever happened to that word document. I have no idea why the paragraphs disappeared, but they weren't intended to. So we'll go back and figure out what happened there.

ACTING CHAIRWOMAN CARON: Well, when you bring this back, you'll have corrected that, number one.

MR. WILEY: Right, right.

ACTING CHAIRWOMAN CARON: And, yeah, then we'll have all of this --

MR. WILEY: I just want to make sure that the changes that were made for this memo follow the direction of the Planning Commission.

COMMISSIONER SCHIFFER: When you come back, you can add the new ones today to that list.

MR. WILEY: I will, yes, sir.

ACTING CHAIRWOMAN CARON: I didn't notice any. Did anybody notice any issues with the ones that we had done earlier the last time around?

COMMISSIONER MURRAY: No, no, I was trying to think if we had any.

ACTING CHAIRWOMAN CARON: I didn't. The notes I had, I didn't notice any problems.

All right. You're good to go then, Robert. You've got your next round.

***And do we have any new business? And the public is obviously clamoring to give us comment. So do I have a motion to adjourn?

COMMISSIONER AHERN: Motion.

COMMISSIONER SCHIFFER: Second.

ACTING CHAIRWOMAN CARON: All right. So moved.

We are adjourned.

There being no further business for the good of the County, the meeting was adjourned by order of the Acting Chair at 1:08 p.m.

COLLIER COUNTY PLANNING COMMISSION


DONNA REED-CARON, Acting Chairman

October 21, 2010

ATTEST:
DWIGHT E. BROCK, CLERK

These minutes approved by the Board on 11/18/2010, as presented ✓
or as corrected _____.

TRANSCRIPT PREPARED ON BEHALF OF GREGORY COURT REPORTING SERVICE, INC. BY CHERIE'
NOTTINGHAM