

April 1, 2010

TRANSCRIPT OF THE SPECIAL MEETING OF THE
COLLIER COUNTY PLANNING COMMISSION
LAND DEVELOPMENT CODE
Naples, Florida
April 1, 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 SPECIAL SESSION in Building "F" of the Government Complex, East Naples, Florida, with the following members present:

Chairman: Mark Strain
Donna Reed-Caron
Karen Homiak
Paul Midney
Bob Murray
Brad Schiffer
Robert Vigliotti
David J. Wolfley

ALSO PRESENT:

Heidi Ashton-Cicko, Assistant County Attorney
Susan Istenes, Zoning Directors
Ray Bellows, Zoning Manager

CHAIRMAN STRAIN: Okay, good morning, everyone. Welcome to the April 1st meeting, continuation of the Land Development Code Amendments.

For today's meeting we will need a -- you'll have to call roll again, Mr. Vigliotti, if you don't mind.

COMMISSIONER VIGLIOTTI: Commissioner Schiffer?

COMMISSIONER SCHIFFER: I'm here.

COMMISSIONER VIGLIOTTI: Commissioner Midney?

COMMISSIONER MIDNEY: Here.

COMMISSIONER VIGLIOTTI: Commissioner Caron?

COMMISSIONER CARON: Here.

COMMISSIONER VIGLIOTTI: Chairman Strain?

CHAIRMAN STRAIN: Here.

COMMISSIONER VIGLIOTTI: Commissioner Vigliotti is present.

Commissioner Murray?

COMMISSIONER MURRAY: Here.

COMMISSIONER VIGLIOTTI: Commissioner Wolfley?

COMMISSIONER WOLFLEY: Here.

COMMISSIONER VIGLIOTTI: And Commissioner Homiak?

COMMISSIONER HOMIAK: Here.

CHAIRMAN STRAIN: Okay, we had a time certain starting point for this meeting to be 10:00, most particularly because of the shoreline calculation issue. We will not discuss that prior to 10:00. We'll take a break at 9:45 and be back at 10:00 to start that discussion.

There are two other items on that agenda for today that we scan discuss now but we can't vote on until after the 10:00 meeting starts.

So with that in mind, I'd like to go right into the two other items and see if we can get those out of the way and where our concerns are.

The first one would be in the book four packet. And it's number -- it's on Page 93. That was the last large packet we received. And this is the item on fences and walls.

Now, Ray, I'm going to kind of put you on the spot without Susan here. Are you aware of what we sent this back for last time so you can kind of brief us on it and we can go from there, or not?

MR. BELLOWS: I have some of that information. And John's here. I believe we are ready.

COMMISSIONER SCHIFFER: Mark?

CHAIRMAN STRAIN: Yes, sir, Mr. Schiffer?

COMMISSIONER SCHIFFER: Wasn't it we started reviewing that and didn't we get hung up on the -- right at the end on the sound walls for the roadways? I mean, we went through everything but that.

CHAIRMAN STRAIN: Well, that's what I want to make sure, because the new version that was sent to us had a bunch of highlights on it.

COMMISSIONER MURRAY: Yes, it does.

CHAIRMAN STRAIN: And I've been through it. I don't have any problems with the highlights. They make corrections on section references. And I know we talked about things like blight and crossing that out, and all that's been done.

I want to make sure that the commission has a handle on everything they asked to be changed. And besides what I knew about. And then we'll get into your sound walls, I guess.

COMMISSIONER SCHIFFER: Because I don't think -- I didn't review the new version. I'm still on -- they sent us that it's a packet for Page 93, so --

CHAIRMAN STRAIN: It's what?

COMMISSIONER SCHIFFER: I mean, the agenda that they sent out yesterday said that it's -- or the day before, packet four, 93, so that's essentially the old one. So I guess there was a new one that was supposed to be the same as this; is that right?

CHAIRMAN STRAIN: Well, no, the new one's got a series of highlighted areas that have changes on them. I can let you see mine real quick. I don't have any notes on mine, so it --

COMMISSIONER SCHIFFER: John might have some back there.

CHAIRMAN STRAIN: Oh, okay.

They sent it out by e-mail, I believe, rather late. So that may be why you didn't get a copy.

John, are you looking for the fences and walls completed new version?

MR. KELLER: You should have it.

CHAIRMAN STRAIN: You're going to have to come up to the mic if you're going -- Mr. Schiffer, doesn't -- Brad, let me give you mine, you can --

COMMISSIONER SCHIFFER: Well, I read through the one that was on the Internet, so I'm not worried about that. But John was going to bring down copies today, that's like maybe what I'm --

CHAIRMAN STRAIN: Okay.

COMMISSIONER SCHIFFER: If he didn't --

CHAIRMAN STRAIN: We'll wait and see if he did.

Did you -- by the way, Brad, did you get the rewrite of the temporary use section?

COMMISSIONER SCHIFFER: Yes, I got that. I reviewed that too.

CHAIRMAN STRAIN: Okay. So that one -- well, then --

COMMISSIONER SCHIFFER: That's a quick one. Why don't we go to that one?

CHAIRMAN STRAIN: Yeah, I was going to say, let's just move to that one and we'll go back to this one.

Just thumb on a few pages past where we started with the last one to Page 105. That will be on your packet for -- that's the rewrite of the temporary use section. Again, there's some changes in there, mostly to references. That seemed to be the problem last time, some of the citations didn't seem to be consistent with what it should be.

I've been through it myself, and the issues I had are corrected. Does anybody have any other issues in the temporary events?

COMMISSIONER SCHIFFER: The only question I had was -- and it's on Page 111 of the packet -- or I'm sorry, starts on 111, but it's packet four. And it's on Page 12. And that's whether these signs are per tenant or per --

CHAIRMAN STRAIN: Hold off just a second.

COMMISSIONER SCHIFFER: -- per shopping center.

CHAIRMAN STRAIN: I think we need to go down and have a half hour break for coffee, the way it looks. We're not going to accomplish anything right now, apparently.

MR. CASALANGUIDA: I have the old one and the new one on the temporary use. And if you want to reference --

CHAIRMAN STRAIN: Well, I'm not sure everybody else has.

John, can you come to the mic. for just a minute so we can ask you something.

Do you have hard copies of the completed packages for both fences and walls in the temporary use section?

MR. KELLY: I do. You should already have copies.

CHAIRMAN STRAIN: Do you have some with you?

MR. KELLY: I do.

CHAIRMAN STRAIN: Okay. So if we take a break, you can distribute those to everybody so we're working from the same pages then? John?

MR. BELLOWS: For the record, we'll do that.

CHAIRMAN STRAIN: Okay, I'll tell you what, let's take a half hour break, we'll resume at 10:00. We'll start with shorelines. And in the meantime, during the break, please get documents that you don't have from John and read them during the break. And we'll kick in at 10:00.

So with that, we're off for half an hour.

(Recess?)

CHAIRMAN STRAIN: Okay, good morning, everyone. We're back again from our rather long break to make sure Cherie' was raring to go when we got back so she could type fast.

We will continue with our hearing on the Land Development Code Cycle 1. We have a 10:00 time certain for an item that's been called the shoreline calculations item. And we'll move right into that.

Anybody that's here that wants to speak, we'll start with the speaker slips, but I will ask afterwards if anybody hasn't signed a slip they're still going to be able to speak. So if you forgot, don't worry about it, we'll still get to you.

And Steve, I guess it's your presentation to start off.

MR. LENBERGER: Good morning. For the record, Steven Lenberger, Engineering Environmental

Comprehensive Planning and Zoning Services Department.

The amendment from before you is to clarify in the code how the county will treat shoreline within conservation easements when calculating the number of wet slips, according to the Manatee Protection Plan.

I guess the best way to start would be on the visualizer I put on an exhibit, and it basically shows two types of scenarios: The one on top being a shoreline which is within a conservation easement, on the edge of it, and part of the shoreline not within a conservation easement.

The second example below it, the shoreline which I highlighted in yellow so you can see it easier, is outside the conservation area, and so is where the docking facility is.

In the case on the lower one, all the shoreline is not within a conservation easement. And therefore the total length of shoreline would be used in calculating the number of wet slips.

This issue is to clarify that if a shoreline, and in respect to the upper diagram, is within a conservation easement, if that portion should be excluded from the calculations in calculating the number of wet slips according to the Manatee Protection Plan.

These are just two examples. If it were used and excluded, we provided some calculations here, that the total length of shoreline is 1,000 feet, 600 on the vertical and 400 on the roughly horizontal.

If we assumed a moderate rating according to these examples, the number of wet slips, if the conservation easement was excluded for the example on top, would be 40 wet slips. If the area was outside the conservation easement or if the conservation easement shoreline could be used in the calculation, then the number of wet slips would be 100 wet slips.

I could give you a little bit of a history of this, if you'd like.

CHAIRMAN STRAIN: Steve, I think it would be important to discuss both of the versions of this shoreline calculation. There was one in 2007, it's going to come up for question, we might as well talk about it, and there's one currently that differs from that previous one. I'd like to understand why the first one was provided, what we've been historically doing, and how that one got generated, and then how the second one got generated as a result of the first one, if they are connected.

MR. LENBERGER: Be glad to do that.

The issue -- this particular amendment was directed by the Board of County Commissioners for staff to address this in the code and how we will treat the length of shoreline within a conservation easement.

Our previous supervisor has told several applicants that they cannot use shoreline within a conservation easement when calculating the number of wet slips.

We have not seen any examples, and we know of no examples where that's actually be applied. Okay, it's not been applied. But it's been told to a number of applicants.

So staff consulted with the County Attorney's Office and they also sought the guidance of the Florida Fish & Wildlife Conservation Commission. And the first amendment was to exclude the length of shoreline within a conservation easement in calculating the number of wet slips.

The amendment was denied by the Board of County Commissioners, and a month later it was rescinded and the Board of County Commissioners directed staff to bring back the amendment.

They also directed staff to meet with stakeholders to discuss the issue, see if the issue could be resolved.

Stakeholders were at odds and apart on the -- in different opinions on the topic. And they had -- we had two stakeholder meetings. And I wasn't involved at that particular point.

So in order to attempt to resolve the issue, the staff took the issue to the Environmental Advisory Council and that was -- I'd have to check the date. That was on July 2nd, 2008. The EAC heard both sides of the issue and they voted to include the length of shoreline within conservation easements in calculating the number of wet slips.

So what staff is did is we held a stakeholders meeting -- I held a stakeholders meeting, along with my other stakeholders meetings this past year -- and basically presented an amendment consistent with the EAC's recommendation. And that is the recommendation we have before you today. There was a little bit of language change by the Development Services Advisory Committee. I can point it to you, if you'd like. But basically the language says that you can use the shoreline within a conservation easement.

We did -- back in May I did receive correspondence from the Florida Fish & Wildlife Conservation Commission, and they had no comment with regards to the amendment the way we proposed it this year. So there was no objection on their part.

The way the conservation -- the Florida Fish & Wildlife Conservation Commission determines what's densities is they include shoreline within a conservation easement in calculating the number of wet slips if the shoreline -- if the conservation easement is for vegetation management, basically a preserve.

If the conservation easement would allow boat docks and be detrimental to wildlife, allow ditching and diking, then they would exclude the length of shoreline in calculating the number of wet slips.

So the amendment before you today excludes -- includes -- you can use the length of shoreline within a conservation easement in calculating the number of wet slips. The previous amendment did not.

The previous amendment, which was e-mailed to you, also had other issues with regards to public facilities, and the County Attorney Jeff Klatzkow had produced a memorandum to the County Commissioners back when that item was heard, explaining that the issue of public access could be pursued by the board if they wished to.

That's basically the chronology and the history.

CHAIRMAN STRAIN: Okay. Mr. Murray?

COMMISSIONER MURRAY: Steve, two words that I'm trying to remember, diking and docking (sic). What -- you use those with the Florida Fish & Wildlife people. They reserve that. Apparently they say if these things exist you cannot count the shoreline.

I didn't get a chance to really go through this new document. Does that now -- do we include that as well as a condition in the plan?

MR. LENBERGER: Unless the conservation easement explicitly prohibits using the shoreline in making the calculations, we allow them to do that. That's consistent with how the state's looking at it. And I can read here how the state reviews that.

COMMISSIONER MURRAY: Maybe I didn't understand you then. Because I thought you -- what you did is you indicated that the state says it's okay to do this as long as it's not for what, I forgot the term you used, the shoreline grasses or whatever -- could be mangrove for all I know.

But what I'm driving at is that it seems that there was a means that the state could use to say you might have qualified but you don't in this particular case. Am I correct in my interpretation of what you said?

MR. LENBERGER: Well, what the Florida Fish & Wildlife Conservation Commissioner says, and I'll read it to you --

COMMISSIONER MURRAY: Thank you.

MR. LENBERGER: It says, where the conservation easement prohibits in-water structures, the length of shoreline within the conservation easement is excluded from the calculations and thus the number of allowable wet slips are reduced in proportion to the length of excluded shoreline.

State's def. indicate that in-water structures can be characterized as construction and operation of future docks. Wet or dry slips, piers, launching facilities or structures other than existing on the property or activities detrimental to the drainage, flood control, water conservation, erosion control, soil conservation or Fish & Wildlife habitat preservation, but not limited to ditching, diking, dredging --

COMMISSIONER MURRAY: Ditching and diking, yeah. So we follow that then is what you're saying. We're controlled by that; am I right?

MR. LENBERGER: If that were the case, then the conservation easement would be excluded.

COMMISSIONER MURRAY: So it will become a case-by-case basis almost every time, correct, on the evaluation of the property?

MR. LENBERGER: For the county, we would look at the conservation easement being counted towards the allowable number of wet slips, unless the conservation easement explicitly says it couldn't be.

COMMISSIONER MURRAY: That's what I wanted to have clear in my mind. Thank you.

CHAIRMAN STRAIN: Anybody else?

COMMISSIONER SCHIFFER: I do.

CHAIRMAN STRAIN: Mr. Schiffer?

COMMISSIONER SCHIFFER: Hi, Steve. Couple of questions. We're talking about going on G, is that right, Mark, on the page by page, or should I wait for that?

CHAIRMAN STRAIN: Well, I mean, the only changes are on the last paragraph, are on G, so I figure we'll just go straight to that and that's where the discussion is. Unless you have other questions.

COMMISSIONER SCHIFFER: No, no, that's where I am.

CHAIRMAN STRAIN: That's all we're -- I wasn't going to go page by page.

COMMISSIONER SCHIFFER: Okay. In G, why did we choose the interface of land in the mean high water where everything else in the manatee is low water? Was there an advantage or disadvantage?

MR. LENBERGER: The mean low water is usually how the shoreline is calculated. We went through this with our surveyor in trying to determine how to define shoreline.

The mean low water is for adequate water depth, not for shoreline calculation.

COMMISSIONER SCHIFFER: But in this -- so we want to use high water. Does that give us more or less shoreline, do you think?

MR. LENBERGER: That I don't know. I guess it would depend on the contour of the shoreline.

COMMISSIONER SCHIFFER: The other thing is, is the standard survey techniques, how would -- a lot of these shorelines are going to be in mangrove, aren't they? I mean, so like you draw nice and right at the edge of the CON district, but it's probably going to be within it somewhere, right? How do they determine the shoreline?

MR. LENBERGER: I didn't ask the specifics. We worked with our surveyor in preparing the language, and that was the language they created.

COMMISSIONER SCHIFFER: Okay, so we don't. Or was there somebody here going to testify to that, or -- how you would determine a shoreline inside a mangrove.

MR. LENBERGER: I'm not a surveyor, I can't answer that question.

COMMISSIONER SCHIFFER: Okay.

The other thing, in wording this, you word it where that you can use it; unless you explicitly say you can't, you exclude it. Why don't we have it where you can use it if we say you can have docks or use it? In other words, why do we choose the default option that it has to be expressed that you can't use the shoreline versus it has to be expressed that you can use the shoreline?

MR. LENBERGER: I had spoke to a few consultants about that. You don't normally draft a conservation easement saying you can count the shoreline towards wet slip densities. That's not a standard practice. I know that was in the previous amendment that had gone in 2008, but the way the -- the way it's written is only if it's specifically excluded. So that means the issue is addressed upfront that it wouldn't be allowed to count.

COMMISSIONER SCHIFFER: Well, do we have agreements where we have excluded it, or we have allowed it? I mean, up until this point it's probably been silent, hasn't it?

MR. LENBERGER: I believe so. I haven't seen any.

COMMISSIONER SCHIFFER: Okay. So would silent -- so this clause is going to be important for the grandfathering of rights.

So if somebody had an easement placed and had no intention to use that or had no intention for docks or anything, we're giving them that right when wouldn't it be best if we went back and looked at the hearings and looked to see if people had wanted to use this area for docks for calculation?

And you're saying you have no recollection either way, so it wouldn't hurt us to flip that to make it where they're -- if they expressed that they want to use the shoreline. So that when we're in the hearings, we're discussing the use of that shoreline. And the applicant would want to discuss that. If we're silent, we -- that right is still there, unless we bring it up ourselves to not use the calculation.

MR. LENBERGER: The Manatee Protection Plan doesn't address when you have to construct your boat slips. You know, A development can go in for multi-family, for example, and not build any boat slips. Be required to put a conservation easement over preferred habitat, which very well would be mangroves on a natural shoreline, but it doesn't preclude them from coming in later to address wet slips according to the criteria in the Manatee Protection Plan.

COMMISSIONER SCHIFFER: Up until now, you know. But with this definition it will become part of the conversation whether we're going to calculate it or not. You can't build docks in the conservation easement, can you?

MR. LENBERGER: Not within the preserve, that's correct. They would be located outside of the preserve.

COMMISSIONER SCHIFFER: Okay. So, I mean, it's not like somebody would want that shoreline dimension to build a dock in a conservation easement.

So I would assume sitting here in prior applications that if they have a conservation easement that they weren't intending to use that for building docks. And to all of a sudden now give them by default the ability to calculate that versus have them during that hearing discuss the fact that I'd like to build docks in the future and thus

would be using this calculation, wouldn't it be better that way?

MR. LENBERGER: Well, like I said, the Manatee Protection Plan doesn't say when you have to address the issue. I mean, you as a board, when you hear these projects, could address the issue upfront.

What we're saying is projects out there which would like to have boat docks which already have conservation easements, we're saying that yes, it could be addressed, it could build boat docks in accordance with the criteria of the Manatee Protection Plan, and it wouldn't exclude them.

I think the issue should be addressed -- whenever it is addressed, that's when you would determine if future docks beyond that point could be used from the conservation easement.

COMMISSIONER SCHIFFER: And I think from this point on it will be addressed. But my question is the way it's worded now the default is that if it was silent through the hearing, you could use a shoreline calculation.

MR. LENBERGER: That's correct.

COMMISSIONER SCHIFFER: Where I'd rather have it -- it would have to be brought up in the hearing to use that calculation. In other words, that -- if a developer does intend to do that, it's not like he goes through the hearing quiet. He has to, you know, request that as part of the hearing so that we know that that's what they want.

And it's just the -- just wording what you have here the opposite. We don't need to belabor that.

The shoreline doesn't necessarily have to be on the edge of the easement, correct? Odds are it won't be if it's a mangrove or something. I'm not sure still how you're going to find the shoreline on the mangrove.

But this last statement that says excluding the use of the easement shoreline. Do you think that should be rewritten to be shorelines within the easement? Your drawing gives that lower example; essentially that shoreline is outside the easement.

But do you think practically the shoreline is going to be -- also share the perimeter of the easement? We can -- I'll wait till I see some people that will probably testify that could answer that better.

I think -- let me just look at my notes. Yeah, I'm done, thank you.

CHAIRMAN STRAIN: Okay, Mr. Murray?

COMMISSIONER MURRAY: I haven't had occasion here to see where in some instances there were, shall we say, a boardwalk was traversing or boring, if you will, boring through mangrove to reach a point where docks could be operated. If we were to use your example right there where -- would we consider going through the manatee protection, that easement area that's the first one on your sheet? If we were to have a boardwalk going through there out past the manatee protection area, would that be legitimate under this scenario?

MR. LENBERGER: Yes, it would. The boardwalk transversing a preserve to the water is an allowed use in the preserve.

COMMISSIONER MURRAY: It is an allowed use.

So if the situation were correct, it is possible to -- then you would then count that shoreline for the purpose of counting additional boat dock or slips; would I be correct in that?

MR. LENBERGER: I'm not sure I understand your question. The boardwalk providing access to the water or maybe to docks would have no effect with this amendment as far as calculating wet slips, so --

MS. MURRAY: I was just trying to figure any way that the best intent could be defeated. We want to be sure we try to qualify everything. And it won't be the first time I poked into an area that turned out to be a dead end. But I'm trying to figure ways that while your language intends to control everything that we don't have a problem.

I was just focusing on the idea that in that first illustration, if you put the docks -- if you were to put the docks outside of that easement area but you could traverse it, there was -- the key question for me was you would then be open to counting the shoreline for a number of slips; am I correct on that?

MR. LENBERGER: If the shoreline as we have defined here would be where the mangroves are, an example brought up --

COMMISSIONER MURRAY: Right.

MR. LENBERGER: -- if that conservation easement went to that shoreline, then it would be within the conservation easement.

The amendment here, we're letting them count that towards calculating the number of wet slips. Unless the conservation easement specifically says they can't.

COMMISSIONER MURRAY: Okay. I just want to be absolutely sure that we don't have a way around it, and this would be the time to try to find that. I accept your statement, thank you.

CHAIRMAN STRAIN: Ms. Caron?

COMMISSIONER CARON: Yeah. Steve, Bill Lorenz, who heads the environmental department, or at least has for a number of years, wrote an e-mail to me and -- because I had asked him a question about this very issue.

And his response to me was, and I'm going to quote, once we receive an application, we will review the information and make the determination of the site reading based on the applicable data. We will also determine the length of shoreline not within a conservation easement to then determine the maximum allowable number of wet slips.

So earlier you said that this had never been applied. Well, I think if I read what Mr. Lorenz said, it apparently has been applied.

MR. LENBERGER: We have no projects that we have seen or know of where it has been applied.

COMMISSIONER CARON: Okay. So this was something that had always obviously been the intent, because it was the intent of the director, but no -- it just never came up as an issue; is that what you're telling me? Nobody ever came forward and said now we want to use all our conservation?

MR. LENBERGER: Like I said, we have not seen any projects, we are not aware of any, and former supervisor was advising applicants that it would not count. When that occurred, when she started telling people that, I don't know exactly.

COMMISSIONER CARON: No, not she, it was Bill Lorenz.

MR. LENBERGER: I understand. And Bill was working with --

COMMISSIONER CARON: And that's who was making that statement.

So according to the language that you have here right now, it says expressly and specifically excludes. Where do you do that on your conservation easement form?

MR. LENBERGER: Conservation easements take different appearances. There is a standard conservation easement produced by the County Attorney's Office to assist us, but that's really a legal question. And where it would be placed in the conservation easement, I would have to defer to the County Attorney's staff.

MS. ASHTON-CICKO: Would you repeat your question?

COMMISSIONER CARON: Well, now what Mr. Lenberger's department would like is for all the conservation easements to expressly and specifically exclude. And I'm asking where on the conservation easement form you do that. There's nothing specific.

MS. ASHTON-CICKO: Right. If the conservation easement didn't provide for it, which our current form does not, then no, it would not be included.

Now, if I may just provide you a little bit of information that you might not have already heard. My understanding from the March 24th, 2007 agenda item that went to the board is that since May of 1995, staff has applied the provisions of the Manatee Protection Plan to exclude the amount of the shoreline when calculating the CE's.

I know that some issues have arisen in the past couple of years, and I can tell you that this particular issue has gone to the board six times from March of 2007 to April of 2008, and they've changed their position each time. The stakeholders don't have a unanimous position on that.

Our office, the County Attorney's Office, recommends that we continue with the current procedure, which is to exclude it unless it's specifically reserved. We are not a proponent to doing an LDC amendment to specify either way.

I think it provides a little bit more control for government if the conservation easement excluded the calculation -- or if it was silent and an owner wanted to add slips, they could request an amendment to the conservation easement. You also have to keep in mind that you've got conservation easements that are both the state and the county. So how the state calculates their portion, the county doesn't necessarily have to follow that procedure.

COMMISSIONER CARON: Right, we can do something different from the state as long as it's stricter than what the state -- we can't do anything less than what's required by the state.

MS. ASHTON-CICKO: As long as the state doesn't assert exclusive jurisdiction --

COMMISSIONER CARON: Right.

MS. ASHTON-CICKO: -- then yes, we can do something different than the state.

COMMISSIONER CARON: These conservation easements, they're pretty easy to change, aren't they?

MS. ASHTON-CICKO: Well, currently there's a standard form that's used for conservation easements that

does not address the shoreline. And that does not go to the Board of County Commissioners since it's a standard form.

In the future, if you start getting into the calculations of shorelines that may, you know, require some board input if it's not addressed earlier in the zoning or permitting process then, you know, it might have to go to the Board of County Commissioners for consideration.

COMMISSIONER CARON: The current form that everybody uses says after the wheres and wherefores, number two says that no building, structures or impediment of any nature may be constructed, placed or permitted on, over or across an easement property. No dikes or fencing detrimental to drainage, flood control, water conservation, erosion control or fish and wildlife habitat.

I mean, I think we've always been pretty consistent in this county of the fact that a conservation easement should be just that, it should be there for conservation and not for building purposes. Once people grant conservation easements, for the most part they've already been given other things in exchange for that. They've been given density in exchange for that, they've been given whatever else might come up.

So it would seem to me that also allowing this -- the way it's written here, you know, allows for some pretty serious double dipping.

I think the language that was presented last time, and believe me, it was not my favorite language, is certainly better than what's presented here. I also think again we're not reading our code correctly if we -- you know, the way this is worded versus the way it was worded before, so --

CHAIRMAN STRAIN: Mr. Midney?

COMMISSIONER MIDNEY: Yeah, I have a question.

If our legal staff is advising us to exclude conservation easements, then why is staff not going with what the legal staff is recommending?

MR. LENBERGER: Well, initially we went with the recommendation of the EAC. But this is the first time I've heard the County Attorney's position on it and I had asked them before verbally.

MS. ASHTON-CICKO: The last direction of the board was to come with a proposal like this, so I think staff is following through on that procedure.

COMMISSIONER MIDNEY: But I would just think that, you know, if it was me I would follow what my legal advisers recommend.

CHAIRMAN STRAIN: Any other questions of staff at this point?

(No response.)

CHAIRMAN STRAIN: Okay, Steve, in your presentation you talked about the fact this has never been applied, and what has been applied I think we found conflicting discussion on that. I think you said it was attempted -- two people had asked and they were told it didn't count, but the County Attorney's Office has told us basically we have applied it through the Manatee Protection Plan for some time and it's been excluded. Are you aware of that?

MR. LENBERGER: No, I'm not.

CHAIRMAN STRAIN: Okay. You said the EAC voted to include the length of shoreline. What was the vote on the EAC, was it unanimous?

MR. LENBERGER: That was 6-1.

CHAIRMAN STRAIN: Okay. The Fish and Game Commission, you said there was no objection to this language, but they rely on the explicit language of each particular easement on a case-by-case basis; is that true?

MR. LENBERGER: Yes.

CHAIRMAN STRAIN: The previous amendment to the Land Development Code that went to the BCC that did not succeed, did that go through this panel? I'm sure it did, I just -- and what was the -- did it get there with our recommendation of approval? I can't remember back that far.

MR. LENBERGER: I don't remember either.

CHAIRMAN STRAIN: That's okay.

As far as the shoreline calculation of mangroves, wouldn't that be set by the mean high water mark?

COMMISSIONER MURRAY: Yeah.

CHAIRMAN STRAIN: Do you know?

MR. LENBERGER: Well, the language here is whatever we included in the amendment as the mean high water.

CHAIRMAN STRAIN: Okay. So there is a way to determine where the line falls in the mangroves. And if they're going to have a conservation easement, is it drawn around a solid line or is it drawn around a reference to the mean high watermark, do you know, for shoreline?

MR. LENBERGER: I have seen conservation easements. Most of them follow the shoreline that I have seen, but there may have been others. But now that I think about it, all the ones that I have seen personally have followed the shoreline.

CHAIRMAN STRAIN: So you haven't had occasion to look at one where they followed the mangrove line in any particular way?

MR. LENBERGER: What was the --

CHAIRMAN STRAIN: You said the shoreline. Is that a visual shoreline versus a line within the mangroves?

MR. LENBERGER: We did not address specifics as to how that was drawn in the past, at least that I have known. This amendment here is to try to establish how that shoreline is to be determined.

CHAIRMAN STRAIN: No, this amendment here is to determine how the shoreline measurement impacts the quantity of docks. I don't -- where does it address how the shoreline itself is physically determined?

MR. LENBERGER: I have not -- I personally have not questioned the survey lines. When I get conservation easements they naturally follow the shoreline.

CHAIRMAN STRAIN: Okay, I think we're going to go around in circles on that one, but I understand. The conservation easement, if someone puts one against a piece of property and they want to amend it in the future, what's the process?

MR. LENBERGER: County Attorney's Office should answer that question.

CHAIRMAN STRAIN: Okay. It wouldn't go through the CDES department for amending a conservation easement?

MR. LENBERGER: Yes, it would. And we would send it to the County Attorney's Office.

CHAIRMAN STRAIN: Heidi, do you know what --

MS. ASHTON-CICKO: If they're not using a standard form, then it would go to the Board of County Commissioners for approval.

CHAIRMAN STRAIN: Okay. So every conservation easement out there that would want to amend it if they're not comfortable with their language today would have to go through a public process, whether it be a summary or consent if it's pulled, to get that amendment.

MS. ASHTON-CICKO: Correct.

CHAIRMAN STRAIN: Is it just the Board of County Commissioners or does it go through any lower boards?

MS. ASHTON-CICKO: It might have to go through the EAC. I don't know that it would come through the Planning Commission. If it has environmental impacts, Steve, would you take that to the EAC? I'm not familiar enough with the --

MR. LENBERGER: That's a good question. I would have to defer to my supervisors for that.

CHAIRMAN STRAIN: Anything going forward after this amendment is accepted or not accepted, depending on whatever it comes out as, people writing these easements in the future can write in any language they want or not want, depending on how much they want to weight their contribution as an easement against their rights that they're asking for, or against their I guess uses they're asking for on their property; is that presumably what will happen?

MR. LENBERGER: Could you repeat that, please?

CHAIRMAN STRAIN: Okay. If someone comes in and wants 1,000 units in their uplands property and they've got a bunch of natural mangrove shorelines, and they want to give a conservation easement up that they would happen to have out into the mangroves in the water, in order to get the benefits of that upland development and they were going to put a conservation easement in at that time, they would know by the outcome of this Land Development Code amendment whether or not they need to specifically include language in their conservation easement to address the location or the ability to calculate docks from that future shoreline -- from that conservation easement shoreline.

MR. LENBERGER: Well, this amendment says unless it specifically prohibits it they could count it.

CHAIRMAN STRAIN: Okay. I think the point of my discussion was going forward after today, everybody's going to know what that do in regards to conservation easements. In the past those that have ones that they're -- that are problematic to them, they have the ability to change them by going to the Board of County Commissioners, if they need to, depending on the outcome of today's hearing.

MR. LENBERGER: That's correct.

CHAIRMAN STRAIN: Okay. Do we have a carrying capacity analysis done on boat docks in Collier County?

MR. LENBERGER: Carrying capacity?

CHAIRMAN STRAIN: Well, it's like Nick, when he does his roadways system, he calculates so many cars per dwelling unit and that's based on a zoning calculation of how many the maximum you can have in the county.

I'm wondering, do we know how many boats any particular waterway or estuary can carry as a maximum level of service for that estuary?

MR. LENBERGER: I do not know that. I do know this, that the state recently amended their Manatee Protection Management Plan, and as a result of that they will be looking to the counties and particularly Collier County to amend ours. And we will have to see what the state wants us to do regarding amending our plan.

CHAIRMAN STRAIN: So the only way we can regulate the quantity of boats going through any particular waterway right now is through the Manatee Protection Plan and/or the ability to enforce conservation easements, depending on what they say.

MR. LENBERGER: Well, they are -- well, not all docks are reviewed by the Manatee Protection Plan, so docks which fall below the 10 slip threshold and also single-family, they would also be allowed to have boat docks.

CHAIRMAN STRAIN: Okay. Thank you, Steve, I appreciate the background information.

Anybody else have any questions?

(No response.)

CHAIRMAN STRAIN: I guess we'll go to public speakers. And if everybody on -- whoever's on the speakers list, please come up to one of the mics and -- go ahead.

MR. LENBERGER: I also just received an e-mail, it was late yesterday, I only got it this morning, from Katie Tripp from the Save the Manatee Club, and she wanted me to read it into the record, so I will do so.

CHAIRMAN STRAIN: Might as well do it before we start public speakers. Go right ahead.

MR. LENBERGER: It says: Thank you for the additional information. I had corresponded with her the last couple of days here.

I do have a couple of outstanding concerns that I would like you to share with Chairman Strain and the rest of the Planning Commission prior to their meeting tomorrow morning.

I was unable to locate the e-mail for the chairman, she says.

We do not believe that land in a conservation easement should count towards the calculation of shoreline footage for obtaining slips under the Manatee Protection Plan.

Also, the shoreline definition should include an effective date, counting all existing shoreline as of that date as part of the county's shoreline, but not allowing for the creation of new shoreline.

Or the definition could simply state that no new shoreline is to be created in the county for the purposes of obtaining more slips under the Manatee Protection Plan.

Next paragraph.

In the event that a parcel gets split off, there should be a conservation easement over that parcel to preclude using it against -- using it again in the calculation of shoreline to obtain more slips. This should be part of the Site Development Plan Amendment.

Earlier I had stated -- I indicated to her that if a parcel was split and it had slips, the conservation easement issues, it would be evaluated during the Site Development Plan Amendment process.

She continues to say: The same length of shoreline should not be able to be used more than once for slip calculations.

While I understand that this has not happened to date in the county, it is something that could occur unless the shoreline definition expressly prohibits it. And I believe the county should prohibit it. Thank you for hearing my concerns and sharing it with the Planning Commission. Katie Tripp.

CHAIRMAN STRAIN: Okay, thank you.

Okay, we'll call the speakers. Come up and use either microphone, please say your name for the record. And then when we finish, for those people that have not registered, I'm still going to ask if anybody wants to speak and you'll have the same opportunity as whether you registered or not.

So Ray, you'll start the speakers.

MR. BELLOWS: The first speaker is Lew Schmidt, to be followed by Bill Eline.

MR. SCHMIDT: Good morning, Commissioners. I'm Lew Schmidt. I live in the Vanderbilt Beach area, and I'm a member of the Vanderbilt Beach Residents Association.

I have talked about what I would talk to you about with some of those board members, although I do not have specific direction from the Vanderbilt Beach Residents Association.

I have a couple of concerns about the entire LDC, but I understand that we're looking at specifically paragraph G inclusions or exclusions of shorelines.

But the problem -- to see what the problem is with paragraph G, you have to look at the specifics of the amendment -- or of the LDC.

There are two points that bother me in the LDC. One has to do with density allowances and one has to do with depth.

If you look at the density allowances in this document, for preferred areas it allows 18 boats, up to 18 boats or boat slips per 100 feet. That's a width of five and a half feet per vessel. That does not allow for separation pilings, it does not allow for maneuvering and fendering, and it does not allow for access, walkways. If you made those allowances, it would take three feet away per boat. You would have rowboats. Now, that's unrealistic, but that's what this document offers.

If you go to the moderate, they give you some -- and they give you some reduction to 10 versus 18. But if you go to 10 and you reduce that for the required fendering access and what have you, the boat widths is seven feet. Pontoon boats, modest pontoon boats, are nine feet wide. Those numbers are unrealistic.

Similarly there's a problem with draft. It has two drafts: Four feet or more, less than four feet. Less than four feet can be inches. And in our waterways we do have bodies of water and shorelines that are in inches. We have estuaries, we have lagoons and we have bays. And the shorelines along that define those estuaries, lagoons and bays are the shorelines in question. And the waterways that are defined by those shorelines will have a draft or depth of two feet or less.

So I would suggest that paragraph G needs to include an exclusion for shorelines that defy estuaries, lagoons and bays that have an average draft of two feet or less. You exclude those, it's realistic. Because larger boats could not access those areas anyway. The boats that can access it are canoes, kayaks and row boats. I would suggest that as an alternative or an addition to paragraph G.

I thank you, I'd be glad to answer any questions you might have.

CHAIRMAN STRAIN: Okay, thank you, sir.

Next speaker, please?

MR. BELLOWS: Bill Eline.

MR. ELINE: Coming. At one time I was much quicker.

I'd like to say good morning to all of you. I keep coming to see you. My name is Bill Eline. I've lived in the Vanderbilt Beach area since 1987, and I'm president of the Vanderbilt Beach Residents Association.

I have a simple appeal to you. When you get a conservation area, I think in this county for the good of the county and the good of the neighborhoods, it should be a conservation area and not be able to be used for any other purpose.

We've had cases where conservation areas have been used to get density, and you're now talking about additional boat slips. So I'd really like to see the county stiffen up and say we are going to protect manatees, we're going to protect our wildlife and we're going to protect the serenity of where we live. So that's all I have to say. Thank you.

CHAIRMAN STRAIN: Thank you, sir.

Next speaker, Ray?

MR. BELLOWS: Linda Johnson.

MS. JOHNSON: Hi. This is an unplanned experience, so -- I live in Gulf Breeze, which is closest to the docks, directly across the channel where it's planned. And I'm a Florida native. I've watched the process the

developers use over the years to keep coming back and coming back through each level of government and attempt to manipulate the facts to get their way, and I think I would like to see the board have a little bit of backbone in regard to the conservation easement and help make it as restrictive as possible to the number of boat slips.

There is an incredible amount of wildlife that lives and uses that estuary around the mangroves. I'm a little bit confused, listening to the shoreline here, because it's a mangrove and I know that in the past there's a community called Bay Forest that put a boardwalk some years ago through a long stretch of similar type mangrove, and it does have a very deleterious effect on the wildlife.

It is also a channel that is heavily used already, and to add more boat traffic in there would be very disadvantage (sic) to the wildlife, in addition to just the sheer safety of the numbers of watercraft that go through there.

I think I speak on behalf of many members of the Connor Peninsula, that we're quite dismayed with the number of boat docks that have been suggested. So thank you.

CHAIRMAN STRAIN: Thank you.

Next speaker, please?

MR. BELLOWS: Susan Leach Snyder.

MS. SNYDER: For the record, my name is Susan Snyder. I'm a biologist, educator and author of 150 of your science textbooks.

I came with a different speech than what I'm ending up with, because I didn't realize that the verbiage had been changed so much since the last amendment. So I'm going to dispense with all of that and just talk about the new.

Conservation easement lands are set aside by developers as a type of mitigation. They are native areas that are supposed to be preserved. According to Florida Statutes, Title 7, Chapter 704, a conservation easement means a right or interest in real property which is appropriate to retaining land or water areas predominantly in their natural scenic open agricultural or wooded condition, retaining such areas as suitable habitat for fish, plants or wildlife.

And it prohibits or limits any of eight things. And one of these eight things, which is letter F in the document, quotes activities detrimental to drainage, flood control, water conservation, erosion, soil conservation or fish and wildlife habitat preservation.

Of course the greater the number of wet slips permitted adjacent to a conservation easement, the greater the amount of erosion, soil loss and loss of fish and wildlife habitat, including habitat for manatees.

As you know, there's been a lot of pressure put on the county concerning shoreline calculations, predominantly by the developer we've all been talking about here, the one that would like to put in a huge marina in the Vanderbilt channel: Vanderbilt Partners, a/k/a Signature Communities.

In the past meetings that we've come to, speakers representing that group have included their attorneys, their marine and environmental consulting firm, and self-proclaimed authorities and pseudo-scientists, including the owner of the Vanderbilt Marina. All of these people have personal financial reasons for not wanting an amendment that would limit the creation of a 49 dock marina to only 28 docks.

Please consider carefully how your decision will impact our environment, including the Vanderbilt Channel, the Cocohatchee River where Signature will build its marina. We know it will be there, we just don't know how many boats you'll permit.

In the age of entitlements, I believe the residents and visitors to Collier County are entitled to enjoy the remaining unspoiled natural resources that have not been over compromised by development. Conservation easements should never be used in shoreline calculations for wet slips.

Thank you very much for permitting me to speak to you today.

CHAIRMAN STRAIN: Thank you.

Next speaker, Ray?

MR. BELLOWS: David N. Galloway.

MR. GALLOWAY: Hi. Thank you. Pleasure to be here today. David Galloway. I'm a member of the Vanderbilt Beach Residents Association. However, I'm actually here as a concerned rear-around resident of Collier County.

I live a pretty good distance from this area they're talking about in question, so it doesn't affect me as far as using these areas, but it's an issue of safety and conservation of a very pristine ecological area. It's very unique over there.

As you may know, as of today's date, there have been documented hundreds of manatee deaths during this past season, which could possibly be even many more than what's ever been in any recorded season.

We need to encourage keeping our already conserved conservation areas that have been designated by the county. And if we lose these areas, which we're losing them across the State of Florida every single day, we're not going to have that -- we won't have these areas anymore. Once they're given up, they're gone. We need to preserve this for everyone in the County of Collier County. Not just for the folks that live in this area, but for everyone. Because these areas belong to everyone in the Collier County area. Thank you.

CHAIRMAN STRAIN: Thank you.

Next speaker, Ray?

MR. BELLOWS: The last speaker is Nicole Ryan.

CHAIRMAN STRAIN: Nicole, I can only afford you one minute today.

MS. RYAN: I can talk really, really fast.

CHAIRMAN STRAIN: It's April 1st. Go ahead.

MS. RYAN: For the record, Nicole Ryan, here on behalf The Conservancy of Southwest Florida.

And as you've been discussing today, there are really two iterations of this LDC language that are being discussed and bounced back and forth. That that you saw in 2007, the County Commissioners certainly saw that in April of 2008, and what staff is proposing today.

The Conservancy is very concerned about the language that staff is proposing for you today. This language would allow shorelines within conservation easements to be included in the maximum wet slip calculation, unless the easement specifically and expressly excludes the use of the easements for such shoreline calculation.

Essentially this language assumes that each and every conservation easement is going to anticipate all prohibited uses in the future, such as utilizing shorelines for wet slip calculation, and expressly and specifically lists those as prohibited. And it further assumes that as such uses are not specifically prohibited, then they should be allowed.

This is not how conservation easements are interpreted. Conservation easements clearly state what is allowed and if something isn't stated as allowed, it is assumed to not be allowed. And this is the opinion not only of The Conservancy, but as you've heard from Heidi, the County Attorney's Office agrees with that.

In an e-mail from Jeff Klatzkow, and I want to read into the record what he said as to interpretation of conservation easements, and I will pass out that e-mail for your records, he states, quote, it is my opinion that where there is a conservation easement involving shoreline, there is no reservation of right in the easement -- if there is no reservation of right in the easement, number one, there can be no shoreline development, including boat slips. And number two, there are no development rights that can be transferred to a different property.

If a property owner wishes to retain such rights, they must do so by an expressed reservation in the easement deed. Unless the record indicates a contrary intent, this applies to all existing shoreline conservation easements.

And how has this been interpreted in the past? Well, you've heard from the County Attorney's Office on that. And also Commissioner Caron referenced a 2007 e-mail from Bill Lorenz, which I will also distribute to you. And in that, as Commissioner Caron stated, Mr. Lorenz indicated, quote, we will also determine the length of shoreline not within a conservation easement, to then determine the maximum allowable number of wet slips.

So we have the County Attorney's Office stating that unless the use is allowed in the easement it's assumed to be prohibited, and we have county staff indicating that this is how staff has applied that standard in the past.

So how can you remedy the LDC language before you today? It's pretty simple. You go back to that 2007 language that you reviewed and what went to the County Commission in 2008. And that language, just the sentence determining how the conservation easements would be interpreted, stated shoreline within county required preserves or within state and federal conservation easements which do not specifically permit boat docks shall not be used in calculating the maximum allowable number of wet slips pursuant to the Manatee Protection Plan.

This is the language that The Conservancy supports. We believe that it should be applicable to conservation easements already in place based on staff and County Attorney's Office interpretation on that. It moves the county away from what we think is really dangerous language, assuming that conservation easements need to prohibit all uses that we don't want in them. So we see this as proactive, as fair, and we ask that you move forward with that language. Thank you.

CHAIRMAN STRAIN: Thank you.

That's the last registered speaker, Ray?

MR. BELLOWS: That's correct.

CHAIRMAN STRAIN: Okay, anybody else like to speak?

Well, the closest one to the podium is Mr. Yovanovich, which -- so we'll let him go first and then we'll start working our way through the rest, everybody else.

MR. YOVANOVICH: Good morning. For the record, Rich Yovanovich.

I need to address a couple of different statements that have been made by Planning Commissioners, staff and speakers.

First of all, it wasn't until 2007 that this issue was actually discussed whether you include the conservation area for the purpose of calculating I'll call it boat density versus residential density. Prior to that it wasn't on anybody's radar screen as to what you do when you bring a PUD through the process.

We all know when you bring a PUD through the process that the conservation area is used for purposes of calculating residential density, but you don't actually build the residential units in the conservation area. That had been the way boat docks had been done in the past. You count the shoreline in the conservation area for purposes of boat dock density, you just don't build the boat docks in the conservation area.

In 2007 this issue came to a head. And it's because of a project brought up by one of the speakers, and thus there was a dispute as to what the law is or what the law isn't.

I will point out that the PUD that's applicable was adopted prior to 2007. So whoever represented that client at the time -- and it was not me, fortunately for me, because I probably wouldn't have addressed it in the discussions, because I wouldn't have known any better to discuss that issue do I specifically include in the PUD document a reference to calculation of boat docks. It wasn't an issue that anybody was concerned about at the time and it has now come to a head.

So we need to deal with these issues perspectively because you can't deal with them retroactively, because people didn't know it was an issue that needed to be addressed.

When you convey property by -- well, you don't convey the property by an easement. What you do is you impose restrictions on a piece of property by an easement. If I convey an easement to the county, I still own that property and all rights on that property that are not inconsistent with the purposes of the easement.

So if I convey a conservation easement to the county, I can still use that conservation property for whatever purposes, as long as it doesn't interfere with those conservation uses on the property.

So the calculation of shoreline, using the shoreline for purposes of calculating the boat docks, as long as I don't put those boat docks on the property is not an inconsistent use with that previous conservation easement.

So I would submit to you that the law has always been I get to count the shoreline, I just can't build in that shoreline. And it wasn't even an issue until 2007.

I would point out too that if you look at the conservation easements that are the standard form conservation easement, it doesn't say that you can use that area for purposes of calculating residential density. You find that in other areas of the LDC and through custom and approach. Because you're trying -- the reason that you give a conservation area is not to get the right to develop your property. Let's not forget that the law says a property owner has the right to use their property, subject to reasonable regulations that the government imposes on that property owner. So what government does is impose restrictions on a property owner, it takes rights away. The compensation for taking away the right to develop that conservation area was move the density somewhere else. The compensation for not being able to use the shoreline for boat docks is take that density, place it someplace else.

That's what your Manatee Protection Plan does. You have a plan in process, you need to honor that process and not take away rights. If you want to put the world on notice that from this point forward you need to retain the right to use a shoreline in your conservation area for purposes of density, I can address that, I know to look at that, I know to address that in a PUD, I know to address that in the conservation easement. And you need to let me modify the form to include the retention of that right. Because you told me I need to do that to protect myself. You need to modify your form to allow me to do that.

And we can all deal with things perspectively, we can't go back and read the minds of everybody else in the past. So any regulation you adopt, we like the language that's there. But if you want to go to the language that says you must specifically retain it in the conservation easement, that needs to be our perspective application, not a retroactive application. Because then we can deal with it, we're all on notice.

And with that, I'll answer any questions you have may regarding my clients.

CHAIRMAN STRAIN: Who are you representing?

MR. YOVANOVICH: Signature Communities.

CHAIRMAN STRAIN: And the particular project is probably the Dunes?

MR. YOVANOVICH: They're -- it could be any project in which they have shoreline.

CHAIRMAN STRAIN: Have they submitted their conservation easement, as example, for The Dunes?

MR. YOVANOVICH: I know that there's an easement out there relating to the water management, but I don't know specifically --

CHAIRMAN STRAIN: Well, as of yesterday, staff told me they hadn't.

MR. YOVANOVICH: Had not?

CHAIRMAN STRAIN: Right. So if they hadn't formatted their language or their conservation easement, the outcome of today's discussion is almost moot.

MR. YOVANOVICH: The important thing is, Commissioner, you have a form, okay? And if you're going to say from this point forward you need to reserve it, you need to allow me to reserve it in the form. You can't give me something, tell me what to do and then say well, that's against our form and we're not going to allow you to modify the form without going through a public hearing process.

CHAIRMAN STRAIN: Well, I just don't believe you've submitted your language yet, and I think that's subject to modification as it goes forward. And this is a whole nother debate that we're not into the -- we're not specifically into that project or that --

MR. YOVANOVICH: I understand. These are general comments about how it should be applied and you should respect the rights of the property owner that you're taking away by imposing a conservation easement.

CHAIRMAN STRAIN: Thank you. anybody else would like to speak? First, sir, in the blue shirt come on up and then Bruce in the back.

MR. THOMPSON: I was going to speak for Bruce too.

My name is Jay Thompson --

CHAIRMAN STRAIN: He'll speak for you, you speak for him. Might just kind of switch out there.

MR. THOMPSON: My name's Jay Thompson. You know, the area that we're talking about is 100 percent mangroved area. And a couple of years ago, Bruce and myself and our spouses did a public records search through the South Florida Water Management District in regard to this whole issue. And there were five pieces of documentation that were redacted that we could not look at. Three of those dealt with conservation easements.

I think what has happened, and my best guess off of this, is that the conservation easement was given to the South Florida Water District. There was one that was given to the state and one to Collier County.

So my question is how many times can you use the same conservation easement to get what you want as a developer? I think it raises some very interesting questions that need to be addressed. Thank you.

CHAIRMAN STRAIN: Thank you.

Bruce?

MR. BURKHARD: Good morning, Commissioners. My name is Bruce Burkhard and I'm a member of the Vanderbilt Beach Residents Association.

And I'd like to point out, it's very seldom that a group of citizens gets excited enough to take their time and follow a proposed LDC amendment and actually come out and get up here and talk about it, so I commend all of my fellow citizens for coming out.

The entire world is finally waking up to the fact that overdevelopment, especially in sensitive areas, has been causing great damage to the environment that we all are charged with protecting.

Both the county and the state have recognized this and have attempted to mitigate some of the destruction that development inevitably causes. The concept of conservation easements was developed I think for just this purpose.

Typically developers have agreed to set aside land, often wetlands, with little or no value to them, in order to be granted development rights or greater density for their upland projects. Essentially a contract is made and the populous would expect that its terms be followed.

What this amendment should do is protect the environment from large scale developers who want to bulldoze through promised conservation easements and use other easements to more densely pack their development with unforeseen, private and exclusive marinas, which contribute nothing to the public at large.

If we count conservation easement shoreline for development, what it's really about is helping developers have their cake and eat it too. The amendment really should be about preserving and protecting the relatively few underdeveloped areas that are left, areas that we naively perhaps thought were set aside and protected.

I know staff has spent a lot of time on this, and we do appreciate that. However, we think the direction that they've taken is taking us the wrong way. CE shoreline, conservation easement shoreline, has already been given up. It amounts to double dipping then to use it again. The language needs to be changed to recognize this. Thank you.

CHAIRMAN STRAIN: Thank you, Bruce.

Does anybody else -- sir, come on up.

MR. LINNERUD: My name is Hal Linnerud. I live at 17 Blue Bill Avenue. My windows look right out on Turkey Bay, adjacent to the property in question right here.

I'd like to point out -- or ask a question, why did Signature give up this easement? I think the nail was hit on the head over here, that property there is absolutely undevelopable. It's wet, it's mangroves. Signature would have had a devil of a time trying to develop that property anyway. They never would have gotten permits to do that, to tear out those mangroves and fill it in.

As far as boat slips are concerned, at low tide I look out onto Turkey Bay and probably well over half of Turkey Bay at dead low tide is bare. It's dry. To develop boat slips in that piece of property would take a massive dredging job.

So basically they can't even use that property for boat docks if they wanted to. And now they're asking us to give them credit for not using it when they probably can't use it anyway and double dip and go down further south. I don't think it's fair. That's it.

THE COURT REPORTER: May I have the spelling of your name.

MR. LINNERUD: L-I-N-N-E-R-U-D.

CHAIRMAN STRAIN: Anybody else like to speak?

Tim?

MR. HALL: I wasn't sure what the agenda title was.

CHAIRMAN STRAIN: You'll have to use the --

MR. HALL: For the record, Tim Hall, with Turrell, Hall and Associates. We're a marina and environmental consulting firm, based here in Naples.

I guess -- I was taking some notes. First off, I can maybe answer a couple of questions. Mr. Schiffer was asking about how you determine the shoreline.

DEP has a set of benchmarks or collection stations all around the state that measure high and low tides. And based over certain timeframes they establish an actual elevation that is the mean high or average high tide mark.

When the surveyors get that information from DEP, they're able to go out into the field and then physically locate that contour line based on that elevation. And that's how the shoreline would be determined.

And then whether or not an easement, a conservation easement would follow the shoreline or not has a lot to do with whether or not the property is based on or adjacent to privately owned bottom lands or privately owned waters or state owned waters.

If it's state owned waters, then the easement line has to follow the mean high water line, because everything below that belongs to the state. If it's adjacent to private property, privately owned bottom lands, than the easement can go wherever over that privately owned bottom lands, because it's the actual owners' property that's being put into the easement. So it depends on the type of area that it's adjacent to and who owns it.

COMMISSIONER SCHIFFER: I have a question.

CHAIRMAN STRAIN: Go ahead.

COMMISSIONER SCHIFFER: So how do you measure -- you're given the elevation, you're given a mangrove forest. How do you find that? What do you do?

MR. HALL: The surveyors hate when we ask them to do it because they basically have to go out there and walk through the mangrove forest and find that contour line and then they connect the dots.

COMMISSIONER SCHIFFER: Okay. I mean, because they build prisons and people looking for freedom can't get through it, I don't know how -- so you do actually go through it and you wander around in there with mud everywhere and --

MR. HALL: Absolutely, yes, sir. You can ask people that see me when I come out of one of my surveys,

they a lot of times wonder if I have escaped from some prison.

COMMISSIONER SCHIFFER: Okay. And then the other question is, they're kind of mostly within that; in other words, since you are within the mangrove forest and there is low water and high water, you -- so this line will not be as pretty on the perimeter as that one shows.

MR. HALL: No, it would be a very convoluted line. Unless the -- the only case where you would get a line like that is if you're adjacent to a created waterway. A lot of the canals have a standard slope and mangroves or something -- you know, or other vegetation has grown on that slope, so there is a relatively consistent line there. It still may not be perfectly straight but, you know, in all intents and purposes, it is.

COMMISSIONER SCHIFFER: Thank you for that.

MR. HALL: I guess a couple of things. I've been a resident here in Collier County my whole life. I've been working in my field since 1997. I came back from Africa and started. And we do marine environmental consulting. And in no case, as Steve said, do I know of this application being applied and where conservation easement has been excluded. None of the projects that we've worked on has that been the case.

From when it came up in 2007 through to I believe it was March of 2008, I had asked the county for examples of projects where they had applied it. I was finally given four projects of which three of them I had worked on. And I know that in the course of my work that this issue never came up.

So I -- I don't understand some of the back and forth that has gone, you know, with staff. And I know some of the staff that was making the interpretations is no longer here so we can't ask them. But I just know from a practical standpoint, a professional standpoint on work we've done, it has not been applied on any project that I'm aware of.

And we have permitted projects that have had conservation easements and the shoreline was counted towards the allowable slip matrix, and so -- you know, as far as the application of the project.

I will say that the other thing that's concerning about this is that there are a lot of projects. The county didn't require easements to be written to the county until, I'm not sure, was it 2002, Heidi, or --

MS. ASHTON-CICKO: I really don't know.

MR. HALL: Yeah, I don't know. There are a lot of easements out there on properties that don't belong to the county that actually belong to DEP or to the Water Management District.

And the way that we originally interpreted this language is that it applied to any easement, whether it was written to the county, to the Corps of Engineers, to a homeowners association, whatever, if there was any easement on the property, you could not count it.

Now, the state has three different easements that they use on properties when they're asking for protection measures. They have a standard conservation easement which generally prohibits any activities within the easement area; they have a passive use easement which allows for passive uses not inconsistent with the intent of the easement, the conservation intent of the easement; and the passive uses. What usually gets put on an area where you're planning to have boat docks or you need a walkway going through the easement to access your docks that are on the outside of it would be a passive use.

And then the state has a third easement which is called a proprietary easement. Now, when the state wants to limits the amount of boat slips that can be used or that can be permitted on a project, they require a proprietary easement to be placed along a shoreline. And usually this goes from the mean high water line in anywhere from one to five feet. And what that does is give the state a proprietary interest in the shoreline so that they have the ability to say okay, we permitted you 40 docks, that's all the docks that you can have there forever, even though your shoreline might allow you more under your Manatee Protection Plan. They use a proprietary easement to actually limit or prohibit docks on areas.

So those are the three easements that the state uses and the -- you know, kind of the methodology or the criteria associated with them.

I'm here you know, tonight -- when this first came before the Planning Commission back in 2007, there was a lot of concern from the Marine Industries Association. I mean, Collier County as well as from a lot of our clients how this would affect them.

And there are no provisions in here for grandfathering, there's no provisions in terms of whether it applies to only county easements or to other easements, and there's no provisions in terms of what happens, the what if scenario was if a storm -- if there's an easement, a current easement in place on a property that has boat docks and we get a

catastrophic storm that comes through and it removes those boat docks, according to -- you'd have to submit a new building permit and all to rebuild your docks. And the way that the county has interpreted things is that -- in the past is that you have to become current, concurrent with the -- you have to be compliant with the current LDC for your new construction. And if this code applies and says well, because that easement's there, they're no longer allowed docks, then they have lost all the rights that they had previously associated with that.

And that's my last comment is that when you own property adjacent to waterways, you have riparian rights. You have the right to access your property from the water.

And if this provision is changed -- the way it reads now, if it excludes the use to calculate wet slips, then everybody is well aware of that. In the past, as Rich said, it hasn't been an issue. It's been assumed that the easement does not eliminate, you know, those rights unless it's specifically put in there. And as I said, we normally have done that with proprietary easements.

So the issue is that I believe that putting this on there where you're excluding uses that are believed to be or, you know, in my opinion are connected to the property, you would really constitute a taking.

CHAIRMAN STRAIN: Okay, are you done?

MR. HALL: Yes, sir.

CHAIRMAN STRAIN: Mr. Midney?

COMMISSIONER MIDNEY: What percentage of the conservation easements are those quote, unquote, proprietary easements that would prohibit the slips' calculation to be used?

MR. HALL: I know that there is -- if we talk about projects that we're discussing now, there is -- there's one on The Dunes property that says 49 slips is all you can have.

COMMISSIONER MIDNEY: But I mean --

MR. HALL: In terms of how many -- how many in the county? I know of -- there was one here. There was one placed at Regatta to limit those. There was one placed on the county, the Goodland boat ramp, the Goodland boat park property. I don't know whether that one is still in place, because when the county purchased the property there was some amendments and some changes made. But there had been one placed out there.

You know, in terms of what I work on, maybe one in 20 has a proprietary easement associated with it.

COMMISSIONER MIDNEY: My concern is just that there's going to be hundreds of boat slips that are probably going to be grandfathered in if we do what the county's staff is suggesting.

MR. HALL: Well, I mean, the Manatee Protection Plan -- Mr. Strain I think asked the question about carrying capacity associated with boats in the county.

When the Manatee Protection Plan was put in place, that's kind of what that document was attempting to do was to say look, if you've got these criteria, you meet these criteria, this is how many boats you can support.

That document -- part of that document was to look at the county, see where boats should or should not go and limit them where they shouldn't and allow them where they should.

And questions came out about the width of the docks that you would be allowed there and all, but you have to keep in mind that in a lot of cases there are a lot of marinas the boats aren't all put right up against the shoreline. You're allowed T-docks and other stuff. So you may only take up 100 feet of shoreline, but you could have 20 or 30 boats because they extend out in a T-dock fashion. You know, so there are other ways that that was addressed.

CHAIRMAN STRAIN: Okay, is that all?

Ms. Caron?

COMMISSIONER CARON: Just one thing before you get going, and it's actually for the County Attorney's Office.

CHAIRMAN STRAIN: Well, I've got a question of Tim, so --

COMMISSIONER CARON: Yeah, I don't want him to go, I want him to be here when I ask this.

One of Mr. Hall's concerns is that if he has docks that are permitted right now and they get blown away by a hurricane and there's a conservation easement, they're not going to be able to rebuild. But that's not how our build-back policy is. Is that correct?

MS. ASHTON-CICKO: Right.

COMMISSIONER CARON: They would just have to -- and when they talk about coming up to code, it would mean that if we have new standards for building docks or if we have -- or if they had a crumbling seawall or something, they would have to replace to current standards, not that the right to have those docks would go away; is

that correct?

MS. ASHTON-CICKO: I think it depends on how much it's destructed and the degree of nonconformity with our code. But I think that it could be remedied if this particular dock facility is affected by amending the easement or coming back to the board. I don't think the intent is to, you know, cut back on the number of docks.

MR. HALL: I agree, I don't think that's the intent. But when we were looking at that, I think that that could be the result.

CHAIRMAN STRAIN: Tim, you said something I wanted to just make sure I understand. You said The Dunes has submitted their conservation easement?

MR. HALL: The Dunes has conservation easements to the Water Management District --

CHAIRMAN STRAIN: Okay, the one --

MR. HALL: -- in place.

CHAIRMAN STRAIN: -- for the county has not been submitted yet.

MR. HALL: I don't know. If you say so.

CHAIRMAN STRAIN: Well, no, I'm was just reflecting what staff had indicated to me. I wasn't sure if you had any better knowledge than that.

MR. HALL: I know that the ones for the South Florida Water Management District have been submitted and recorded.

CHAIRMAN STRAIN: Okay. And I heard a gentleman said that they were redacted. It's a public document. How do you redact something that's a public document? Do you know?

MR. HALL: (Shakes head negatively.)

CHAIRMAN STRAIN: The monitoring stations that you indicated are around to measure the tide levels and through that they set the shoreline levels, if Al Gore was here, or others, he might tell you that our water levels are going to change.

Let's assume that's true. If it changes one inch on a very slightly sloped area, that one inch goes back any great number of feet. Since those tide stations aren't monitored, that must mean there are changes anticipated. Do you know of any changes in our mean water levels?

MR. HALL: Not yet. That hasn't come about. But I guess it's hard because we're -- usually it's an interpolation between two stations. So depending on where you are, how close you are to each station. And it's not something that my office does, that comes out of a surveyor's office. I just kind of know the procedure for it.

But, you know, it is possible that gradually if we have sea level rise that shorelines will change. The county code actually has a provision for coastal projects to -- in the EAC -- or in the EIS we're supposed to address what the potential effect on a project would be if there was a six-inch rise in sea level.

CHAIRMAN STRAIN: Correct. And so if there was even a one-inch rise in sea level, if your conservation easements are based on hard survey lines and not on a meandering shoreline as it would modify or change over time, basically the shoreline would move further inland then.

MR. HALL: It could, yes.

CHAIRMAN STRAIN: Interesting.

Okay, the last question, I can't tell by your conversation here whether you're for or against the language being proposed.

MR. HALL: I guess I forgot that part.

CHAIRMAN STRAIN: I'm just curious, since you are a professional in the field, I just want to know what you think of it.

MR. HALL: Well, I was part of the stakeholders meetings with the Development Environmental Services staff, Marine Industries Association was present at some of those. I believe The Conservancy was present at some of those.

This was the language that we thought was the most fair. It gives notice that -- you know, and it gives the county a way through their development process, if they want to at the PUD, time of PUD or any approval, to limit slips or eliminate slips, they can do that through this conservation easement where the slips are excluded.

And then the people that haven't addressed that in the past are not penalized for it. You know, people coming in for new dock projects, if they have conservation easements on there are still going to go through some kind of county review. And this -- you know, the item as to whether or not there's going to be any exclusion of slips should

be done at that review period and them not be penalized for trying to have the forethought to deal with an issue that they weren't aware was going to become an issue.

CHAIRMAN STRAIN: Okay. Are you for or against this language?

MR. HALL: I am for the language as it's written. I think that the easements should -- the only shoreline that should be excluded is the ones where the easement states that that's the case.

CHAIRMAN STRAIN: Thank you.

Are there anybody else -- anybody else like to speak?

Yes, sir, come on up.

MR. SAWYER: My name's Kit Sawyer. I have Sawyer's Outboard on Bayshore Drive. And I guess I'm glad to hear that Tim likes this. I'm just -- I don't know all the legalities here.

I just -- I have a marina. I've been here all my life, my family's been here, Sawyer's. I'm doing -- my dream is my building and my marina. I finally did get dock permit -- or ramp permit. I wanted a lot more docks than I did get. I actually -- because the fire department wants me to put water on all my docks because I wanted service docks, I don't have enough parking to do a whole bunch of docks anyways. But I wanted more docks for people to bring their boats, drop them off so I can do service.

I didn't get that, so I have now just a ramp and just a pier to unload and load boats, which is not what I wanted, but some day I guess, if I keep going forward, is I would like to add on, put more docks in. If it's go up over my service yard and put parking up there or something, then I would like to know that I can still put docks in. That is my dream.

So I guess my question is to Tim that this doesn't affect me and other people like me that would like to do this. I understand stopping a development from developing stuff, but I've been here all my life and before all you people were there and where you're at, that wasn't there. And I don't know that we can keep telling people we can't build. 82 percent of the land in Collier County is non-developable land now. Isn't that enough? Thank you.

CHAIRMAN STRAIN: Thank you.

Is there anybody else that would like to speak?

(No response.)

CHAIRMAN STRAIN: Okay, we're going to go on with this one for a while yet and we've got two short ones to finish after that. I would suggest to the Planning Commission, we probably don't need to take a lunch today. But knowing that, I think we ought to give Cherie' a break and come back and resume after a 15-minute break. So why don't we break right now, we'll come back at 11:45, make it even.

(Recess.)

CHAIRMAN STRAIN: Okay, everybody, welcome back from break. We're going to finish up shoreline. We have two other small ones after that and then that'll call it a day.

So we had finished public testimony before the break, and basically we need to know if there's any other questions of the Planning Commission of anyone before we go into discussion.

(No response.)

CHAIRMAN STRAIN: I have one, and it's kind of a combination question of both Steve and the County Attorney.

We're here today because someone asked a question, and it's been going on for a few years. We're attempting to change the code to fit the circumstance that may not be that frequent. It centers around conservation easements, both prior and going forward.

I think it's clear as a result of today's discussion and the history going forward anybody knows, including this board and the others, that if they want something in the conservation easement, they better think carefully how they do the language of that easement.

In going in the past, I think we heard from the County Attorney's Office that someone could modify a conservation easement. I know that can be done on a project I'm familiar with with the Golden Gate Fire Department.

My point is that maybe instead of doing anything today in regards to this language we do nothing and we provide the suggestion that if someone wants to come in and challenge a shoreline calculation through a conservation easement and it's one existing, they can go through a process with staff as a recommendation or non-recommendation, can go back through the County Attorney's Office and be scheduled for a public hearing in front of the Board of County Commissioners for approval of that conservation easement.

Going forward, I don't see the problem occurring, because any language that's a modification of the current standard would have to go to the board for approval. So either way, the conservation easements happen in front of the board, which is a public process and people can participate on whether or not it is a good or a bad idea for that particular conservation easement on a case-by-case basis.

And I think what we avoid doing then is opening a Pandora's box of pros and cons on an issue that could either unleash an unknown amount of boat docks and quantities that we don't have a handle on or we have the threat of someone's property rights being taken away because it wasn't properly addressed in the manner it is now.

So to me that might be a solution we should consider. And I'm kind of looking for reactions from staff and county attorney as to what they think about that kind of a process.

MS. ASHTON-CICKO: Well, I think what you're proposing is consistent with what Jeff's opinion is, is it should be handled how it already is handled outside of the Land Development Code. And if you put language in either way, you're going to put the language -- whether it's what's currently proposed or an exclusionary language, you will continue to have problems with the language.

And you do have an opportunity later on as part of the permitting of 10 or more boat slips where this will be heard again. So I recommend what you're proposing.

CHAIRMAN STRAIN: Steve, any comments?

MR. LENBERGER: No comment.

CHAIRMAN STRAIN: Okay. And then we'll go back -- anybody else? This is basically a discussion point before we have a vote on the issue. Anybody else have any comments, discussion?

Mr. Midney?

COMMISSIONER MIDNEY: Yeah, clarification. So what you're saying is we have this proposal G. You're saying don't do anything; don't adopt it, don't deny it, don't modify it.

CHAIRMAN STRAIN: Well, we've got to do -- we would have to do something. But I'm saying not recommend approval on it which means we don't do anything as far as changing the code and we rely on the system we currently have in place. And if those rare occasions come up where someone has an issue, let them challenge the process through trying to initiate a change to an existing conservation easement or rewriting a new one and let the process be vetted through the public at a public meeting like it would be under that condition. So that's what I'm suggesting.

COMMISSIONER MIDNEY: But what I'm understanding the people who are in favor of this thing is that if it's not specifically excluded then it means it's included. So if we do nothing, isn't that accepting, I don't know, that point of view?

CHAIRMAN STRAIN: I think if we do nothing, from Steve's testimony, where's -- if we do nothing, would -- how would staff approach? Let's say -- let's not use The Dunes, because they're -- who knows where they're at with things. Let's just take a typical project with a conservation easement, how would you approach it?

MR. LENBERGER: Staff would seek direction from the board on this on how they want to handle it.

CHAIRMAN STRAIN: Okay. Well --

MR. LENBERGER: At this point, because we've been requested to bring the amendment forward, so we would have to seek direction from the board. And I imagine the County Attorney's Office will probably weigh in, so it might be appropriate to ask them.

MS. ASHTON-CICKO: You'd continue to first look at the conservation easement to see whether or not it's addressed. And if it's not addressed, then I think you'd evaluate the shoreline and what would be permissible under either scenario and come up with a recommendation and get input from the state as to the appropriate number of boat slips.

CHAIRMAN STRAIN: And if the applicant wanted more than what that recommendation standardly would provide, would we advise the applicant they have the option of changing the language in the conservation easement?

MS. ASHTON-CICKO: That would be one way that they can handle it.

CHAIRMAN STRAIN: And then if that happens, that goes to the Board of County Commissioners; is that --

MS. ASHTON-CICKO: Correct.

CHAIRMAN STRAIN: Mr. Schiffer?

COMMISSIONER SCHIFFER: Yeah, question I have is if we do go that way, what happens to this? Will this be brought before the County Commission? Will they be given an option of either of two ways? Because if we

do let this thing go forward, I think we should amend it and then maybe yours as an alternate solution.

But if we have the ability to totally kill the proposed amendment, then that might work. But if we vote not to make a recommendation and then this goes forward, I wouldn't be comfortable with that.

CHAIRMAN STRAIN: Well, no, I was suggesting we make a recommendation but it's to deny, because the change wouldn't -- I don't see where the change is warranted for the site specific purpose that it seems to evolved under.

For the limited amount of times this would come up, I think the other avenues through the changes or modifications that a rewriting of a conservation easement is a better way to go and it affords the public an opportunity at every event if they want to to intercede. So that's where I was thinking.

Go ahead, Brad.

COMMISSIONER SCHIFFER: And let me keep going.

And then I guess the real question is how many different sites have this kind of problem. So you have these small sites, I mean, the fellow with the repair shop, does he have a small conservation easement and this will hurt him? Or I mean, what kind of projects are going to have this? We obviously know of big projects that have conservation easements on the water line, but --

MR. LENBERGER: Well, it could potentially be all size projects. It would be anything -- any project where the Manatee Protection Plan applies, which is all marina facilities and multi-family projects with 10 slips or more.

COMMISSIONER SCHIFFER: And are you familiar with those projects enough to know how many of those have conservation easements with the project?

MR. LENBERGER: No, I'm not familiar with the quantity. I've not done any surveys.

COMMISSIONER SCHIFFER: Okay. And the reason I'm saying that, because I don't want to hurt some small guys. You know, if you give them direction in the LDC, then everybody knows what to do and it's inexpensive. If they have to go through hearing processes for even smaller shops and stuff, that doesn't make sense to me. But thanks.

MR. LENBERGER: You're saying for smaller projects they could count the shoreline?

COMMISSIONER SCHIFFER: I'm not saying which way to go, I'm just saying that one of the advantages for smaller people is that if you can read it in the code and you know what it is, you don't have to go through the expense of a hearing. That's all. If it's only large projects that have this concern, that's a different story.

But thanks, I'm done.

CHAIRMAN STRAIN: Mr. Midney, then Ms. Caron.

COMMISSIONER MIDNEY: What I would like to see us do is to adopt G but just to delete the last line and the second to the last line starting from the word "where." So the last sentence would be, all the shoreline will be used for calculating the maximum number of wet slips pursuant to the Manatee Protection Plan except for shoreline within conservation easements, and just put a period and stop there.

CHAIRMAN STRAIN: Okay. Ms. Caron?

COMMISSIONER CARON: I would love your language to carry the day. I think it's the appropriate language to carry the day.

In answer to Mr. Schiffer, apparently according to testimony that we've heard today, this has not been a problem, so I don't think you have to worry about the little guy, he's not been ever affected. So -- and I doubt he's suddenly going to crop up out of nowhere. So I don't -- you know, I don't really think that's an issue.

I will support Mr. Strain's idea. I think it gets us as close as we're probably going to get to what Mr. Midney and I would like. And it will keep it in the public hearing. You will be able to go before the Board of County Commissioners and express your opinions one way or the other on these issues.

Again, I go back to what I heard from Mr. Lorenz and Mr. Midney's comments, it should just end at the word conservation easements and we shouldn't be having this discussion. But we are, so --

CHAIRMAN STRAIN: Mr. Wolfley?

COMMISSIONER WOLFLEY: My thought, I had everything clear in my mind until I heard the comparison to transfer development rights and the same things we're trying to accomplish in the RLSA. And if we do that, if we take this last part off, then what's good for the east is not good for the west of the county. So I mean, this is what I'm struggling with. In other words, transferring rights of non-development to development of more slips. That's what I'm struggling with right now. So that's why -- gosh, we vote right away to eliminate where the conservation easement all

the way to wet slips on those two lines out, it's going to take me more than a couple of seconds here to decide on a vote. So thank you.

CHAIRMAN STRAIN: Anybody else have any comments?

(No response.)

CHAIRMAN STRAIN: Just so you know, if you were to drop the language as suggested, and Mr. Midney, I'm not saying it's wrong, but I want to provide a cautionary statement. The old language that occurred in 2007 basically got where you're trying to go. But with it there were some exceptions that were rather important. One was that government owned boat facilities would not -- would be exempt from that provision. And that's important for the property the county has acquired for the minimum amount of slips they have.

And the other provision was that marina facilities that were 100 percent open to the public would be exempt. And that would then discourage private slips and allow more public access to the shoreline.

We're but we're not discussing that 2007 language. So I think just cutting the sentence off will lead to some unintended concerns that may hurt that language from passing with just that cut-off point. Because that's one reason why the other language was added in 2007 is to make it solve more problems than it might create.

I don't know what motion's going to be made and I have a statement at the point of the motion, so I'll wait and see who wants to make a motion. So anybody?

COMMISSIONER MIDNEY: I just wanted to ask a question about what you just said.

So there is an exclusion now for county owned facilities and facilities that are open to the public.

CHAIRMAN STRAIN: No, no.

COMMISSIONER MIDNEY: There's an allowance that the conservation easement land would count towards the wet slips on that property?

CHAIRMAN STRAIN: No, in 2007, in the language that this board and then the Board of County -- I think we recommended approval and it was denied or I guess not pursued by the Board of County Commissioners. In that language they had actually three exceptions. And one was for creative shorelines, which is not an issue here. But the other one was for the government owned waterways, and the third one was for 100 percent publicly owned marinas. There were exceptions to the language there.

There's nothing like that being offered today. And if you were to take a sentence that's being offered today and cut it back, as you indicated, it would be more in line with what was in 2007, but the exceptions don't apply. That may make it concerning to public officials who have gotten us boat docks to the best they can and certainly would like to get us more, and those people that want to see more public marinas. Because basically it would apply to everything. And it may be more prohibitive than other people might feel need to vote on, so that may be a problem.

Mr. Schiffer?

COMMISSIONER SCHIFFER: Mark, why can't we have this brought back and maybe they could -- the direction could be to bring some of it -- obviously the vested rights is discussed on the old one.

I think -- I kind of favor what Paul and Donna favor. I would also add, though, that if we did -- in the public hearing process it was allowed in the conservation easement to use the shoreline, I would like that to be put in, essentially the reserve of what's here. But why don't they try again with the wording and maybe pick up some of the older wording?

CHAIRMAN STRAIN: Well, I don't know, I think that the Board of County Commissioners turned down the older wording and gave direction to create the new wording and that's why we're here today. And if we turn around and tell them to go back to some of the old wording, I'm not sure we're going to be getting anywhere but spinning our wheels.

So, I mean, it's up to this board. My position is I'm fine moving forward with some suggestions of my own today. And I'm assuming each of us may have our own too, and that's why I'm trying to seek a motion, so we can start the discussion.

Mr. Schiffer?

COMMISSIONER SCHIFFER: But one thing we would do if we did adopt something would be that we would give everybody from this point forward notice on how to deal with this. And obviously if they're going back and forth, they don't have clear direction.

COMMISSIONER WOLFLEY: It's not clear here.

COMMISSIONER SCHIFFER: I mean, I'll make a motion if you want, just to start it off.

CHAIRMAN STRAIN: Let's see what Ms. Caron had to say.

Ms. Caron?

COMMISSIONER CARON: Well, actually, what I was going to say is I think that you actually started a motion, so why don't you finish the motion that you started?

CHAIRMAN STRAIN: Well, I don't mind going forward. I usually defer to others, because as chairman I don't like to take the initiative, because I can -- I don't have to look to myself to say okay, Mark, you can talk.

COMMISSIONER VIGLIOTTI: I'll give you that.

COMMISSIONER CARON: Okay, Mark, you can talk.

CHAIRMAN STRAIN: I'd like to make a motion to recommend denial for the change of the language, with the suggestion that the Board of County Commissioners look to an alternate process of seeking a case-by-case analysis of the conservation easements in the manner which we discussed. Now that -- so that's my motion.

Mr. Vigliotti?

COMMISSIONER VIGLIOTTI: I'll second.

CHAIRMAN STRAIN: Okay, motion's been made and seconded. Now discussion. Mr. Schiffer?

COMMISSIONER SCHIFFER: Okay. But which means -- and this is to Ray.

Ray, this language will not go forward to the commission with that recommendation. So what happens? Because here's the problem: I think if we do that and it goes -- this language goes before the commission with the fact that the Planning Commission recommended denial, they're still looking at this language.

MR. BELLOWS: That's correct.

COMMISSIONER SCHIFFER: And I'd much rather work on this language also. Can we do that also, Mark?

CHAIRMAN STRAIN: Sure. I was going to add during discussion some reasoning to go with it. But I didn't want to make that a part of the motion. That was going to be part of the discussion. You know how we normally discuss why we're going to vote and the board asks what was the reasoning sometimes behind our vote? Well, I was going to provide that for my perspective.

COMMISSIONER SCHIFFER: Okay.

COMMISSIONER VIGLIOTTI: That might clear it up.

COMMISSIONER SCHIFFER: Okay, so then what do we do, your motion first and then go back and clear

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CHAIRMAN STRAIN: Well, my motion has been made and seconded. Now we're open for discussion on the motion.

The motion was for denial, suggesting an alternate plan and looking at a case-by-case basis at the conservation easements, both retroactive and perspective in the manner which we discussed earlier with staff and the county attorney.

Ms. Caron?

COMMISSIONER CARON: And I think maybe if we're going to suggest an alternate process, we need to work on that alternate process language so that we give something at least thought out to the BCC. And then it's not just wide open you'll get everything.

CHAIRMAN STRAIN: That's a good point. And I was wondering, can staff do that? See, there's --

COMMISSIONER CARON: Well, we may all want to think about this for a while, too. I mean, it may bring it back closer to 2007 and maybe we just rework some of the processes and that language. You know, and actually resubmit some --

CHAIRMAN STRAIN: And that's fine. If staff has a latitude to take a direction, let's say we turn the motion into just a direction right now and we bring this back but that direction is for staff to come back with an alternative tailored around the discussion we've had, can you do that based on the fact the board tells you to come back with the language that you're in front of us with today?

MR. LENBERGER: Well, yes, we can come back to you. The BCC did not direct this language, they directed us to meet with stakeholders. This particular language was what the EAC recommended. So staff could work with the County Attorney's Office and we can draft some language and come back with you later on, if you wish.

CHAIRMAN STRAIN: Well, if that can be done, I think that's a much preferred route.

And thank you, Ms. Caron, for suggesting that, it's a good idea. Go ahead.

COMMISSIONER CARON: And I think that the County Attorney's position on this whole issue needs to play a major role in what that process is, so thanks.

CHAIRMAN STRAIN: Susan, from a perspective of staff, do you see this as something realistic to get back with us in this cycle?

MS. ISTENES: Susan Istenes for the record.

Our deadline is -- oh, am I looking at April? Because it's the 1st today. Our deadline is the close of business on the 5th.

CHAIRMAN STRAIN: Of what, April?

MS. ISTENES: April, yeah.

CHAIRMAN STRAIN: You mean your deadline to have Cycle 1 wrapped up?

MS. ISTENES: To put something in writing, print it and send it to you for your consideration for April 15th, we have to wrap up by the 5th. And then we are -- our next meeting with the board I believe is -- I'm going to look to John and maybe he could look it up if he doesn't know off the top of his head. I'm thinking it's around mid May. So yes, I am running out of time.

However, we could bring this one back to them at a later meeting, assuming we could do that.

CHAIRMAN STRAIN: Well, I -- I mean, if you can do that, that might be the solution, if it needs to be. I don't think you and the County Attorney's Office can get together by the 5th, which is what, Monday, and have this resolved, especially with the weekend.

MS. ISTENES: May 17th is the first board meeting.

CHAIRMAN STRAIN: Okay. But this one is such a highlighted issue, I would imagine the board's going to probably do a time certain, and they could even put this on a special date like we have, isolate it out.

MS. ISTENES: There's some flexibility. I would recommend just -- because I know this was vetted through stakeholders groups, that if you do opt to suggest some different language, that staff really ought to be informing the board of the input. And if the stakeholders had supported this language, we ought to be also explaining to them that this was the stakeholders' approved language and that you all had wanted some modifications to that, so that they understand that there's two different recommendations. Otherwise it kind of discounts the stakeholders' input.

CHAIRMAN STRAIN: No, we're not trying to do that --

MS. ISTENES: I didn't think so.

MR. LENBERGER: The stakeholders were not uniform --

CHAIRMAN STRAIN: That's what I was just going to ask you.

MR. LENBERGER: They were not in agreement with the language. There's all different sides.

CHAIRMAN STRAIN: You know what, if you could devise something along the context of which we just discussed and it was done in the manner where the stakeholders could take a look at it and it was a compromise that all the parties would buy into, we could then go to the board with something that is now not as controversial.

So maybe that is an opportunity that we need to really look after. So I like the suggestion, Ms. Caron, to untangle the -- I mean take off the table the recommendation for denial, but change it to a recommendation for staff direction on the matters that we just -- as we just discussed? Assuming the second would accept that, Mr. Vigliotti?

COMMISSIONER VIGLIOTTI: Yes.

CHAIRMAN STRAIN: Okay. So let's proceed under that basis for discussion. This would be a direction to staff to pursue the avenue of looking at the easement language and the process of the easement as a solution to this whole thing.

Does anybody have any discussion on that as a motion?

(No response.)

CHAIRMAN STRAIN: Okay, we most --

COMMISSIONER MURRAY: I'd still like to hear some of -- you were going to provide some backup, some information.

CHAIRMAN STRAIN: Oh, yeah. I mean, on the original language, I'd be glad to tell you what I was --

COMMISSIONER MURRAY: I think it would be -- I think it would serve us and serve everybody here at least what the rationales were.

CHAIRMAN STRAIN: Okay. Because we have a limited ability to control quantities of boats, we don't

have a level of service standard like we do on our roads, like we do for density, we don't have a carrying capacity analysis on the estuaries. Each estuary can take a certain amount of boat traffic. And the north end of the county it's all funneled through Wiggins Pass. In the south end of the county there's a myriad of exits to the gulf. So each area is going to have a different ability to accommodate more boating. That was one of my reasons why I didn't think arbitrarily allow the shoreline calculation to go across the board was a good thing.

The second one was that there were no exceptions in this language. I think I already voiced that concern to Mr. Midney.

I don't believe that the easement's ability to follow the shoreline and where the shoreline is is articulated correctly in the code, so that could pose a problem in the future as the shoreline moved.

All the -- and part of my argument against the current language was that we can deal retroactively with any easement, as the county attorney said. It can be modified. And I know for a fact that you can modify those, because I was involved in one for a public agency.

If we allow this language to go forward, it sets a new level of interpretation from stating what is allowed by -- as a rule, to versus now suggesting that any silence of a use means it is allowed. That's a radical change to the way we look at the Land Development Code.

Right now every zoning district, we spell out what's allowed. The way this is saying is if you don't spell it out, it is allowed. That's a little concerning.

So basically from a commonsense viewpoint, if an area within a conservation easement cannot be used for docks when it is -- why would it be practical to allow it to be counted then for docks? The intent would not seem to be consistent with the Land Development Code.

And the code has always been a protective code, not one that says if we didn't say it you can automatically do it. I think it's been more the opposite direction.

So that's my leanings against the language that was being proposed today. And I would have voted for denial, regardless of the motion made. I'm now trying to figure out a compromise.

I think with Ms. Caron's help, we've got a suggestion to staff that might come back with a compromise to solve the problem for a lot of the parties. And hopefully we can get there through the public process as well. I think we'd be way ahead of the game.

COMMISSIONER MURRAY: I think we're making progress by going this way. Definitely.

CHAIRMAN STRAIN: So anyway, we have a motion. I think we're finished with discussion.

All those in favor of the direction to the staff, signify by saying aye.

COMMISSIONER SCHIFFER: Aye.

COMMISSIONER HOMIAK: Aye.

COMMISSIONER MURRAY: Aye.

COMMISSIONER MIDNEY: Aye.

COMMISSIONER WOLFLEY: Aye.

COMMISSIONER VIGLIOTTI: Aye.

COMMISSIONER CARON: Aye.

CHAIRMAN STRAIN: Aye.

Anybody opposed?

(No response.)

CHAIRMAN STRAIN: Motion carries 8-0. And I'll wait for staff to reschedule this with us and when it comes back we'll deal with it.

I wish to thank everybody from the public for attending today.

Okay, we have two items left. We're going to go back and try to attempt the fences and walls one again. That was on book four, Page 93.

MS. ISTENES: You all actually had gotten through the amendment and I had written on Page 103 that we ended right before -- you had started discussion on sound walls and I think you were asking questions about it. And that is actually the end of the amendment, so that's what my notes say anyway.

CHAIRMAN STRAIN: I think you're right. Brad started to say that. You weren't here. He had not seen a copy of the changes. So now that I think he had gotten a copy of that, you're here, I can certainly ask the Commission if they have discussion on the entire text of the entire proposal.

Mr. Schiffer?

COMMISSIONER SCHIFFER: Well, what we were talking about sound walls, is this is just giving carte blanche to sound walls and I'm not sure we wanted to do that.

Susan, we were going to maybe put landscape or something else? Or why do we have to have that in there at this time?

MS. ISTENES: Why do we have to have sound walls in there at this time?

COMMISSIONER SCHIFFER: Well, I know because --

MS. ISTENES: Because they exist.

COMMISSIONER SCHIFFER: They won't meet the defini -- the criteria that we have for the walls.

MS. ISTENES: Yes.

COMMISSIONER SCHIFFER: So what do we want to do? I mean, I really think a lot of communities are coming apart with people putting sound walls all over the place. I mean, and it's not just urban communities that are starting to stick sound walls all over the place, so --

MS. ISTENES: I'm not sure -- I mean, my perspective is I'm not sure that you're going to get away from people not wanting sound walls. In fact, I'm understanding there's people that want sound walls that don't exist because of expansion of I-75 and other rights-of-way.

I think -- I guess the question is are there any set of standards that you want to apply to them, or do you want to mitigate them in some form or fashion? And that's where landscaping was a suggestion. But there may be others, like, I don't know, maybe design standards or something.

COMMISSIONER SCHIFFER: The ones that you're referring to here are only those, you know, from a government entity. So nobody could interpret that to put up their own private sound wall on their property line, correct?

MS. ISTENES: Correct. They certainly could erect a wall, they could -- but it would have to be in accordance with the height and the locational and the landscaping requirements.

COMMISSIONER SCHIFFER: So they couldn't take advantage of this clause. So maybe it isn't that big a deal.

Do we have control over the government at that point in time anyway? Could a community establish what they want for sound walls?

MS. ISTENES: Sure. I'm sure negotiations with the county, they could establish what they want.

My understanding is most of them are retaining the ownership of the walls, if you will, and the requirements to maintain them after the county has erected them. And I believe they're being placed in easements across their property. Not all of them, but I believe a great majority of them are. So in a sense they're being turned over to the community is my understanding.

I think the concern would be -- and I can't speak for transportation, they're obviously not here, but I'm sure the concern would be the cost if you were to impose additional requirements on them, either that be through design standards or landscaping requirements or what have you.

COMMISSIONER SCHIFFER: Okay. But what you're saying though is that the county, which is the government entity in this clause, is actually building these sound walls on private property?

MS. ISTENES: That's my understanding, that seems to be the pattern recently, because it's less expensive than trying to acquire the additional right-of-way simply to put the wall up and then they've got the maintenance and ownership issue and cost associated with that as well, so --

COMMISSIONER SCHIFFER: Who reviews those? Does anybody review those designs, or what -- how does that come about? They do look different, so some people are thinking differently.

MS. ISTENES: My understanding is the transportation department does. We do not. I'm not aware of any that we've reviewed.

COMMISSIONER SCHIFFER: Okay. I mean, I guess we have to have something, so maybe we let it go. But maybe it's something -- I mean, to say -- to study what to do. The staff has no time to study anything at this point, right?

MS. ISTENES: Well, I guess it's being put here. If you have any thoughts or suggestions or things to look at for the future, I'd welcome them at this point. It's up to you.

They're here. You see them. If you have any recommendations about them in their current form; otherwise,

this is just meant to I would say legitimize what's there.

COMMISSIONER SCHIFFER: Well, I think we should do that. But I don't know how you would go about requesting, you know, do the architectural standards start to include them and maybe people convene and develop what standards they should have? I mean, something has to be studied. You can't just --

MS. ISTENES: I could certainly carry forward this board's recommendation, if you want to do something like that other than, you know, a specific standard.

COMMISSIONER SCHIFFER: That's what I think. Anyway, just to keep moving on.

CHAIRMAN STRAIN: Mr. Murray, then Ms. Caron.

COMMISSIONER MURRAY: Susan, I really believe that there have to be standards. The federal government, for all -- along many interstate corridors has included it in its construction activity or reconstruction activity. And I can't imagine them, especially the federal government, not having a requirement for standards. And so I would think -- I don't know how difficult that would be to obtain that information, but I would imagine transportation people would have the access. And if there are such standards, if they comport with the needs of the county, then perhaps we can not adopt them or accept them as the base. Does that sound reasonable?

MS. ISTENES: Yes. I'm sure there's standards. The intent is to attenuate sound. I know they are basing their height and location, I believe, on sound studies.

COMMISSIONER MURRAY: Yeah.

MS. ISTENES: I could certainly reference that or check with transportation and see if there would be an issue with referencing that. I'm not sure how that would really change anything here, though.

COMMISSIONER MURRAY: Well, it might get you closer to some information that you might feel we're missing right now, or we might feel is missing right now.

Because if the interstates are being done by the fed and they have a set of standards based on criteria that are already established and we can apply that in some form to the collector arterial, why wouldn't we want to? That would be my view, and I would think that that's worth at least taking a shot at that.

CHAIRMAN STRAIN: Ms. Caron?

COMMISSIONER CARON: Yeah, I think it's not so much standard as for erecting the walls that Mr. Schiffer was talking about. I think he was looking at more things to soften the effect of these walls in terms of architectural design esthetically, not construction-wise, and for landscaping to make our community look better. And I think that might be worthy of looking into.

I don't know, I think, Susan, you're probably right, the big issue is going to be cost when you finally talk to anybody about it. But I'm not so sure that's not a good thing for us to look at, just sort of the same way we looked at median plantings and things. They give our community a different look, a better look, and helps raise all boats here in terms of values. So --

MS. ISTENES: Well, certainly. I mean, whe --

COMMISSIONER CARON: -- maybe just looking at it. You know, I'm not recommending that we do anything in this cycle.

MS. ISTENES: I mean, if you -- certainly just as the median landscaping provides a statement about our community, so do the walls. And so maybe the contemplation is, is this making the statement that we want it to make now that we're seeing them? And maybe it's just a contemplation at this point, an observation.

I don't care. I personally -- or professionally I think if you're spending all the money on landscaping medians and then erecting barriers on both sides of them, it really negates the impact. And -- but, you know, again, I think it's more of a budgetary concern than anything.

CHAIRMAN STRAIN: Heidi?

MS. ASHTON-CICKO: I may be able to respond to some of your questions.

Currently I think what Susan is proposing is a codification of what currently exists. Right now I don't believe the sound walls are regulated in any fashion as they're constructed in road right-of-way.

I know that the transportation department does have standards on the erection of sound walls and prototypes of what certain walls they'll accept. Some of them are built by the county and some of them are built by the homeowners association. There's so many different arrangements out there, I can't give you an example of how they handle it in every situation. Some of them probably involve landscaping and some of them don't. And then as you know, we have a median beautification, or had one in better days, program that also involves beautification along the

sides where the walls are constructed. And there's a Warren Study that the transportation department does when the roads come through to determine whether they should build walls and to what height they should build it, and that's all based on the studies that they do. And some of it is also the result of negotiations with the associations. So it really varies in every circumstance.

I don't think the transportation department would want to put regulations in the LDC, because they look to the Federal Department of Transportation standards and they have certain prototypes, but that could change. And I think they're always looking for a better product and a cost efficient product but yet still trying to maintain aesthetics in something that's acceptable to the public.

If you have any other questions, I can try to answer.

CHAIRMAN STRAIN: Brad?

COMMISSIONER SCHIFFER: Ray, do you get summer interns or anything like that at the planning department? Because what I was thinking, see if somebody could maybe look up, pull from APA files a book or something, something on sound walls, so we just start to think about it.

The thing that scared me is a while back we did a development up the northern part of 75 where they really wanted to get close to the road and the sound wall was part of their application. And we kind of thought that was okay for some horrible reason that -- in other words, like I can get the house really close if I put this 20-foot sound wall.

So I mean, essentially we should be doing better planning where maybe that's where the preserve should have been instead of the sound wall. So it would be good that we do have to focus, and maybe we do set some standards and maybe they're palatable even.

MR. BELLOWS: I agree. And for the record, we do look at design standards for sound walls in certain instances. I recall a couple projects that I worked on along I-75 where the sound walls were part of the project design.

And you're right, it allows them to move the buildings a little closer to the interstate while still maintaining some sound deadening abilities with the larger wall that was approved as part of the PUD.

Where I see the big problem is, and as Susan eluded to, is these after-the-fact projects where the Type D buffer has been installed, it's a nice visual design for both the property owner and for the traveling motorists, and then when the sound wall goes in, it's usually in front of the Type D buffer and then you've got a stark wall.

And the standards should be -- you know, one thing is you have to make sure that there's adequate buffering on the outside of the wall once the sound wall goes in. But that's sometimes predicated on the amount of right-of-way that's left or room that's left. So there's going to be a lot of safety issues involved when the after-the-fact sound wall goes in. And it's not going to be easy to have set standards that apply universally for each right-of-way. So it's going to take some thought.

And I'd be happy to have some of our staff look at some development standards that other communities have, or the state standards.

CHAIRMAN STRAIN: Mr. Murray?

COMMISSIONER MURRAY: Heidi, I have -- I need clarity on something. You've indicated that associations -- I don't know if you went any further than that by intimation, but at least associations who are not a governmental agency necessarily in the same context we're talking about here and may want a sound attenuating wall, if they're not at the direction of the County Commission, they may be restricted to height, based on this paragraph. Because this is very clear it says erected by or at the direction of. Now, I don't know if those associations have the right to just pull a permit and build a wall, but now they're restricted to a given height.

MS. ASHTON-CICKO: Well, that's a good point, because I do have an ongoing project right now where the road is going to be constructed very, very close to -- I can't get into the details, but it's a development, and they will need to put in a sound wall, but it will not be on county road right-of-way. It would probably be the result of a settlement and whether they craft the settlement to say it's at the direction of the county. I guess if they didn't craft the settlement to say it's at the direction of the county, it was just a settlement agreement, then it probably would not fall under here.

COMMISSIONER MURRAY: Yeah, because prior it was said that they -- nobody can other than the government initiate such a thing, and you brought that into it. So I do think that has to be qualified now.

MS. ASHTON-CICKO: Okay.

CHAIRMAN STRAIN: Okay, I think the best thing to do is first of all, I think the suggestion is there's not

enough regulation in this reference to a sound wall. Actually, it seems to remove more regulation than provide. I think we need regulation for sound walls; that seems the consensus.

So I would suggest we have a motion to recommend approval on the fences and walls and drop the -- with a recommendation to drop the reference to sound walls for another cycle to come back when we have more adequate time to research the issue.

COMMISSIONER MURRAY: So moved.

CHAIRMAN STRAIN: And go forward with something in the future.

COMMISSIONER WOLFLEY: Second.

CHAIRMAN STRAIN: It's been -- motion's been accepted by Mr. Murray, seconded by Mr. Wolfley.

Discussion?

Mr. Schiffer?

COMMISSIONER SCHIFFER: Susan, doesn't that leave us in the position where we don't have -- nobody can build sound walls higher than our wall and fence ordinance?

CHAIRMAN STRAIN: We're doing it now.

COMMISSIONER SCHIFFER: It doesn't?

MR. BELLOWS: Not in the right-of-way.

CHAIRMAN STRAIN: They're doing it now.

COMMISSIONER SCHIFFER: In the right-of-way. Okay. But I thought you said -- well, okay. So nobody's going to do it on private property. That's good.

MS. ISTENES: Correct.

COMMISSIONER SCHIFFER: All right, thank you.

CHAIRMAN STRAIN: And I think also it also provides the opportunity for transportation to get with the code writing to make sure that if there are federal guidelines for certain types of roads, they're incorporated, and if there are state guidelines, they're incorporated, and if there are beautification guidelines, architectural criteria that we want to include, they can be incorporated.

So I think moving that one into a more definitive cycle in the future to come back in a more thorough thought-out way would be better than just putting a sentence through today.

COMMISSIONER SCHIFFER: Good.

CHAIRMAN STRAIN: So all those in favor of the motion, signify by saying aye.

COMMISSIONER SCHIFFER: Aye.

COMMISSIONER HOMIAK: Aye.

COMMISSIONER MURRAY: Aye.

COMMISSIONER MIDNEY: Aye.

COMMISSIONER WOLFLEY: Aye.

COMMISSIONER VIGLIOTTI: Aye.

COMMISSIONER CARON: Aye.

CHAIRMAN STRAIN: Aye.

Anybody opposed?

(No response.)

CHAIRMAN STRAIN: Motion carries.

The last one we have today is the rewrite of the temporary use section. That's on Page 105.

And Susan, maybe you can enlighten us. I think it was section references and things like that were checked and possibly corrected. There's a few other highlighted areas. Do you want to --

MS. ISTENES: Yes, certainly. This isn't anything new. I mean, you did see this change when the sign ordinance changes went through.

This is essentially finishing up the sign ordinance changes. John did go through and clean up some references I think just really providing direction to where things went, because there were some errors there.

And then he did -- I did e-mail you a clean copy that he put together so you all could see how it would read without the underlines and strikeouts.

But essentially it's moving the topic of temporary signs from the sign code into the temporary uses and structures section of the Land Development Code.

We did reorganize it a little bit better to read a little bit better and a little cleaner. And that's really about it, unless you have specific questions that I can attempt to answer.

CHAIRMAN STRAIN: Since we've already had the package before, I'll just -- we'll take the document in a whole because we're looking at refinements from prior meetings.

Does anybody have any questions of anything?

Mr. Schiffer?

COMMISSIONER SCHIFFER: Susan, on page -- starts on 111 but it goes to 112. The temporary signs, is that per tenant or is that for the mall or the site in general? And how would somebody know that?

MS. ISTENES: It could be per tenant. It's not for the mall, per se. I mean, it's per business, really.

COMMISSIONER SCHIFFER: So a strip little center with 10 tenants, they could all decide that they want to have a temporary sign for a special weekend and there be -- and they all could have them?

MS. ISTENES: Sure.

COMMISSIONER SCHIFFER: Okay.

CHAIRMAN STRAIN: Anybody else have any questions?

COMMISSIONER WOLFLEY: Mark?

CHAIRMAN STRAIN: Yes, sir, Mr. Wolfley?

COMMISSIONER WOLFLEY: I had a question, and I couldn't find it in here. And I have passed quite a few places where somebody will park let's say a truck and a trailer on a very busy road, maybe even laid a pad of concrete there so they could park it right on the road and so they have a sign for their business. Is that addressed? Is that considered temporary? Because this has been, oh, two, three years sitting there.

MS. ISTENES: Are you talking about perhaps a truck that they drive in the daily operation of their business or --

COMMISSIONER WOLFLEY: Sometimes, yeah. Well, there's not much business so it sits there a lot. But yes. But yes, it is a vehicle and a trailer that's used. Is that permissible?

MS. ISTENES: It gets into a grey area of the code that I think is a little bit hard to enforce, because if the vehicle is being parked in a parking lot of their business and --

COMMISSIONER WOLFLEY: Their home.

MS. ISTENES: Oh, their home? There's really not a restriction on the sign on the vehicle.

COMMISSIONER WOLFLEY: I didn't have a problem. I was just wondering if --

MS. ISTENES: Yeah, I know what you're saying.

COMMISSIONER WOLFLEY: -- the problem was addressed, because we have restricted similar things before. Thank you.

MS. ISTENES: I mean, if it's a licensed operable vehicle and it just happens to have a sign on it that talks about a business and they are using, you know, the vehicle, it can be driven, then it's allowed.

COMMISSIONER WOLFLEY: Very good, thank you.

CHAIRMAN STRAIN: Anybody else have any questions?

(No response.)

CHAIRMAN STRAIN: Is there a motion on the rewrite of the temporary use section?

COMMISSIONER SCHIFFER: I will.

CHAIRMAN STRAIN: Mr. Schiffer?

COMMISSIONER SCHIFFER: Okay, I move that we find this to be compliant with the Growth Management Plan and forward with a recommendation of approval with the -- that's it, no with the.

CHAIRMAN STRAIN: Okay, is there a second?

COMMISSIONER VIGLIOTTI: So moved.

CHAIRMAN STRAIN: Motion made by Commissioner Schiffer, seconded by Mr. Vigliotti.

And I failed to do this the prior time. But that's for Sections 5.04.01, 5.04.05, 5.04.06, 5.04.07, 5.04.08, 10.02.06.G and appendix G.

And I assume that the motion maker and seconded find them consistent with the Growth Management Plan?

COMMISSIONER SCHIFFER: I stated that.

CHAIRMAN STRAIN: Okay, did you? Okay, fine.

All those in favor, signify by saying aye.

COMMISSIONER SCHIFFER: Aye.
COMMISSIONER HOMIAK: Aye.
COMMISSIONER MURRAY: Aye.
COMMISSIONER MIDNEY: Aye.
COMMISSIONER WOLFLEY: Aye.
COMMISSIONER VIGLIOTTI: Aye.
COMMISSIONER CARON: Aye.
CHAIRMAN STRAIN: Aye.

Anybody opposed?

(No response.)

CHAIRMAN STRAIN: Motion carries 8-0.

And for the record, the fences and walls subsection was 5.03.02. I did not read that in last time around.

So with that, that takes us to the end of our agenda. I think we're continuing because of the shoreline thing.

COMMISSIONER SCHIFFER: Well, we have --

CHAIRMAN STRAIN: Or others. Yeah, there's some others out there. So -- but do we know when we're continuing to?

MS. ISTENES: For the shoreline, it doesn't sound --

CHAIRMAN STRAIN: No, but --

MS. ISTENES: -- like it. But April 15th.

CHAIRMAN STRAIN: Okay. Is there a motion to continue this meeting to April 15th, whenever we get to it that day?

COMMISSIONER VIGLIOTTI: So moved.

CHAIRMAN STRAIN: So moved by Mr. Vigliotti. Seconded by?

COMMISSIONER CARON: Second.

CHAIRMAN STRAIN: Ms. Caron.

All in favor, signify by saying aye.

COMMISSIONER SCHIFFER: Aye.

COMMISSIONER HOMIAK: Aye.

COMMISSIONER MURRAY: Aye.

COMMISSIONER MIDNEY: Aye.

COMMISSIONER WOLFLEY: Aye.

COMMISSIONER VIGLIOTTI: Aye.

COMMISSIONER CARON: Aye.

CHAIRMAN STRAIN: Aye.

Motion carries. We're adjourned -- or continued. Thank you.

There being no further business for the good of the County, the meeting was adjourned by order of the Chair at 12:33 p.m.

COLLIER COUNTY
PLANNING COMMISSION



MARK STRAIN, Chairman

These minutes approved by the board on 5-6-2010 as presented or as corrected _____.

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