

April 1, 2010

TRANSCRIPT OF THE MEETING OF THE
COLLIER COUNTY PLANNING COMMISSION
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 REGULAR 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
Nick Casalanguida, CDES Interim-Director
Ray Bellows, Zoning Manager

CHAIRMAN STRAIN: Okay, now that Cherie's here and came a little late (sic), we're good to go.

Rise for pledge of allegiance.

(Pledge of Allegiance was recited in unison.)

CHAIRMAN STRAIN: By the way, welcome to the April 1st meeting of the Collier County Planning Commission.

And if you haven't gone to Google yet this morning, do it, and read what the name change they have. They changed their name to Topeka. It was pretty interesting. It took a while to figure out it was an April Fools Day spoof. But they wrote it up pretty well. It's pretty neat of them.

Item #2

ROLL CALL BY SECRETARY

CHAIRMAN STRAIN: Okay, with that little bit of trivia, can we have the roll call, Mr. Secretary?

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.

Item #3

ADDENDA TO THE AGENDA

CHAIRMAN STRAIN: Okay, addenda to the agenda. We have two items involving the same area, Port of the Islands, on the agenda today.

After this meeting is over, we will adjourn and then reopen a continued meeting for the Land Development Code amendments that were continued from March 24th.

And we're going to go over three specific amendments today on the Land Development Code. The first one will be the shoreline conservation issue, for those people that will be showing up or may be here. But that starts at 10:00.

Item #4

PLANNING COMMISSION ABSENCES

CHAIRMAN STRAIN: Planning Commission absences. Ray, do we have any meetings between now and our next regular CCPC meeting? I can't recall.

COMMISSIONER SCHIFFER: No.

CHAIRMAN STRAIN: Doesn't look like it.

So it will be the 15th of April is our next meeting.

MR. BELLOWS: That's what I show on my calendar.

CHAIRMAN STRAIN: Yeah, me too.

Does anybody know if they're not going to make it for the April 15th --

COMMISSIONER WOLFLEY: No.

CHAIRMAN STRAIN: -- Mr. Wolfley, you won't be here?

COMMISSIONER WOLFLEY: I'll be out of town.

CHAIRMAN STRAIN: Okay. Mr. Murray?

COMMISSIONER MURRAY: Well, I wanted to just mention, I had --

THE COURT REPORTER: Mr. Murray, I'm sorry, I can't hear you.

CHAIRMAN STRAIN: You'll need the mic.

COMMISSIONER MURRAY: Oh, I'm sorry, I apologize.

I had a note the 9th was going to be a possible meeting. And I just saw Commissioner Caron nodding, so she knows it too.

COMMISSIONER HOMIAK: I had it too.

CHAIRMAN STRAIN: I didn't.

COMMISSIONER WOLFLEY: Me neither.

CHAIRMAN STRAIN: Okay, I don't know of any meeting on the 9th. There may have been one at one time, but it probably got dropped.

Is that your understanding, Ray?

MR. BELLOWS: That's my understanding.

COMMISSIONER MURRAY: That's good.

CHAIRMAN STRAIN: Yeah, we have a meeting every week. I don't know what it's going to be -- we're going to go through withdrawals here. We meet more often than other boards do in this county.

Okay, so it's the 15th. And only -- Mr. Wolfley is the only one that probably won't make it to that meeting.

Item #5

APPROVAL OF MINUTES – SEPTEMBER 21 & SEPTEMBER 23, 2009, AUIR PLANNING
COMMISSION/PRODUCTIVITY COMMITTEE SPECIAL MEETING; FEBRUARY 26, 2010, LDC; AND
MARCH 4, 2010, LDC

CHAIRMAN STRAIN: So let's go into the approval of the minutes.

The first one is September 21st for the AUIR planning meeting. Those were sent to us electronically. Is there a motion to recommend approval?

COMMISSIONER VIGLIOTTI: Move.

CHAIRMAN STRAIN: Is there a second?

COMMISSIONER HOMIAK: Second.

CHAIRMAN STRAIN: Okay, motion made by Commissioner Vigliotti, seconded by Commissioner Homiak.

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.

Anybody opposed?

(No response.)

CHAIRMAN STRAIN: Motion carries.

September 23rd, 2009 AUIR Planning Commission meeting.

Anybody? Same motion, different motion, any kind of motion?

COMMISSIONER VIGLIOTTI: So moved to approve.

CHAIRMAN STRAIN: Mr. Vigliotti same motion.

COMMISSIONER HOMIAK: Second.

CHAIRMAN STRAIN: Ms. Homiak seconded.

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.

Anybody opposed?

(No response.)

CHAIRMAN STRAIN: Motion carries.

We have a series of -- we have two more to go through. March -- three more, actually. February 26th, 2010, an LDC meeting. Is there a motion to approve?

COMMISSIONER SCHIFFER: Move approval.

CHAIRMAN STRAIN: Mr. Schiffer made the motion.

Seconded by?

COMMISSIONER MURRAY: (Indicating.)

CHAIRMAN STRAIN: Mr. Murray.

All those in favor, signify by saying aye.

COMMISSIONER SCHIFFER: Aye.

COMMISSIONER HOMIAK: Aye.

COMMISSIONER MURRAY: Aye.

COMMISSIONER MIDNEY: Aye.

COMMISSIONER VIGLIOTTI: Aye.

COMMISSIONER CARON: Aye.

CHAIRMAN STRAIN: Aye.

Anybody opposed?

COMMISSIONER WOLFLEY: I was not there.

CHAIRMAN STRAIN: That wasn't one of the choices.

COMMISSIONER WOLFLEY: That was the last one.

CHAIRMAN STRAIN: Does that mean you're abstaining?

COMMISSIONER WOLFLEY: I'm abstaining.

CHAIRMAN STRAIN: Okay. Mr. Wolfley will be abstaining.

March 4th, 2010, is there a motion?

COMMISSIONER SCHIFFER: Move approval.

COMMISSIONER MURRAY: (Indicating.)

CHAIRMAN STRAIN: Mr. Schiffer, seconded by Mr. Murray.

Discussion?

(No response.)

CHAIRMAN STRAIN: 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.

Anybody opposed?

(No response.)

CHAIRMAN STRAIN: Motion carries.

By the way, all the motions are unanimous, unless I say otherwise for you. It's simpler that way.

March 10th, 2010.

COMMISSIONER SCHIFFER: Move approval.

COMMISSIONER MURRAY: (Indicating.)

CHAIRMAN STRAIN: Motion made by Mr. Schiffer, seconded by Mr. Murray.

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.

Anybody opposed?

(No response.)

CHAIRMAN STRAIN: The motion carries.

Item #6

BCC REPORT – RECAPS – MARCH 23, 2010

CHAIRMAN STRAIN: Okay, BCC report and recaps. Ray?

MR. BELLOWS: Yes. The Board of County Commissioners last Tuesday heard the conditional use for the Collier Transit Facility. That was the bus transfer facility. That was approved 5-0, subject to the CCPC conditions of approval.

CHAIRMAN STRAIN: Good.

Item #7

CHAIRMAN'S REPORT

CHAIRMAN STRAIN: Okay, chairman's report. Nothing new. We've been meeting so often I think we're all pretty much aware of everything going on.

Item #8

CONSENT AGENDA ITEMS

CHAIRMAN STRAIN: Consent agenda. We don't have any today.

Item #9A

PETITION: RZ-PL2009-910, PORT OF THE ISLANDS COMMUNITY IMPROVEMENT DISTRICT

CHAIRMAN STRAIN: So with that, we'll move directly in the public meeting.

First of all, disclosures on the part of the Planning Commission?

(No response.)

CHAIRMAN STRAIN: Anybody? I -- Mr. Wolfley?

COMMISSIONER WOLFLEY: I spoke with someone out at The Conservancy.

CHAIRMAN STRAIN: Okay. I spoke with Mr. Duane about the project. We didn't really have a lot to say because it was short notice. But I mentioned to him I had some issues involving a couple of the interpretations from the agreement, settlement agreement for that area which we will be discussing today. And I relayed that information to staff and Ms. Ashton, who will be prepared to discuss it as well.

Anybody else?

(No response.)

CHAIRMAN STRAIN: If not, all those wishing to testify on behalf of this item, please rise to be sworn in by the court reporter.

(Speakers were duly sworn.)

CHAIRMAN STRAIN: Okay, Mr. Duane, it's yours.

MR. COX: Good morning, Commission. My name is Dan Cox. I'm the attorney for the Port of the Islands Community Improvement District.

I have with me today Dr. Benson. Dr. Benson is the district's engineer. Mr. Duane is our planning consultant. Mr. Dale Lambert is the chairman of the board of supervisors of the district. And Mr. Richard Ziko is another member of the board of supervisors.

The district is a community development district, established pursuant to Chapter 190, Florida Statutes. It provides the utility services for the Port of the Islands community, which I'm sure you're familiar with, located east of town, bisected by -- just drew a blank on the road -- 41.

CHAIRMAN STRAIN: U.S. 41.

MR. COX: Yeah, Tamiami Trail. I live on 98 up in northern Florida, and I always want to call 41 98. Bisected by 41 and the Fakiunion Canal.

The particular property that we're talking about today is located in the northwest quadrant of the project. It is a -- it's been a utility facility for quite some time. We have an existing water treatment plant there. The plant is under consent order with DEP. We have to build a new plant by July of next year. We intend to -- this is what has triggered the need to come before you today to have some changes in the development approvals for the property.

We have historically operated under a conditional use approval that allowed the construction of these public facilities in the RT zoned district and on portions of the property that are zoned conservation. Although zoned conservation, it's been severely impacted. There are no native vegetations or any sensitive communities in that area that is within this parcel.

We've also added 1.16 acres to our old utility facility plant. We want to incorporate that into the plan and hope to at some time in the future build a community center on the property. And that in essence is what we're asking you for the zoning approvals for and the variances that are before you.

We would like to just turn it over to staff at this point and then we'll be available to answer any questions, or if you'd like me to field any questions before we get started, that would be fine too.

CHAIRMAN STRAIN: Yeah, usually we ask questions of the applicant first, so we'll go through our questions of you and go from there.

MR. COX: Okay.

CHAIRMAN STRAIN: Questions from the Planning Commission. Anybody?

COMMISSIONER SCHIFFER: I have one.

CHAIRMAN STRAIN: Mr. Schiffer?

COMMISSIONER SCHIFFER: The location of Union Road right now runs through your property? And --

MR. COX: Union Road traditionally went right through our property up to the northern boundary. There's a cell tower up there that provides communication services for the area.

At about a year and a half ago there was a person who had a contract to purchase all of the land that's west of our property, and they were going to develop it as a high end RV park. That was about the time that the economy

turned a little south on us, and that deal never went through.

But while he was in his due diligence phase, he built a replacement road through Union Road so that it would make access to a separate parcel that's up here where they operate a shooting range. Then his development was going to be to the west and south of that access road.

So there is a reconfiguration of the road that goes to the Gun Club, but Union Road does still bisect up through here.

This is actually not part of the platted Union Road, but rather it's an access easement that allowed people that used to own property north of us to get to their property. The state now owns all of that property and restricts access to that area.

COMMISSIONER SCHIFFER: But you will -- in other words, the Union Road right-of-way is not on your property, it is to the west of it, correct?

MR. COX: It is actually on the eastern edge of our property, just inside of our property.

COMMISSIONER SCHIFFER: Okay. So the western edge of the right-of-way would be your boundary line, your property line?

MR. COX: Correct.

COMMISSIONER SCHIFFER: And you say -- if you go up north of that, when you look on aerials, it looks like there's a bunch of residences and stuff, but that's been bought by the state?

MR. COX: That's correct.

COMMISSIONER SCHIFFER: Okay, thank you.

CHAIRMAN STRAIN: Mr. Murray?

COMMISSIONER MURRAY: Yes, sir, good morning.

You talk about a community center, and yet I note that one of the prohibitions would be for libraries. I know the closest library would be at Everglades City, which is just a real -- I mean, it's a nice-looking room and it's got a lot of publications in it for its size, but the only other library is up in South Regional Library, which is a haul. Why would you not want to have a library opportunity in such a place?

MR. COX: Essentially all we want is to operate our water/sewer irrigation reuse and potentially the community facility. We could add that back in as a possible use, if -- I would see no objection to that.

COMMISSIONER MURRAY: Well, I'm not trying to force anybody to do anything, but it just seemed the people there to my knowledge don't have a library at this time. They have to go down to Everglades City or they have to go up to the South Regional and that's a haul. And I just thought if you're going to put a community center you might be able to allocate some space for that. And if you have no objection, maybe that's something we could talk about.

That's fine, thank you.

CHAIRMAN STRAIN: Anybody else have any questions?

(No response.)

CHAIRMAN STRAIN: Well, I've got a few.

Are you familiar with the development agreement between your CID and the BRH Enterprises?

MR. COX: I am.

CHAIRMAN STRAIN: Why did you redact out items B and C?

MR. COX: The purpose for putting that agreement into the record was to show that we had a contractual interest to the 1.16 acres of land that we were including in the development plan. And these assertions as to this third party that we spoke about that was going to develop the property, we just didn't see that as being something that was relevant to the purpose of the agreement being in the record and potentially at that time embarrassing to that third party.

CHAIRMAN STRAIN: You do realize that your CDD is a public body and all your records are open to public disclosure.

MR. COX: Absolutely.

CHAIRMAN STRAIN: Okay. The two items that you redacted out had to do with some work that was done on the property. That is what you're asking for today. So apparently the work you're asking for today, some of which has already been done; is that true?

MR. COX: That is true.

CHAIRMAN STRAIN: Okay, so the redaction was done not only to cross out the references to a third party but it also eliminated any I guess knowledge put on record that anything was completed prior to the application here today in front of us that is supposed to be for the items that some of which have already been corrected -- or created, I'm sorry, constructed.

MR. COX: Somebody might construe it that way, but it was not our intention.

CHAIRMAN STRAIN: Did you let staff know in your pre-application meeting that you had already constructed the road that you're now asking for permission to construct?

MR. COX: Mr. Duane attended the pre-application meeting. Could we address that question for --

CHAIRMAN STRAIN: Sure.

MR. DUANE: I don't believe we discussed that issue other than to tell them that the road was going to be relocated as part of this application.

COMMISSIONER MURRAY: I printed this last night. It's not redacted.

CHAIRMAN STRAIN: I know. It's not -- the one in your document is redacted. When I saw it I realized they can't redact something that's a public record, so I requested the version that isn't redacted. And that's what led me to the conclusion, going back and looking at aerial photos all the way back to 1975 as to the progress on that site.

Now, I don't have anything wrong with what you're -- problematic with what you're asking for. I think if you guys want to improve your water treatment plant, put a community center in and all that, that's great. But it bothers me that this wasn't disclosed in the process. I don't think it would have made a difference, but I don't know why you wouldn't have been forthright enough to disclose it as you went forward both in -- with staff and the fact that your water management system was damaged and still to this day may not be working properly because of that let's say illegally placed road.

Again, people make mistakes. Those things happen. A road being there isn't a problem. But why -- I don't understand why you guys approached it this way.

MR. COX: Well, please understand, Commissioner, that the road was put in without the permission of the Community Improvement District. We had actually proceeded to the point of giving demands to the third party to restore that land back to its pre-disturbed condition. They filed bankruptcy and essentially left us in a position where we've got to deal with what happened, even though it was done without our permission by those persons. Just basically told us if we didn't get out of the way the bulldozer driver was going to run over us.

And going forward from there, again, there was no intention of misleading anyone. I apologize if there's any perception that we were trying to mislead someone.

CHAIRMAN STRAIN: Well, I went back, and when I did check the aerials, one thing it did show, is what you're asking for is in an area that was already pretty much filled and destroyed anyway. Even though it had vegetation in the year from -- some vegetation grew back in the late '90's, early 2000's. And you've now -- recently it's been taken off in the last couple of years. But that was vegetation that grew back in an area that had previously been cleared and filled anyway.

So none of what you're doing really poses a problem. It's just I don't think the CDD board would have appreciated not being told something in their district if an applicant came forward. And I think this board and the BCC would have expected the same, is that you just be as forthright as possible when you come into these meetings. We're not here to penalize, we're here to make sure things happen. And I would have preferred that methodology. I wanted to make sure you understood that so maybe in the future things don't necessarily have to be done this way.

I also noticed that -- are you familiar with the settlement agreement that CDD has, or Port of the Islands has with DCA?

MR. COX: Yes.

CHAIRMAN STRAIN: Okay, do you know there's a paragraph in that settlement agreement that requires -- I'll read it to you. The developer agrees to call to the attention of Collier County the fact that this property is located within the Big Cypress area of critical state concern and to provide the county at the time of any application for zoning or other development approvals with a copy of this agreement.

Now, staff checked and didn't find one supplied to them with the agreement -- with the application. And there certainly wasn't one in our packages. Having lived in the county a long time, I have that information, so I was able to get a copy.

But again, we should be getting copies of this stuff. If you've read the agreement, you know the rules.

Especially being an attorney. You should have submitted it with the package.

So I'd like to make sure the record's clear, we didn't get it with the package. I don't know if the rest of you have seen that agreement or not. I intend to ask some questions from it, just for clarification at this point.

And also in the letter that was written by Mr. Duane to the county staff at the intake, the agreement very clearly has a concern over intensity of uses in any of the zoning districts or zoning areas at the time the settlement agreement was put in place. And that was back in the Eighties.

At that time this was an RO, which is comparable to the CON district today. CON district is conservation. That's the north side where the water treatment plant is. The south side where the septic treatment is in the RT zone.

But when your letter of the issued to the county, you carefully crafted it possibly not to even mention the intrusion into the CON. You simply said that you were -- for example, the acres of the RT zone land on the subject property, up to 16 dwelling units per acre, are allowed. Based on three employees per shift -- and it goes on and on about how much you're going to use that RT zone. Similar measures of development intensity in the rezoning of the P district will result in reduction in development intensity.

I agree, it does in the RT zone. But it's not so clear, and the analysis was not prepared in the CON zone, which is half of what you're doing in the conservation area to the north.

MR. DUANE: I'll answer the question. The -- Robert Duane for the record.

As part of my cover letter, I did note that we were -- the property's approximately 4.8 acres. I noted that three acres from the RT district were being removed on Page 3 of my cover letter dated December 31st, 2009, and that had the effect of removing 48 multi-family units from the property and 78 motel units.

Because the portion of the property that is zoned CON already had a water plant on it, I didn't think that was really germane to the intensity of use analysis, since that conditional use was approved in an application that I filed and was approved by this Planning Commission in 1992, I believe.

CHAIRMAN STRAIN: Well, you're expanding that water treatment plant area.

MR. DUANE: No, we are not increasing the capacity of the plant. We were under a consent order from the Florida Department of Environmental Protection to upgrade the facilities to bring the technology up to the present state standards. So that is principally the reason that we're before you is to comply with requirements that the State of Florida has imposed on us for upgrading the treatment plant, which do not increase the capacity of the plants.

I might also note for the record that the CON district, while we were a nonconforming use because that district no longer allows sewer and water plants -- which was one of the other reasons that we converted CON to the P district, in addition to the fact that our plan was changing and we're adding the space for the community meeting room.

But in terms of development intensity, the plant only uses approximately three employees per shift, and we take the community meeting room or some similar use, we thought that was demonstratively less intensive than 48 dwelling units or 78 motel units on the RT zoned portion of the property.

CHAIRMAN STRAIN: You're increasing the area in which the plant is going to consume, are you not?

MR. COX: The square footage footprint. And I was going ask for clarification on that.

CHAIRMAN STRAIN: Well, you're going to get clarification, whether you ask for it or not. Because I don't like the little games we're playing with words.

You didn't increase maybe the use capacity of the plant, but you're spreading it out on more land that was once utilized as CON. That's the whole thing boiling down to a nut in a shell. That's it. So you are using more of a conservation district property. You are not simply limiting it to the expansion of the existing plant, you're asking for seven different new uses -- and Mr. Murray's trying to throw in one more -- that would give you more intensity than what's there now.

So it's not what you're possibly doing now. And like I said, I've got no objection it. It's what you could do. And if you're intending to do that, be forthright and tell us.

MR. COX: What we intend to do is to operate a water plant, a sewer plant that has reuse irrigation capability, and potentially build a community center in the future.

CHAIRMAN STRAIN: The manner in which you guys approach this is making it a lot harder than if you had just come right up out of the shoot and said what you were going to do.

Anybody have any other questions while I -- Ms. Caron?

COMMISSIONER CARON: What -- your water and sewer plant, how many units is it equipped to serve?

MR. COX: The plants are sized for 1,032 equivalent residential connections.

CHAIRMAN STRAIN: Is that it?

COMMISSIONER CARON: Well, I have some other questions, but --

CHAIRMAN STRAIN: No, I didn't know if you were done.

COMMISSIONER CARON: Okay. In the ordinance 92-59 there were some agreements made. I'm wondering if I and J have both been met.

CHAIRMAN STRAIN: Dr. Benson, since you're in charge of the water and sewer plant down there, you would know that answer. One is the refiling of monitoring reports on a quarterly basis. I know your firm does that, knows how to do those things, so I'm assuming that your department might have been doing that for the applicant.

MR. BENSON: I need to see what specifically I and J are.

COMMISSIONER CARON: I is for filing quarterly reports and J is landscape buffering, on the south and the west.

MR. COX: Specific to the landscape buffering, when the third party took everything else into their own hands, they also took our landscape buffer out, which was I believe some of the vegetation you may have seen from the aerial photos in the late '90's, early 2000.

COMMISSIONER CARON: So the landscaping was there --

MR. COX: Yes, ma'am.

COMMISSIONER CARON: -- as it was required --

MR. COX: Yes, ma'am.

COMMISSIONER CARON: -- prior to that road issue?

MR. COX: And we planted an extensive landscape buffering between the road and the plants so that they would be shielded also from the south and the west.

COMMISSIONER CARON: We can talk about that.

MR. COX: And the plant itself is going to have architectural relief, so it's not going to just look like a box stuck out there. It will have a facade and be in character with the architecture of the community.

CHAIRMAN STRAIN: Okay, does anybody else have any questions of the applicant before we go to -- oh, Doctor?

MR. BENSON: With regard to I, the Port of the Islands submits all their reports to the DEP. I do not know if the operator is also copying Collier County Pollution Control on those.

CHAIRMAN STRAIN: Okay, you're still going to be continuing monitoring that facility for the applicant? Is that your firm going to be --

MR. BENSON: No, we're the engineer. There's an operator, and the operator is the individual that's required by Florida law to sign those applica -- or monitoring reports and submit those to the state.

I do not know if they've been submitted in addition to Collier County Pollution Control.

CHAIRMAN STRAIN: Well, maybe staff does.

Thank you, I appreciate it, sir.

Anything else before we go to staff report?

COMMISSIONER CARON: I just wanted to go back to that development agreement for a minute. Number two of that development agreed says that the 1.1 acres is -- the site is to replace the previously permitted and constructed stormwater management system.

Now you're doing stormwater management, I think, and also this community center?

MR. COX: The stormwater management system used to be through here that took care of the stormwater from our property. When they put the road in, they took it out. We're going to have stormwater management facilities here, here and here and here to serve all of the runoff from the property. It's not taking it from any other property, it's to meet our obligations to attenuate the stormwater generated from our facilities.

COMMISSIONER CARON: But my question relates to the agreement, and the agreement with respect to that one-acre parcel. The one-acre parcel, according to this agreement, is for stormwater. Now you're making it stormwater and community center. I don't know if that affects your agreement or not or it's no big deal and nobody cares.

MR. COX: I don't think that this was intended to limit it solely to stormwater. It was just to acknowledge

that that was -- part of the consideration for him giving us that was because the contract vendee that he had the relationship with had taken this action without our permission.

COMMISSIONER CARON: Okay. And now I'm going to ask a stupid question for my own knowledge here.

The last line in that paragraph says parcel A will have six ERC's allocated to it. I don't know what an ERC is.

MR. COX: They're equivalent residential connections. As indicated, the plants are sized for 1,032 ERC's, equivalent residential connections. The property that is located to the west of us has approximately 180 something ERC's -- 181 ERC's. It's completely undeveloped land right now. Each of those ERC's is assessed about \$1,500 a year, so the carrying cost for that property is fairly extreme.

He felt like that as a percentage this was 1.16 acres zoned RT, and we took a proportion of the ERC's equivalent to the proportion of the land that's zoned RT that we're getting. We'll be putting it kind of in the bank, because what we have is two properties down there that do not have enough ERC's to construct all of the buildings that they have Collier County approval for.

In those circumstances what we do, we give our letter of utilities availability that states in it that they can -- they have enough capacity in our systems to build "X" number of units. If the county approves more than that, they have to obtain ERC's from another property like this one to the west of us that has underutilized capacity that they could transfer. We have a mechanism for doing that through our rules of the district.

COMMISSIONER CARON: Okay. Yeah, that was --

MR. COX: That may have been more information than what you're looking for.

COMMISSIONER CARON: No, actually, it's very good information. Thank you.

CHAIRMAN STRAIN: Okay, does anybody else have any questions?

(No response.)

CHAIRMAN STRAIN: If not, we'll get to the staff report. Thank you.

MS. DESELEM: Good morning. For the record, Kay Deselem, Principal Planner with Zoning. Happy April Fools Day.

You have before you staff reports for both petitions, a variance petition and a rezone petition. Both are -- the variance petition is last revised 3/15, the rezone petition is last revised 3/4.

The applicant has already gone into most of the information regarding the first several pages about the action and the location, the description of what we're talking about, the aerial photograph.

On the staff report on Page 3 you have the growth management analysis. Staff is recommending that this project be found consistent with the Growth Management Plan.

On Page 4 it begins the analysis of various staff members, including environmental, stormwater management, transportation review, affordable housing and zoning.

On Page 5 you'll find the beginning of the rezone findings that support staff's contention that this is consistent with the Growth Management Plan and in compliance with the Land Development Code. Those continue through.

And on Page 10 you have staff's recommendation of approval of the petition for rezoning, noting at that time the condition that we were proposing, that the collection and transfer site for resource recovery use was not to be an allowable use based on the applicant's voluntary exclusion of that use.

You have before you in the presentation by the applicant a revised list of uses that he wants to clarify for the site, and staff has no objection to that revised list.

In the variance application, again you have Page 1 that goes into the actual variance request. And then the general location, purpose and description.

This project -- although the variance petitions aren't normally addressed through the Growth Management Plan, we carried over what was in the staff report for the rezoning, finding that it is consistent with the Growth Management Plan.

Beginning on Page 3 is the analysis, providing the findings for you in support of staff's recommendation that the variance be approved.

And on Page 6 you have staff's recommendation. The only condition that goes with the variance petition is that which identifies the site plan. And you have the site plan that shows where the variances are to be applicable.

With that, I'll let that --

CHAIRMAN STRAIN: Mr. Murray?

COMMISSIONER MURRAY: Good morning.

MS. DESELEM: Good morning.

COMMISSIONER MURRAY: And this is not an April Fools question, although it might be.

If this were modified to be zoning and if there were a community room or building, and if it were large enough to have a space to have some books and magazines and so forth that might be checked out, would that be considered a library? Those books and articles and whatever, would that be considered a library?

CHAIRMAN STRAIN: Before you answer, Bob, I might offer a solution to your -- because your idea is a good one. But the RT zoning, which is the south part where that center is, if they were to use their uses one through six in the CON, one through seven plus libraries in the RT, then they've gotten everything they want and you don't have to worry about it, whether it's a library or a community center with books.

COMMISSIONER MURRAY: I wanted to find out if there was going to be some prohibition. Thank you for that thought, but I didn't know that they were going to be able to build in both locations.

CHAIRMAN STRAIN: Well, the way they're asking, they want to expand the water treatment plant into the CON in the north and they want to expand the wastewater treatment plant into the RT in the south.

If the uses applied as they're suggesting, one through seven would apply equally to the north and the south. But the north being a more sensitive zoning, my suggestion -- and I like your idea, the library is good, and Port of the Islands could probably benefit from it if they ever wanted to do it. And if they were to put it in the RT zoning in the south, it would clearly then be less intense than the existing zoning, so there it would make sense.

COMMISSIONER MURRAY: Let's leave it at that. Because I'm glad that you do agree that there's something useful there. It is important for people to be able to avoid having to get in their car and go all the way -- thank you, that's good enough. Got it.

MS. DESELEM: That was easy. Thank you.

COMMISSIONER MURRAY: Well, we do a lot of that here.

CHAIRMAN STRAIN: Any other questions?

Mr. Schiffer?

COMMISSIONER SCHIFFER: And Kay, just to go over these uses, I assume that this would be a replacement for Exhibit B in the resolution, correct?

MS. DESELEM: Let me verify that and look at Exhibit B to see, verify what it is. Excuse me just a moment.

COMMISSIONER SCHIFFER: Mark, while she's do doing that, in the last conversation you had with Bob you were mentioning in the different districts. But aren't we wiping those districts off and making this just P, the whole thing?

CHAIRMAN STRAIN: Right.

COMMISSIONER MURRAY: That's what I thought.

CHAIRMAN STRAIN: But we are making it -- we're turning the CON in the north to a P and a conditional use to a P, and we're turning the RT and conditional use in the south to a P. The P can have whatever uses would be coming out of this meeting.

COMMISSIONER SCHIFFER: Right.

CHAIRMAN STRAIN: Seeing as how the facility and each one that was supposed to be weighed on increased intensity by -- based on that settlement agreement.

And so what they're trying to do is have the least increase intensities in zoning districts that where they were more sensitive. And the CON is probably the more sensitive in comparing it to an RT.

COMMISSIONER SCHIFFER: So we'll limit that to some other description?

But anyway, will that be the new Exhibit B?

MS. DESELEM: Yes, sir, that would be the new Exhibit B.

COMMISSIONER SCHIFFER: In the description one through seven up at the top, the permitted uses, the community building, is it clear that that would be allowed in those uses? I mean, would you consider -- is it administrative services? I'm not sure.

MS. DESELEM: It's kind of a call. But I would think that that would fall under the guidelines of administrative facilities. We didn't actually go into it. If not --

COMMISSIONER SCHIFFER: Then why don't we put parenthesis community services, building, you know, or something. Just to make sure. Because I can read this thing and it doesn't look like you'd be allowed to do

what I would do in a community service building.

MS. DESELEM: Thank you, I think that's a good solution.

COMMISSIONER SCHIFFER: Down below at the bottom it says, child care, not for profit. Does that mean you could run one for profit?

MS. DESELEM: It assumes so.

COMMISSIONER SCHIFFER: So why don't we --

MS. DESELEM: But that's the only way it's listed in the LDC. It's silent on whether you could do it for profit or not.

COMMISSIONER SCHIFFER: I mean, what if we just said you're not allowed to have child care, wouldn't that kill both?

MS. DESELEM: Yes.

COMMISSIONER CARON: They're prohibited.

COMMISSIONER SCHIFFER: Right. But what it says, Donna, is child care, not for profit. Essentially I could run one for profit and it would be allowed, so --

MS. DESELEM: I see your distinction. Just say no.

COMMISSIONER SCHIFFER: Okay. So let's just let's wipe out not for profit so no child care is allowed.

COMMISSIONER CARON: But that isn't the way we read our code, Brad. What is allowed is what is up above, and nothing else is allowed. So they couldn't do child care for profit or not for profit.

COMMISSIONER SCHIFFER: Well, I think if we isolate one, we open up the door for the other, I think. I mean, then why are we doing the bottom thing at all?

COMMISSIONER CARON: I don't know.

COMMISSIONER SCHIFFER: I mean, obviously the intention was they wanted to relieve everybody's fear that this would be a collection of transfer stations. That was a concern. Then it's grown now to be the thing we're dealing with here.

But anyway, I think just if you're going to mention child care with one specific use, that would give the impression the other's allowed, so --

COMMISSIONER CARON: Yeah, I see what you're saying. But again, if we go back to the way we're supposed to read our code, that shouldn't be an issue.

CHAIRMAN STRAIN: If we -- see, the problem's going to be is if you leave the permitted uses up on top, the one that's titled essential public service facilities is going to be a conglomerate of whatever the department wants to claim as their public service facility. And that could bring in a lot of the issues that are down below.

So based on that, it's kind of like passive recreation, no one really knows what it is. And if you don't exclude things, you could include too much. So that may be the reason why we ought to clean up and at least leave those in.

And I think Donna's argument is correct, and that takes precedent, but I think the clarification doesn't hurt. Doesn't hinder, it --

COMMISSIONER CARON: No, I think it hurts.

COMMISSIONER SCHIFFER: But I could -- theoretically somebody could run for profit a child care for the workers of the --

CHAIRMAN STRAIN: No, I think we're all in agreement with you're drop -- drop the last three words not for profit.

COMMISSIONER SCHIFFER: And that's it.

But this will be the new Exhibit B, and that's the important thing. Thank you.

MS. DESELEM: Yes, sir.

CHAIRMAN STRAIN: Anybody else have any questions of staff?

Ms. Caron?

COMMISSIONER CARON: Where on this site would you put a communication tower?

MS. DESELEM: That is not shown on the site. Right now there's a communication tower slightly north of this site.

COMMISSIONER CARON: It's not on this property.

MS. DESELEM: But it's not -- on this site it's not shown. Where it might be, I don't know.

CHAIRMAN STRAIN: Anybody else?

(No response.)

CHAIRMAN STRAIN: Okay, public speakers. Anybody in the public wish to speak on this matter? We're pretty informal, so just come on up and talk.

(No response.)

CHAIRMAN STRAIN: Okay. Any last comments from the applicant?

MR. COX: The only communications towers that we might consider putting on the property would be related with the SCADA systems that are, you know, communications for the water and sewer plant.

The other thing I think we might could do to address this library being -- where they would be located. Where we have the building labeled as the community center on the site plan community center/library. And then I believe the site plan is incorporated in one of the resolutions that would be approved by the board, so that would take care of that.

CHAIRMAN STRAIN: Kay, does that work for staff? Or does that limit it for staff? This is a straight zoning, so I'm not sure how effective a site plan is.

MS. DESELEM: I'm not exactly certain what that comment -- right now the library is excluded.

CHAIRMAN STRAIN: Okay. What I think the best solution, and it works probably even better for you, is if we take a look at the CON district, the area that was formerly CON, north of that CON line, and we limit the uses there one through six. And then the area south of that line, which is the RT district, which is going to go to P, we limit that to one through seven plus libraries, six from down below.

I think that gets you where you want. It doesn't limit you to just that building. And you're anything south of that dividing line between CON and RT.

Does that work for you?

MR. COX: That works for us.

CHAIRMAN STRAIN: Okay. Does that work for everybody on the board?

MS. DESELEM: If I may --

CHAIRMAN STRAIN: Kay?

MS. DESELEM: -- clarify. You said one through six? You did not include seven?

CHAIRMAN STRAIN: No, seven is a catchall. I'd rather not see a catchall applied to a conservation area, especially if they're indicating they really don't need it, they've got the ability to do what they want to do all to the south, why don't we leave it to the south? And if that catchall's in the south any more intense district, I think it doesn't hurt anything.

MS. DESELEM: So RT would include one through seven as well as --

CHAIRMAN STRAIN: And six from down below. So you'd have to revise Exhibit B for the consent agenda. And probably just show it two different ways.

MS. DESELEM: I understand, thank you.

COMMISSIONER SCHIFFER: Mark?

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

COMMISSIONER SCHIFFER: And I think you should note that as the old RT and the old CON, just to not confuse the issue that we're changing those zonings. You know what I mean? In other words, on the old CON site the following uses are allowed.

MS. DESELEM: Oh, I see what you're saying.

CHAIRMAN STRAIN: Formerly CON.

COMMISSIONER SCHIFFER: Or formerly CON. But don't use the CON word, because that will confuse what we're up to.

MS. DESELEM: I think --

CHAIRMAN STRAIN: Ms. Caron?

MS. DESELEM: -- I understand what you're saying.

COMMISSIONER CARON: I just had a question about the buffer variances. Nowhere in the staff report is that addressed, it's just sort of there. They applied for it? You're not saying one --

MS. DESELEM: We did recommend approval, understanding the rationals that they provided, that it was appropriate. We didn't go into a great deal of detail.

COMMISSIONER CARON: Okay. Then I'll talk to Mr. Cox about that issue.

I just want you to address the buffering issues and why you think it's appropriate to exclude those buffers.

MS. COX: The -- we do have a 15-foot -- 10-foot wide buffer through here, 15-foot through here all through the south, located on the east and north of the road rather than on our property line, because the road was built on our property line.

COMMISSIONER CARON: Thank you.

CHAIRMAN STRAIN: Anybody else have any questions of anybody before we close the public hearing and entertain a motion?

(No response.)

CHAIRMAN STRAIN: Okay, we will close the public hearing on both items and we'll entertain two separate motions. The first one would be Petition RZPL-2009-910, and that's the one for the actual P district uses. And the second one we'll get to is for the variances.

Is there a motion from the Planning Commission?

Mr. Murray?

COMMISSIONER MURRAY: I've made that motion based on your statement. Or I'll read it again.

I recommend approval of RZPL-2009-910, Port of the Islands Community Improvement District, that it be forwarded to the Collier County Board of Commissioners for approval.

CHAIRMAN STRAIN: Do you accept the staff's recommendations?

COMMISSIONER MURRAY: And I do. And the modifications that were made.

CHAIRMAN STRAIN: Yeah, that would be subject to the modifications of Exhibit B that we discussed.

COMMISSIONER MURRAY: Correct.

CHAIRMAN STRAIN: Okay, is there a second?

COMMISSIONER VIGLIOTTI: I'll so move.

CHAIRMAN STRAIN: Mr. Vigliotti seconded.

Discussion?

COMMISSIONER SCHIFFER: We want to run through this list one more time and make sure, Exhibit B, or wait till the consent?

CHAIRMAN STRAIN: No, we can do it right now. It's the best time to get it -- make sure it's clear. And if the applicant has any objections, let us know during this discussion.

Go ahead, Brad. Or you want me to do it or you want to do it?

COMMISSIONER SCHIFFER: No, you go ahead and do it.

CHAIRMAN STRAIN: Okay. Exhibit B will be revised to reflect two formats for the principal uses to be used on this property.

And then the prohibitive uses. The first one will be for the old formerly (sic) CON district. It will contain items one through six that are currently listed as principal permitted uses on the handout that we received.

The second listing of permitted uses will be for the old RT district. It will be items one through seven of the principal permitted uses, and we'll move one of the prohibited uses, which is libraries, up to the permitted uses category for the old RT.

Both the CON and the RT will retain the list of prohibitive uses that are listed. In the old CON it will be all but libraries. In the -- no, I'm sorry, in the CON will be all of them, one through seven. In the RT it will be all but libraries. I think I got there.

And then there's some clarification to the language for child care. We'll strike the words not for profit. And for where it's listed as administrative service facilities, we'll put in parentheses, i.e. community services.

Mr. Schiffer?

COMMISSIONER SCHIFFER: Since the way you're breaking it up, I think why don't we just do this is add community building in the old RT site. And then that way it's clear.

In other words, we don't really want a community building on the upper one anyway.

CHAIRMAN STRAIN: I have no problem with that.

COMMISSIONER SCHIFFER: So, you know, when you added libraries to the RT, also add community building there and that would be clear what the intent is.

CHAIRMAN STRAIN: Does that work, Kay?

MS. DESELEM: Yes.

For clarification, thinking down the road when those of us who are here now might not be here or remember what we did, I was thinking perhaps it might be a good idea to make some kind of exhibit similar to what's shown and attach that to this so that somebody else say will look at this and say well, I don't know what was CON, all I see is P.

So is that acceptable? I didn't want to add something in without your --

CHAIRMAN STRAIN: No, I think it's a good -- any clarification for the future is a good idea. Absolutely.

MS. DESELEM: Okay. Thank you.

CHAIRMAN STRAIN: Okay. Ms. Caron?

COMMISSIONER CARON: Well, one final thing. Since we are separating out, I think you can put administrative service facilities and community buildings in the former RT portion, because that's where they're going to be located, that's where they want them to be located. You don't want it to be anywhere on -- and certainly not in the CON portion of it, so --

CHAIRMAN STRAIN: Well, the problem is there might be needed offices and facilities in fact for that water treatment plant.

COMMISSIONER SCHIFFER: Right, I agree.

COMMISSIONER CARON: They've got them in their buildings.

COMMISSIONER SCHIFFER: No, but there might be a small -- you wouldn't want them, if they wanted to build an office up in the upper part.

CHAIRMAN STRAIN: I don't think it hurts.

COMMISSIONER SCHIFFER: No.

CHAIRMAN STRAIN: I don't think it hurts anything to leave it up there.

COMMISSIONER SCHIFFER: I agree.

COMMISSIONER MURRAY: You'd probably want to have an office away from the location anyway.

CHAIRMAN STRAIN: Okay, Kay, are you clear on the discussion we've had on how to lay out these (sic) Exhibit B?

MS. DESELEM: Yes, sir, I believe so.

CHAIRMAN STRAIN: Is the board satisfied with the discussion? Then we'll call for the vote.

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.

Thank you all. That's the first one. We need to finish up with the second one. That's a separate variance request.

Item #9B

PETITION: VA-PL2009-1077, PORT OF THE ISLANDS COMMUNITY IMPROVEMENT DISTRICT

COMMISSIONER STRAIN: It's Petition VAPL-2009-1077. A discussion of that occurred simultaneously with the other one. Staff is recommending approval with a condition.

Is there a motion from this board?

COMMISSIONER MURRAY: I'll make that motion then too.

CHAIRMAN STRAIN: Mr. Murray made a motion to recommend approval. With staff stipulations?

COMMISSIONER MURRAY: Absolutely.

CHAIRMAN STRAIN: Is there a second?

COMMISSIONER VIGLIOTTI: So moved.

CHAIRMAN STRAIN: Mr. Vigliotti made a second. Is there a discussion?

(No response.)

CHAIRMAN STRAIN: Hearing none, 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.

Anybody opposed?

(No response.)

CHAIRMAN STRAIN: Motion carries 8-0.

Thank you all for your time this morning.

Now, it's 9:20, we're ahead of schedule.

Nick, you had something?

MR. CASALANGUIDA: Yeah, we drafted a proclamation for Tor to be heard. We're shooting for I guess the 13th, board meeting. We want to make sure that's okay with his family, and we'd like to maybe have the Planning Commissioners attend, if that's possible, in the morning.

I'm going to get confirmation from the County Manager and I will follow up and let you know by e-mail. But I'd reserve that date, if possible. It's a brief moment around 9:00 in the morning, if you could attend. I think that his family would appreciate that. And I'll let you know if that date changes to the 27th.

CHAIRMAN STRAIN: Thank you.

COMMISSIONER MURRAY: I have a comment.

CHAIRMAN STRAIN: Go ahead, Mr. Murray.

COMMISSIONER MURRAY: I don't know whether they've gone back to the practice of reading them.

MR. CASALANGUIDA: Yes.

COMMISSIONER MURRAY: Good. Thank you. That was going to be my comment. They need to read it.

CHAIRMAN STRAIN: Okay, we'll look forward to it.

And I want to thank staff again for suggesting the idea. It was a nice gesture on your part and I think it would be very nice for his family, so -- Ms. Caron?

COMMISSIONER CARON: What's the tentative date again?

MR. CASALANGUIDA: The 13th.

CHAIRMAN STRAIN: 13th.

Okay, we're done with the meeting and we might as well adjourn.

What I'd like to do -- ask Heidi, though, before we do. Heidi, I'd like to reopen our continued LDC meeting for a discussion on the other two items that are not shoreline related. Not to vote on them, just to discuss them. Then we'll vote on them after we hear the shoreline issue later on, if that works.

MS. ASHTON-CICKO: Yeah, that's acceptable.

CHAIRMAN STRAIN: Okay.

And then the other thing. Nick and Ray, does Susan need to be here for the discussion of the other two?

MR. CASALANGUIDA: I'd like her to be here. I mean, I think we can proceed for discussion, and if we need to follow up when she gets back, she's going to be running a little bit late, we can do so.

CHAIRMAN STRAIN: Okay. I'd rather just not waste 40 minutes if we don't have to.

MR. CASALANGUIDA: Agreed.

CHAIRMAN STRAIN: Okay, so first let's adjourn this meeting.

Is there a motion to adjourn?

COMMISSIONER MIDNEY: So moved.
CHAIRMAN STRAIN: Motion made by Mr. Midney.
COMMISSIONER VIGLIOTTI: (Indicating.)
CHAIRMAN STRAIN: Seconded by Mr. Vigliotti.
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.
Anybody opposed?
(No response.)
CHAIRMAN STRAIN: Motion carries.

There being no further business for the good of the County, the meeting was adjourned by order of the Chair at 9:22 a.m.

COLLIER COUNTY
PLANNING COMMISSION



MARK STRAIN, Chairman

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

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