

March 24, 2010

TRANSCRIPT OF THE MEETING OF THE
COLLIER COUNTY PLANNING COMMISSION
Naples, Florida
March 24, 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 1:00 p.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 (Absent)
Bob Murray
Brad Schiffer
Robert Vigliotti
David J. Wolfley (Absent)

ALSO PRESENT:

Jeffrey Klatzkow, County Attorney
Susan Istenes, LDC Manager
Ray Bellows, Zoning Manager

March 24, 2010

CHAIRMAN STRAIN: Good afternoon, everyone, welcome to the March 24th meeting of the Collier County Planning Commission. This is a continuation of what we started, seems like a long time ago, I'm not sure how many months ago, of the LDC amendment cycle for this year.

I'm going to ask you all to rise for the Pledge of Allegiance, but I'm asking that you remain standing for a few moments after we get done with the pledge.

Please rise.

(Pledge of Allegiance was recited in unison.)

CHAIRMAN STRAIN: Okay, if you don't mind for just a moment, you'll see a shortage of people up here today. Tor Kolflat, who was with us at our last meeting last week, has passed away between then and now. He sat all the way to the end over by Brad. And he was a remarkable man and a very close friend of this commission.

Many of you may not have noticed it, but Tor was going through a lot of challenges with health over the past few years and they affected a lot of things that he had to do, and even the manner in which he walked to the meeting. But he struggled and he did it. And he came to these meetings, he came prepared, he read all the data, not just executive summaries, and he participated, all for the benefit of this community. And we very much appreciate Tor's efforts and he was an inspiration to all of us.

And so with that, I'd like to ask for a moment of silence on Tor's behalf.

(Silence.)

CHAIRMAN STRAIN: Thank you.

Nick, you had asked to have a moment after that discussion?

MR. CASALANGUIDA: Yeah, I'd just like to get a couple of nods from the Planning Commission, sir. I think it's appropriate that staff prepares a resolution for the BCC in honoring Mr. Kolflat's work on the Planning Commission, if I can get you guys, folks to support that --

COMMISSIONER SCHIFFER: I'm in.

MR. CASALANGUIDA: -- I think coming from the Planning Commission. We'll prepare it and draft it for the County Manager to review with the Chair and we can bring something forward to the BCC.

CHAIRMAN STRAIN: All I see is absolute positive nods of heads. I think that would be very appropriate, and I'm very pleased that staff would make such a recommendation. Thank you very much. And I'm sure the board will follow through with it. Thank you, Nick.

And with that, we'll ask for our roll call by our secretary.

COMMISSIONER VIGLIOTTI: Commissioner Schiffer?

COMMISSIONER SCHIFFER: I'm here.

COMMISSIONER VIGLIOTTI: Commissioner Midney is absent.

Commissioner Caron?

COMMISSIONER CARON: Here.

COMMISSIONER VIGLIOTTI: Chairman Strain?

CHAIRMAN STRAIN: Here.

COMMISSIONER VIGLIOTTI: Commissioner Vigliotti is here.

Commissioner Murray?

COMMISSIONER MURRAY: Here.

COMMISSIONER VIGLIOTTI: Commissioner Wolfley is absent.

And Commissioner Homiak?

COMMISSIONER HOMIAK: Here.

CHAIRMAN STRAIN: Okay, Planning Commission absences. Our regular meeting is April 1st. It's -- I think we have three things on the agenda. Probably be at least the morning and maybe part of the afternoon. Everybody here planning on making it? Okay.

There are two changes to our agenda today. Item 2.0.3.07.L is a private petition for the Vanderbilt Beach overlay. That will not be heard. That's been removed from this cycle and just going to be forwarded to a new cycle. So we will not be discussing that today.

The other item is, and it's not on the copy of the agenda that I have but I know it was supposed to be added. That is the shoreline calculation and preserves item. That item is going to be continued to a date certain, which is April 1st, at the end of this meeting, assuming that motion is made and accepted. And we'll try to give an

approximate not to start before time on that date. There are people that are interested in attending that meeting, and adding it to today we would never have known if we were even going to get to it today.

So those are the two changes to today's agenda. Is there any other changes that anybody knows of?

MS. ISTENES: Yes.

CHAIRMAN STRAIN: Go ahead, Susan.

MS. ISTENES: Susan Istenes for the record.

I had a late request for a petitioner to continue the first item on your agenda, 2.03.03.E.1. I actually think that likely will be withdrawn. But we just need a little bit more time to work through that.

That's a private petition.

CHAIRMAN STRAIN: Right. Okay. So we're continuing the C-5 commercial surgical manufacturing petition?

MS. ISTENES: Correct.

CHAIRMAN STRAIN: Okay.

MS. ISTENES: And that would be till April 1st as well.

CHAIRMAN STRAIN: Okay. If it is continued, it will be April 1st --

MS. ISTENES: Correct.

CHAIRMAN STRAIN: -- but if it's not, you'll let us know and it will be dropped.

MS. ISTENES: Yes.

CHAIRMAN STRAIN: Okay, with that, we'll move into the first item on the agenda then, which will be 2.03.04.A.1.A, the industrial zoning districts. Mr. Pires is bringing that forward. It's a private petition. And it is on Page 7 of the most recent packet that we all received.

MR. PIRES: For the record, Mr. Chairman, members of the Planning Commission, Tony Pires with the law firm of Woodward, Pires and Lombardo.

The revised language that you see has been discussed and revised and agreed to, I believe, by myself and by the staff, and we would request that you make a favorable recommendation to the Board of County Commissioners to adopt it as it exists in today's agenda packet.

And if you have any questions, I'm available for any questions.

CHAIRMAN STRAIN: I have -- who drafted the language?

MR. PIRES: It was an effort between the County Attorney's Office and Susan Istenes and myself.

CHAIRMAN STRAIN: Okay. My only question is the reference to the -- operating the business conspicuously. Do we know how that's defined? Or does it need to be or is that going to be a problem trying to determine what --

MR. KLATZKOW: That's my language. I put that in because we've already gone around and we know who's out there. And if somebody's hiding, we don't know who's out there, you know, they won't fall into this. So if somebody purposely has a storefront that's (sic) doesn't adequately reflect what they're actually doing, they still might fall under this.

So as long as you're operating your business in an open way, okay, you're fine. If you're concealing what you're doing, you're not.

CHAIRMAN STRAIN: Okay. And that's -- you feel it's adequate, defensible and all that. Otherwise you wouldn't have drafted it probably, so --

MR. KLATZKOW: I like the word. It's a good scrabble word.

CHAIRMAN STRAIN: Any time we get an arbitrary thought, it just worries me. But that's fine, Jeff, if you come up with it I'm sure we'll be able to defend it.

Ms. Caron?

COMMISSIONER CARON: I have a question.

It says here that in the event of destruction or damage, we're going to put these legally nonconforming businesses right back into business as legally nonconforming businesses.

When we have a natural disaster, aren't we -- isn't that the time we're supposed to be getting things back into conformance and moving these things along into a more appropriate place, or -- anybody --

MR. KLATZKOW: That's going to be a policy decision. We had a lot of discussion, everybody, on that language, and it's -- we're okay with it. But at end of the day, that really is a policy decision.

COMMISSIONER CARON: But --

CHAIRMAN STRAIN: Well, just if it helps, Donna, the way I was looking at it, the businesses that we're talking about are in areas that we've already recognized as being operable for the use that they've been operating in for quite a long time. And I don't know why they couldn't continue if they had to be rebuilt. I don't know what the value would be not to letting it. It would encourage and help our economy.

And as far as industrial needs go, we have so much out in other areas that is going to be available, especially in Immokalee, that I don't think the coastal area is going to be a prime industrial manufacturing area of Collier County eventually in the future anyway.

MR. PIRES: And I think one other aspect, if I may, was that staff wanted to limit the natural disaster and not any other kind of destruction, say by fire or some other manmade event. And we have no difficulty with that. We think that's appropriate.

COMMISSIONER SCHIFFER: One small question.

CHAIRMAN STRAIN: Okay. Go ahead, Brad.

COMMISSIONER SCHIFFER: What other uses do you know of? We obviously are focused on one. Is there any others that you can think of?

MR. PIRES: I think someone raised last time with regards to an art gallery or some other uses such as that that might be out there.

And back in December of 2006 when this issue came before the Board of County Commissioners, the staff was directed by the board and earlier, and the staff came back to the board with a report indicating they'd visited I forget how many hundreds of businesses and found five percent apparently approximately of the businesses in this industrial area alone were engaged in retail uses, basically.

And so that's why we think there are a number of others out there that may still be operating. We picked the date, once again, January 1st, 2009, because it's a few months ahead of the application date, which was in May, and thought that was an appropriate time frame.

COMMISSIONER SCHIFFER: Thank you.

CHAIRMAN STRAIN: Okay, are there any other questions on this particular item?

(No response.)

CHAIRMAN STRAIN: If not, we certainly would entertain a motion for recommendation of approval and consistency with the GMP, if there's anyone so inclined.

COMMISSIONER VIGLIOTTI: So moved.

CHAIRMAN STRAIN: Mr. Vigliotti made such a motion.

Is there a second?

COMMISSIONER CARON: Second.

CHAIRMAN STRAIN: Seconded by Ms. Caron.

That's for LDC creation of 2.03.04.A.1.A.54. Any other discussion?

(No response.)

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

COMMISSIONER SCHIFFER: Aye.

COMMISSIONER HOMIAK: Aye.

COMMISSIONER CARON: Aye.

COMMISSIONER VIGLIOTTI: Aye.

COMMISSIONER MURRAY: Aye.

CHAIRMAN STRAIN: Aye.

Any opposed?

(No response.)

CHAIRMAN STRAIN: Motion carries 6-0.

MR. PIRES: Thank you very kindly.

CHAIRMAN STRAIN: Thank you, sir.

Next one is the density standard and housing types, 2.05.01. It's on Page 39 of the same packet. This is the one relating to timeshares.

MS. ASHTON-CICKO: Mr. Chair?

CHAIRMAN STRAIN: Yes, ma'am.

MS. ASHTON-CICKO: You had asked me the question whether there was a conflict with the pulling in the state definition and the lock-off units.

CHAIRMAN STRAIN: Right.

MS. ASHTON-CICKO: And as a result of looking into that and meeting with Susan and Rich, we came up with some proposed changes which didn't make it into your book. And I can put it in the overhead, if you would like to.

CHAIRMAN STRAIN: That would be helpful. And I do have one other legal question concerning this issue that we might as well get up front that came in the second reading of it, or third or fourth or fifth, whatever number readings we had of this thing.

MR. YOVANOVICH: It's only been two.

CHAIRMAN STRAIN: For you --

MR. YOVANOVICH: But it feels like three.

CHAIRMAN STRAIN: No, I read them a lot at home, so I've had a lot more readings of it than two. Trying to understand it, especially the part written by the attorney for this group, but --

MS. ASHTON-CICKO: One of the questions that you all had raised was whether or not this statute should be referenced as opposed to the provision of the text. And we looked into that and are recommending that the state statute be recited as to the definition of timeshare estate and timeshare units.

Mr. Yovanovich had provided a definition of timeshare property, which is a state definition. And I don't recommend that you put that in at this time. I don't think you need to because it's not really cited throughout the code. The only time it's cited now is in your definition of, I think it's the timeshare estate. One of the two has that word in it. So I don't think you need to provide a definition in your LDC of timeshare property.

Rich, do you want to continue on or do you want me to comment?

CHAIRMAN STRAIN: Well, Heidi, before you go too far, there were only three definitions proposed: Timeshare estate, timeshare estate facility and timeshare unit. Where was the property one?

It may have come out of this version.

MS. ASHTON-CICKO: Yeah, actually, I wasn't looking at this version, I was looking at the former version. And the proposal that Mr. Yovanovich had was the definition of timeshare property.

I apologize, because I've been mostly working off of book number three, and your language here in this book is a little bit different.

CHAIRMAN STRAIN: Well --

MS. ASHTON-CICKO: Book number three took those three definitions out and put the new definitions in. And this version in here apparently has the old definitions, so I can't really attest to that. I can -- other than Mr. Yovanovich and I worked out the language before staff distributed the book.

CHAIRMAN STRAIN: Okay, well --

MS. ASHTON-CICKO: I mean, it was about the same time as when they were distributing the book that we were working out the language. So they distributed -- I'm not really sure, they'll have to explain why they put what they put in here.

But if you want to continue it for a new staff report, we can do that. But otherwise, I can just read through what it should read.

CHAIRMAN STRAIN: No, what I'm trying to get to, Heidi, is we have a book four in front of us.

MS. ASHTON-CICKO: Right.

CHAIRMAN STRAIN: Are the definitions that are included in our book four the ones that you're recommending we use or are they not?

MS. ASHTON-CICKO: No, they're not.

CHAIRMAN STRAIN: Okay. The definitions that you're recommending we use, one of which is up here called timeshare unit?

MS. ASHTON-CICKO: Yes, timeshare estate is the first one. The second one is timeshare unit. And working off of book number three, you had a definition proposed by Mr. Yovanovich of timeshare property, which I don't think needs to be included. Once --

CHAIRMAN STRAIN: Okay. Well, we will need to have this unfortunately come back again, because I

think we need to know what we're voting on, and the last book was the one that most of us probably reviewed.

If you're going to make changes to it, that's fine. We're going to be back on the 1st, we can hear it again. But then let's get a concise, complete document.

But that doesn't mean we don't have other questions today, so let's go through the rest of them.

MS. ASHTON-CICKO: Yeah, the other change was to add at the end of footnote two, which was the -- to add to the end of footnote two, which is the definition of density on your Page 42, would have the language which is on the overhead. But I'll read it for the record.

As to the calculation of density for hotels and motels, including timeshare units that meet the floor area requirement for hotels and motels, any hotel and motel unit, including timeshare units, that meet the floor area requirements for hotels and motels in which a door or doors connecting two or more separate rooms are capable of being locked to create two or more private dwelling units shall constitute two or more timeshare units or two or more hotel units, each private dwelling shall constitute one timeshare unit or hotel unit.

And that's where your conflict was in your prior draft where the lock-off unit created two units and the definition created one unit. So you had a conflict. But by placing this in under the density section, that does rectify that. It actually makes it better for the other sections where you're defining units as to -- you're talking about something other than possibly a dwelling unit.

CHAIRMAN STRAIN: Okay, and I think all this needs to be put back in its proper format and be brought back to us. But there are other questions, and I'm going to take a moment to head one off right from the get-go, because it may impact other comments from this commission as well as the public.

In reading the reasoning behind how a timeshare unit has to be handled and how it's considered, I looked at the applicant's analysis on Page 45, the very last paragraph. And it says, a timeshare plan is a form of ownership and is not a land use. Collier County is prohibited from applying different standards to a land use based upon a form of ownership.

Then if you skip down a little bit it says, it shall have the same intensity as far as number of hotel-motel units as any other form of ownership for hotel-motel units.

Now, I see where we were consistent with that in most of the areas in the check-off chart that we have, but under the Vanderbilt Beach overlay, I notice we put an exception to it.

I'm not against the exception, but I'm concerned that if we put that exception there and it's not legally defensible, what are we really doing, are we misleading people into believing they have a condition that doesn't apply to them when in reality the analysis that was part of our packet seems to indicate it can't be done that way, it has to be done the same for all units?

Has the County Attorney's Office taken a look at that at all?

MS. ASHTON-CICKO: No, not that particular issue.

CHAIRMAN STRAIN: Well, I think that's an important factor, because if a timeshare has got to be the same because of the way it's approached by Florida Statute and it's the same in Collier County, why wouldn't it be the same in Vanderbilt Beach? And if it is, that may raise other concerns that we need to address. So I think that needs to be resolved.

And that really is a result of the applicant's analysis on Page 45 that I think the County Attorney's Office may want to look at to understand my question better.

Richard, did you have any thoughts on that? I know you've probably got a lot of thoughts, but --

MR. YOVANOVICH: Okay, I feel like this issue we take three steps forward and then we take four steps backwards.

The whole purpose of this amendment was for RT zoning in Port of the Islands where the law says that you can't treat timeshare ownership different than other types of ownership. And we're just simply trying to move forward to be able to do a timeshare hotel in Port of the Islands. That was the purpose of the amendment. I've said that from the get-go that that's what we're trying to do.

I have always said that we're getting into a lot of other issues in this discussion regarding the operation of hotels versus the operation of multi-family. And then the people from Vanderbilt Beach said, well, wait a minute, what's going on with this change? And the simplest mechanism to address that was to create an exception for them in Vanderbilt so that we'll deal with that issue later.

It's my belief under the law today you can have a hotel at 26 units per acre and operate it as a timeshare.

However, the code mistakenly treats timeshare as a form of use. And we were trying to get that glitch out of the code.

I would like to find a way to keep this on track with that concept that timeshare is a form of ownership, just like a condominium is a form of ownership. You don't distinguish between a mixed use -- I'm sorry, a multi-family product that is, if you have 16 units per acre in this particular case, where I may develop it and own 100 percent of those 16 units or I may sell those units individually as condominiums, you don't distinguish between that as a form of multi-family use.

You need to apply that same concept to hotels and motels if you -- one person may own all of the units in the hotel. Look, Ritz-Carlton, they own all the units. When The Registry was first developed, it was developed as a condominium form of ownership. It was still a hotel, but the individual rooms were purchased. Same concept applies when you do a timeshare for a hotel-motel.

I'm just trying to get the defin -- to have people recognize that timeshare is a form of ownership, it's not a type of use. Let my client develop 26 unit per acre timeshare-owned hotel in Port of the Islands. That's the whole purpose of this amendment.

I thought we were clear on that and we were moving forward. There's some confusion and concern regarding how this would apply on Vanderbilt Beach, so staff created an exception so that people on Vanderbilt Beach could address that later on. And I hope we can keep moving forward with that concept so that this amendment doesn't slow down and we can keep moving forward for my client in Port of the Islands.

CHAIRMAN STRAIN: Let me finish my question first, Mr. Murray.

Richard, I understand your argument about the use, I'm not objecting to that. But the way that you've approached this, instead of a fix for Port of the Islands, where you could have come in with an amendment to their PUD or whatever other process --

MR. YOVANOVICH: They're not PUD, they're straight zoning.

CHAIRMAN STRAIN: Okay, maybe you could have come in for an application to amend their straight zoning. No, you couldn't have done that --

MR. YOVANOVICH: Yeah, I didn't have --

CHAIRMAN STRAIN: -- conditional use or something.

But this process you've chosen has some unintended consequences. A timeshare can either be residential or hotel-motel. Because it can be either one, one is a commercial operation and the other isn't. A hotel-motel can't necessarily be a residential operation. A hotel-motel is a commercial.

Well, because of the -- some of the other uses that are involved with hotel-motels that are commercial, to let those happen uncontrolled in timeshare could be a problem, such as the jet ski incident that's going on right now in Vanderbilt Beach.

And I don't think anybody intended a residential facility to be opened up to a commercial operation. So --

MR. YOVANOVICH: This change has absolutely nothing to do with the operation of what happens on that piece of property. This change simply says you can own a hotel or motel in the timeshare form of ownership. And you can only do the accessory uses allowed in a hotel and motel under that form of ownership. If you decide to timeshare a multi-family project, you can only do the accessory uses allowed in a multi-family project.

This change has absolutely nothing to do with the operational characteristics of what happens on that piece of property. It only deals with the form of ownership of that type of use. It has nothing to do with the operational.

I understand the concern, you have -- there apparently is a multi-family project on Vanderbilt Beach that happens to be owned as a timeshare doing things that you would typically find in a hotel. The question is can they as a multi-family timeshare do those uses?

This amendment doesn't change anything. You'll still have that question.

CHAIRMAN STRAIN: Mr. Murray?

COMMISSIONER MURRAY: Yeah, just for clarification, in every case of ownership for timeshares is there a deed involved?

MR. YOVANOVICH: Yes.

COMMISSIONER MURRAY: Thank you.

CHAIRMAN STRAIN: Now, any other questions? I started out because I wanted to get what I thought was one of the bigger issues on the table to open up any other discussion there might be.

Ms. Caron?

COMMISSIONER CARON: Well, yeah, let's get acknowledgment from staff and from the County Attorney's Office that they see it the same way Mr. Yovanovich sees it.

CHAIRMAN STRAIN: So who's the committed party on staff? Or the County Attorney's Office? Somebody want to make a statement that we can -- right now you have an issue with a timeshare having been issued apparently a business occupational license for a commercial operation, because Parks and Rec somehow got into that picture, which is still absurd, for a zoning issue.

I'm not sure how all that came down, but I think that's the crux of where the concerns are now. We want to make sure we don't open the door for more problems like that. We should be shutting the doors, not opening them.

MR. KLATZKOW: I hate amending the code when I'm only dealing with one property, that's the concern. You're right, the easiest way to handle this is through a PUD or conditional use. I understand this is straight zoning, but I hate amending the whole code because there's one property that wants to get developed in a particular way. There are unintended consequences.

And I'll talk with Richard afterwards and see if we just can't get this done for this particular property and just be done with the issue.

CHAIRMAN STRAIN: Susan or Ray, is there any other way that he could apply to make this fit for the property that he's concerned about?

A deviation to our code for that property?

MR. KLATZKOW: He's not asking for a deviation.

CHAIRMAN STRAIN: No, no. I mean, but could he apply through another method to get there other than changing everything in the county?

MS. ISTENES: You're RT, right, Rich?

MR. YOVANOVICH: I'm RT.

MR. KLATZKOW: He could get a zoning interpretation telling him exactly what it is that they can do to develop there specific to that one property. That's one approach.

Richard, if you're saying it's just the one property you're concerned about.

MR. YOVANOVICH: No. You know what, Jeff, here's what it is. I want to -- on this piece of property that is zoned RT, I want to develop a hotel and motel. That's all I want to do.

I could do that. But you also put in that same section the word timeshare and defined it as a use. So I can't own that hotel and motel as a timeshare. That's my problem, is you're regulating an ownership as a use. It's like if you'd have put condominium in there and said well, you can have a condominium in RT zoning but you can't have a condominium and straight multi-family. That doesn't make any sense.

So I'm stuck. I'm stuck. I can't do what I want to do, and the statute says you can't stop me from doing it because I choose the ownership format as timeshare. So I don't know what to do. I can't do a PUD; there's too many parties out there to do a PUD now.

CHAIRMAN STRAIN: Let me make a suggestion. If we were to clarify the language that's being brought forward to indicate that timeshares functioning as hotel-motels have the right to accessory uses typical to hotel-motels but timeshare functioning as residential uses don't, they only have the accessory uses typical to that particular use --

MR. YOVANOVICH: I'm at peace with it.

CHAIRMAN STRAIN: -- that may solve the whole problem. Because somehow, somehow a commercial concessionaire got permission in a residential use to operate. And we know how that happened, it didn't go through the normal review process to get there.

So I think with that clarification it may help get you through or where we need to be.

Susan?

MS. ISTENES: Yeah, I think we talked about this last time, and in a sense we're trying to put a round peg in a square hole. And we agreed that timeshare wasn't the best way to regulate. I mean, we understood the state statute and what it said and we understood it just wasn't the best way, but our code is kind of intertwined that way and you've got development that's already occurred using that.

From a zoning perspective, we look at it from the use perspective. So if you're operating as a hotel-motel -- and in this case -- I'm willing to bet 99 percent of the timeshares in this county operate on a week turnover basis. I don't see that any different than a hotel or motel.

And so that's what zoning is concerned about is the impacts of the use, not necessarily what it's called.

I just think it's gotten intertwined in the code and it's not an easy fix. And so yes, I'm willing to consider that, because that's the way we look at it, essentially. So it's not anything real different. We could just clarify it though.

CHAIRMAN STRAIN: But the 90 percent of the timeshares that you speak of that operate on a less than a weekly basis, so in essence they operate as a hotel-motel --

MS. ISTENES: Weekly, yeah, weekly turnover.

CHAIRMAN STRAIN: Right.

Do they have the same development -- do they have the development standards that meet the hotel-motel category?

MS. ISTENES: No. I mean, if they're being approved as a timeshare, then they have -- they don't have -- they are limited in density.

And so what Rich is trying to do is trying to get the same density with the hotel-motel standards. So they would have larger units.

CHAIRMAN STRAIN: Then if you have timeshare --

MR. YOVANOVICH: We would have smaller units --

CHAIRMAN STRAIN: If you have a timeshare that's operating as a hotel-motel but its standards are not consistent with the hotel-motel standards of our code, then they should not be allowed to operate the commercial part of that because they're more residential than they are hotel-motel.

MS. ISTENES: All I'm saying is in the planner's perspectives, a unit that is turning over on a weekly basis that has a different family or a different person in it every week is not functioning like residential in a planner's opinion.

CHAIRMAN STRAIN: I agree with you. I mean, I think we're all there. I think we don't want this to get into a situation that can't be controlled. And I think just some further clarification on how the use applies to the different levels between commercial and residential would help us get past the threshold that we need to be.

Are the rest of you thinking the same thing?

COMMISSIONER SCHIFFER: Yes.

CHAIRMAN STRAIN: Jeff, do you think that's something we can get to?

MR. KLATZKOW: I still say if this is a site-specific thing, just to sit down and just hammer out a zoning letter what he can do and what he can't do on this site. And if it doesn't meet Mr. Yovanovich's needs at that point in time, change the code.

I hate changing the code, because four years from now somebody's going to have a different interpretation of the darn thing.

CHAIRMAN STRAIN: Mr. Schiffer?

COMMISSIONER SCHIFFER: There is one benefit of carrying on, and that is to clarify the fact that if it has to be a motel-hotel type to get the commercial uses and we're bringing that into --

MR. BELLOWS: For the record, Ray Bellows.

I think there's two issues to be looked at. One is there could be a site-specific instance, but there is also need to fix the LDC in that regard. And I think the language that the Chair proposed is a good fix in regards to limiting accessory uses to hotel-motel -- legitimate hotel-motel timeshares and restricting those things to residential condo type timeshares.

CHAIRMAN STRAIN: Well, you've got two possible solutions: You've got the County Attorney's Office suggesting we look at a zoning letter that can be explored before we come back again, and the language, if that isn't available, can be revised to tighten it up. And either solution will get this to an end at our next meeting.

Is that someplace you all agree to go?

MR. BELLOWS: I agree with Jeff, if you're dealing with a specific site-related issue, we could handle it through normal zoning means. But I still think the LDC has some issues with the definition that the applicant is still trying to fix. It may serve his benefit, but it also serves to fix the code.

CHAIRMAN STRAIN: Well, if the LDC ultimately got fixed, why don't we make that the fix and not issue another zoning letter. But if the zoning letter can take care of it and we can't do the LDC this time, then that could be an alternative as well.

I would suggest that you all get your heads together and come back next meeting with a solution to this that kind of tightens it up enough so that we can feel more comfortable with it.

MS. ISTENES: May I put two things on the record, please.

There's no guarantee a zoning letter is going to fix Mr. Yovanovich's problem. I'm not sure I really know what his problem is in detail.

MR. YOVANOVICH: I could tell you.

MS. ISTENES: But that's okay. That's the one thing I want to put on the record.

And the second thing I want to put on the record is we strive to get the books out to you in a timely manner, so we would need things worked out, and this is just for staff between us on time so that we can print the books with the updated information on time.

CHAIRMAN STRAIN: Good point.

MR. YOVANOVICH: Can I ask you a question?

CHAIRMAN STRAIN: Sure.

MR. YOVANOVICH: April 1st is the next scheduled meeting. My guess is you're not going to get everything worked out by April 1st in order for you all to get the books in time. Is there another meeting after April 1st?

CHAIRMAN STRAIN: Yeah, the 18th.

MR. YOVANOVICH: I mean, I just think, frankly, that's probably --

CHAIRMAN STRAIN: 14th, I'm sorry.

MR. YOVANOVICH: I think that's probably more realistic.

CHAIRMAN STRAIN: It doesn't matter. Whatever day in the future. We can continue the cycle until you can get back to us is what --

MR. YOVANOVICH: I understand.

CHAIRMAN STRAIN: -- I think we're suggesting.

MR. YOVANOVICH: I just wanted to make sure, Mr. Strain, that we -- you know we're not going to meet the printing for that.

Here's the -- just so everybody's clear on the issue that I'm stuck with. On the list of allowed uses in RT zoning you have hotel-motel, you have multi-family, you have some other uses, and then you have timeshare, okay. Those are the list of uses. I think there's five, I don't have it right in front of me. But it's timeshares specifically listed as a use.

And it says that your density for timeshare is 16 units per acre. Your density for a hotel-motel is 26 units per acre. So I'm stuck that timeshare's shown as a use and its density is capped at 16 units per acre.

So if I wanted to do a timeshare that has the smaller units that are required of a hotel-motel, the three to 500 square foot, I'm capped at 16 units per acre because you list timeshare as a use with a density associated with it of 16.

So what I'm trying to do is strike the word timeshare as a use and then go back to how you operate. And I know that it's confusing because timeshare has so -- it's been always referred to kind of as a use. So we're having to change our thought process on what it really is.

And there are people who are using -- who are doing some accessory uses that you would not -- that are typically commercial associated with a hotel in a residential use. And I understand that. In my opinion that's always been wrong. I'm not changing anything.

CHAIRMAN STRAIN: Ms. Caron?

COMMISSIONER CARON: Well, whether it was right or wrong from the beginning, it is what it is, and we are very intertwined at this point and we ought to find a solution.

I think that perhaps the Chairman's solution works. I'd certainly like to, you know, think about that language. I'd certainly like to have conversations with everybody about this, because it is a real issue up where you and I live, so

MR. YOVANOVICH: And I think the fix -- I don't think a zoning letter's going to help me, only because timeshare is listed as a use in the RT zoning district and I don't know how you get around it.

So I think the fix is get rid of timeshare and add the language that it seems that the Chair and the rest of the Planning Commission would like to add is, what are proper accessory uses that go with a hotel and what are proper accessory uses that go with multi-family.

CHAIRMAN STRAIN: But Richard, if the zoning district already allows motel-hotel is one, multi-family is another and then timeshare is a third, but the statute already makes timeshare a form of ownership, not a use, why

couldn't you call your facility a hotel-motel and sell it as a timeshare but keep the standards of a hotel-motel? At such time that you move into the standards of a multi-family and you sell it as a timeshare, then you keep the standards of a multi-family. Why are we even here?

MR. YOVANOVICH: We're here because the minute I add the word timeshare to how I sell it, I'm not consistent with the density allowed in your code.

CHAIRMAN STRAIN: But if it's a motel-hotel, your density is 26, you're just selling it as a timeshare.

MR. YOVANOVICH: You made my point exactly. You don't need timeshare as a use in that category because it's a form of ownership.

MR. KLATZKOW: Which is why, by a zoning letter, if what you're doing is identical to a hotel we can say in your zoning letter you get the 26 units per acre. If your timeshare is more akin to residential, that's when the 16 per acre goes in --

MR. YOVANOVICH: You just ignore the use portion --

MR. KLATZKOW: It's not ignoring, it's an interpretation based on a Florida statute.

COMMISSIONER SCHIFFER: Mark?

MR. YOVANOVICH: I'm a practical guy. I just want to get this project built for my client --

CHAIRMAN STRAIN: Mr. Schiffer?

MR. YOVANOVICH: -- and I want a bulletproof zoning letter that I don't want to have to worry about in the future.

CHAIRMAN STRAIN: Mr. Schiffer?

COMMISSIONER SCHIFFER: I think as a user of the code I would personally rather see it in the code, not a zoning letter. That's kind of the stealth code. And unless somebody is really aware of that, they're going to miss it.

Are we going to discuss this at all, Mark, any of these other sections, or are we going to ignore it and see what they come back with?

CHAIRMAN STRAIN: No, we're going to discuss the whole thing. I thought we'd get all our discussion on the table and try to come back with a final resolution to this whole thing next time they come back in. So I'm encouraging everybody to ask any questions they have now.

And Brad, if you've got more, why don't you go right into them.

COMMISSIONER SCHIFFER: Yeah, I kind of do. On 26, which is footnote three and footnote four.

CHAIRMAN STRAIN: What page?

COMMISSIONER SCHIFFER: I'm sorry, it's on Page 42. Should we go page by page, would you rather?

CHAIRMAN STRAIN: Well, there's only five pages. Let's just take the whole thing at once. So let's just -- Page 42 is where you're at?

COMMISSIONER SCHIFFER: Right, footnote three, footnote four. This has been revised.

And one thing I think that was a little confusing, when you -- in the format we have here, the shaded was actually what was done in three, there were revisions in this packet four that were hard to differentiate from the other. So I think if there's a packet five, shade the new stuff in five so that we -- you know, and it's leapfrogging shading.

Richard, what you're saying there is that if you have 51 percent of your units in a building or a project, then you -- and it's hotel, then you could start using the accessory that go with a hotel for the whole thing; is that right?

MR. YOVANOVICH: Yes, yes.

COMMISSIONER SCHIFFER: Is this also saying that you have to have 51 percent of your units? I think it's also saying that, too; isn't it?

MR. YOVANOVICH: Well, I think if you want to have the uses that we were talking about, let's just use the jet ski as an example. If you want to have jet ski as a concessionaire in a project that has both timeshares and multi -- it has both hotel units and multi-family units in it, you have to have at least 51 percent of that project be hotel-motel.

COMMISSIONER SCHIFFER: Okay. Because sometimes I read it and it looked like you had to have 51 percent.

MR. YOVANOVICH: No, you can have the differences, but if you want to have those amenities -- if you want to have 49 percent motel-hotel and 51 percent multi-family, you don't get to use the same type of concessionaires.

COMMISSIONER SCHIFFER: And so is it the majority of the units?

MR. YOVANOVICH: Yes.

COMMISSIONER SCHIFFER: Because remember, we have two different ratios --

MR. YOVANOVICH: It's units. It's units. So you can't -- if you have 80 units, that would be what, 41-39 would be the split.

COMMISSIONER SCHIFFER: Right. But because the one has more density than the other, essentially the mass of the building -- it will work fine with what you're doing.

Ray, is the staff comfortable on how to calculate the density when you're mixing two uses that have two different densities?

MR. BELLOWS: Yes.

COMMISSIONER SCHIFFER: I mean, you would do the ratio one over the other plus one over the other less than equal to one, right?

MR. BELLOWS: It would have to be clearly spelled out in the site development plan what units are what, but yeah, that shouldn't be a problem.

COMMISSIONER SCHIFFER: So we don't have to spell it out here. Okay.

And again, that only applies to the RT districts, that does not apply to Vanderbilt footnote three or four, correct?

MR. YOVANOVICH: Correct.

COMMISSIONER SCHIFFER: Okay. Thank you.

CHAIRMAN STRAIN: Okay, we're on the entire section involving the timeshares. Does anybody else have any questions?

(No response.)

CHAIRMAN STRAIN: Okay, the only thing that I guess we'll leave, I think the direction's been fairly clear, we want some tightening up of the definition.

And Heidi, from my understanding it's important that that last paragraph be understood in how it applies to the fact that we've got different density standards for one section of the county than another, while that same section of the county has the same standards the other section has for hotel-motel. So based on the analysis on Page 45, I'm not sure how we can separate that out, if the analysis is right.

So if you could take a look at that before it comes back.

MS. ASHTON-CICKO: Sure.

CHAIRMAN STRAIN: Is there anybody in the public that would like to speak on this item?

MR. BELLOWS: We have one speaker, Bruce Burkhard.

CHAIRMAN STRAIN: Come on up, Bruce. We're not as formal with those slips. Ray likes those.

MR. BURKHARD: Thank you. Good afternoon, Commissioners. For the record, my name is Bruce Burkhard with the Vanderbilt Beach Residents Association.

And I actually wrote up some things that have already been discussed, but let me read it anyways, and maybe it will reemphasize and underline some of the things that we've been talking about this afternoon, if you don't mind.

CHAIRMAN STRAIN: Sure.

MR. BURKHARD: Well, what I see as a problem is that this amendment appears to be an LDC change, that's designed to benefit, as we've said, one specific project written by a planner and lawyer who are working for one specific developer.

The language is really mind numbing, and it's not clear to me how it benefits the county and its citizens and why the current code language is not sufficient.

By meeting floor area requirements, a timeshare appears to be made the equivalent of a hotel. And they shouldn't be confused or mixed. And in my mind that's what I'm seeing. Maybe I'm wrong, but that's what I'm reading out of this.

From the material that I have and what you probably have also, there's no staff analysis of this, no staff recommendations, no indication that the staff has looked for the ripple effect problems throughout the LDC that this change could result in. Staff has not weighed in, at least in writing, on exactly why they feel that the change is necessary and how it applies to the entire county's LDC.

Then going on, an additional problem is, as has been discussed with the Vanderbilt Beach residential tourist overlay language, our planners and our attorneys, when we drafted that overlay specifically separated hotels and motels from timeshares, which were considered primarily residential. Our neighborhood right now is primarily

residential with a slight mix of some commercial, but not very much.

And our aim was, in the whole process of writing the overlay, to prevent Vanderbilt Beach from becoming another Fort Myers Beach or a Cony Island.

We specifically didn't want timeshare condominiums to become commercial hotels and motels, kind of like businesses, in other words, commercial. We didn't want jet ski operation vendors, we didn't want people selling crab claws out on the beach and who knows what other kind of commercial operations might pop up. Those are two examples of what's happening right now in front of that condominium.

So if this goes as planned, if we end up mixing motels and hotels with timeshares, it's going to change the whole character and ambience of the beach as we know it today. And we think we need to maintain the language that we put in the RTO. And I read this amendment as losing some of the protections that we wrote into the overlay.

In the overlay we -- as I said, we deliberately separated hotels and motels. The permitted uses in the overlay are hotels, motels, multi-family dwellings, family care facilities, nursing homes, and timeshare facilities. Each one is different, each one is separate. And it's important that we maintain that separation. Otherwise, if it goes as being proposed, I'm afraid that, as Susan is saying, timeshares are the same as hotels and motels.

And I disagree with that. I think a hotel rents rooms on a daily basis, not on a weekly, bimonthly or monthly basis. So there is a difference between a motel and a hotel versus a timeshare condominium. Timeshares are much longer rental periods.

So I think we need to capture that. I think we need to go forward and, as you indicated, we do need a lot more discussion, a lot more study, and we need to get the protections locked in that prevent this commercial jet ski kind of operation from proliferating down the beach.

I'm talking to one guy that's a jet ski operator. He's a commercial guy that works legally in front of LaPlaya and also in front of -- which is not in the overlay, but in front of the Ritz. And he's saying that in order for him to protect his business, if this jet ski operation continues, he's got letters from several other condominiums and timeshares on the beach that he's going to be wanting to do the exact same thing. He's going to start putting more jet ski operations up and down the beach. And that's not what Vanderbilt Beach is supposed to be.

So I hope that we can resolve this somehow, protect what we have, protect the family ambience, and yet maybe let Rich get his specific development built down in the Isles of Capri or wherever it is that really doesn't concern our area, or the rest of the county for that matter.

CHAIRMAN STRAIN: Thank you, Bruce.

Part of the issue that you brought up, that jet ski issue and the other commercial uses in primarily residential, I hope that your organization pursues that and follows it to the end because --

MR. BURKHARD: We absolutely intend to.

CHAIRMAN STRAIN: -- as you know, we were given the -- I guess it was the Code of Laws in which it was allowed, and to let the Parks and Rec Department control zoning is absurd.

MR. BURKHARD: It is, I agree.

CHAIRMAN STRAIN: And I would think that hopefully your commissioner and others can get involved to put a stop to it and put it where it belongs with the Zoning Department, and then maybe things like this wouldn't be happening.

MR. BURKHARD: Thank you, sir.

CHAIRMAN STRAIN: Thank you.

COMMISSIONER SCHIFFER: Mark, a question.

CHAIRMAN STRAIN: Yes, sir.

COMMISSIONER SCHIFFER: You know, I read that, and Susan actually sent us the laws, and I read it. But there was one thing in there that seemed strange. It said that to do this operation you had to have an office, essentially a commercial use in that building. And I think that's where the failure was. There is no commercial use. In other words, I couldn't move my architectural practice to the ground floor of a timeshare condo.

So in other words, is that a good interpretation out there, or what did happen? Because the thing where I think it would fall is there is no office, there is no commercial office in that building.

I think when they refer to office they don't mean four walls and you have a key, you're a tenant. So I'm concerned as how that even happened, based on what we read.

CHAIRMAN STRAIN: Well, most every plan for a condominium -- in the bigger condominiums especially

along the beach, their ground floors or some of their floors have a manager's office. I believe that's how it got construed. And I certainly would love see it fettered (sic) and found out as to how this happened and get it corrected, because it could be a real bad sign for spreading throughout Collier County if it's not fixed.

COMMISSIONER SCHIFFER: So my curiosity, you know, continues on again through that word office.

But the impression in the recreation is that it had to be -- they had to have an office. So that isn't even the condo's office. And I don't think a condominium on the beach in residential zoning can have commercial offices to outsiders in that building. So I think the failure is there, unless staff's not enjoying us like we would like, but the failure is -- maybe that's why we have these problems.

COMMISSIONER CARON: We have problems --

CHAIRMAN STRAIN: Well, Nick's listening and Nick is the big kahuna, so maybe he'll get the point we're trying to make, so --

COMMISSIONER SCHIFFER: So the point is let's not stop like we pretend we know the answer. I would like to have them, somebody get back to me as to why they would consider that a legitimate office, thus allowing the guy to run commercial operations out of it.

CHAIRMAN STRAIN: Ray and Susan, these issues that we're talking about are important to the community. I know you want to have sidebars. And David, you all can have your sidebars, but when we're speaking you need to pay attention to what we're saying.

Okay, anybody else have any issues on the particular timeshare?

(No response.)

CHAIRMAN STRAIN: If not, we'll move on. This will come back to us as soon as you all can resolve it.

Okay, next item up is 2.03.07.G, the Immokalee overlay deviation process, their interim. Mr. Mulhere, and Bob, I want to thank you and the efforts you and the CRA have gone to to resolve the differences, because I understand from a meeting I attended in Immokalee just last week that everything is looking pretty good. And if it stays that way through your discussion, it will be nice.

MR. MULHERE: Thank you, Mr. Chairman. I appreciate you coming out, too, to the CRA meeting in Immokalee. And Susan as well. Susan Istenes also attended.

And Susan and I have met I think probably three times leading up to today. So we've resolved all the issues. Although I have one more change that Susan is unaware of. I'm sure she won't object to it because it's an elimination of one of the deviations that we requested, which I'll get to in just a minute.

Just in summary, and I'm sure you all read the executive summary portion of this, but the idea of this interim set of amendments is to allow for deviations under very specific conditions from various code provisions, LDC code provisions in Immokalee, in the urban area of Immokalee for a limited period of time, maximum of 24 months, while we get the Comprehensive Plan amendment adopted and then create a separate -- or go in and basically rewrite the Immokalee overlay.

We're already working on those LDC amendments, but we hesitate to put too much time and effort until we know exactly where the Comprehensive Plan stands. There could be things that could change, even in an ORC, so we don't want to spend too much time. But we are working on those that we're fairly comfortable will remain in place.

So again, there's -- just in summary there's two separate types of deviations and there's a very specific list of deviations with sections, and that was Mr. Strain's recommendation, I don't know, several months ago, that we be very specific, that we list each section very specifically. And we did go through that and do that.

And you can have a administrative, which is a de minimis threshold of deviation. If you go beyond that then you have to come to the Planning Commission. And although it's not a variance it's a formal process, there's an application and there would be criteria and staff would review it and write a staff report.

If it falls under the de minimis threshold in association with an SDP or an SIP or a plat or in the case of signs with a building permit, then it would just get approved as part of that process. Staff would review it, presumably approve it, and then would prepare some sort of a written approval of it that could be recorded in the public records.

And I think that's really it. There were a couple of changes I did want to bring to your attention. I have copies of them. They're relatively minor.

CHAIRMAN STRAIN: We're going to take this page at a time, so when we get to that page it might --

MR. MULHERE: Okay, that's good.

CHAIRMAN STRAIN: -- be easier just to wait until we get there --

MR. MULHERE: Okay, that's good. That's good.

CHAIRMAN STRAIN: Before we start, I want to make sure, Susan, you are in agreement on most of this now; is that true?

MS. ISTENES: Bob said he had one more. I haven't seen it. But yes, to the changes he'll give to you today and the content of this book.

I haven't seen those.

CHAIRMAN STRAIN: Thank you. Because you guys getting together and doing it this way saves us from going through 44 pages one at a time, so -- with that in mind, let's start with the first couple of Pages 9, 10 and 11. Does anybody on the Planning Commission have any questions on Pages 9, 10, 11?

(No response.)

CHAIRMAN STRAIN: 12 and 13 are graphics. Then we get to Pages 14 and 15. Are there any questions on Pages 14 and 15?

(No response.)

CHAIRMAN STRAIN: Bob, I have one. Maybe it's Susan. Under 7.A, and it would be line 16, it talks about fees associated with the dimensional variance, Section 9.04.00. I didn't find the fees referenced in that section. I think you might have meant 10.09.00.

Did you -- do you know offhand if that -- if you had -- because I didn't see the fees listed there.

MS. ISTENES: Well, they wouldn't be. But the intent was to reference the dimensional variance process.

CHAIRMAN STRAIN: Right, which I have printed --

MS. ISTENES: Is that a wrong citation?

CHAIRMAN STRAIN: Well, I don't -- it says for the fees. And I couldn't figure out where the fees were referenced in the dimensional process. If it's the process and not the fees --

MR. MULHERE: Let me make a suggestion. I think Susan, probably originally it was going to be that way, but we've agreed upon the fees, and they're specifically written here, this \$1,000 for the de minimis and then 5,000 I think for the variance -- for the larger one, the more substantive deviation.

So I guess my question would be do we even need -- maybe we just want to say processing procedures here, which are spelled out in 9.04.04.

CHAIRMAN STRAIN: That's what I was thinking, and take out the reference to the fees.

MR. MULHERE: And the reason I say that is because I think somewhere in this document there was -- maybe it isn't specified in here. I guess it's not. It was in the executive summary portion where it was specified.

MS. ISTENES: Yeah, the fees are adopted in a separate fee resolution, so that -- yeah, obviously the intent wasn't to use that Section 9.04.04 as a reference to fees.

CHAIRMAN STRAIN: Okay.

MS. ISTENES: We have dimensional variances and we have administrative variances, and I was trying to distinguish between the two so that there was an understanding that processes and fees were different, depending on which type of deviation you were requesting.

But I can take a look at that and clean that up a little bit.

CHAIRMAN STRAIN: Under C, insubstantial deviations, is there a maximum limitation there like you have in 9.04.04?

For example, 9.04.04.A, five percent of the required yard not to exceed a maximum of six inches. Ten percent of the required yard with a maximum of two feet. Improved encroachments up to 25 percent of the required yard. Is --

MR. MULHERE: The only one that we put a maximum on was the parking, because the other ones we limited to 10 percent.

CHAIRMAN STRAIN: Okay. So in essence that's your maximum.

MR. MULHERE: So that's the maximum, yeah.

CHAIRMAN STRAIN: Okay. Any other questions on 14 and 15?

(No response.)

CHAIRMAN STRAIN: I notice you removed some of the previous sections that you had cited when you get into the listing of the sections of the code. That was intentional, I take it?

MR. MULHERE: Yes.

CHAIRMAN STRAIN: Okay. Ms. Caron?

COMMISSIONER CARON: I just do want to -- because that was the question that I had on this 10 percent. You are comfortable with that, Susan, that there are no maximums, that it's just an overall 10 percent of --

MR. MULHERE: That is the maximum.

MS. ISTENES: Yes. It was 20 percent. He reduced it to 10 percent. And if I recall, we also had some limitations for height. So it doesn't include height.

MR. MULHERE: Right.

MS. ISTENES: So yes, I am comfortable with that, yeah.

CHAIRMAN STRAIN: Okay, the next pages would be 16 and 17.

COMMISSIONER SCHIFFER: One question.

CHAIRMAN STRAIN: Go ahead, Brad.

COMMISSIONER SCHIFFER: Let me weigh --

MR. MULHERE: Hold on one second. On Page 15, let me -- David and I -- and this is -- I misspoke, there's two actual changes.

There was a staff recommendation to limit the potential deviation set forth on the bottom of Page 15 in Paragraph B, where it says Table 2. And the staff recommendation was to add the following language to that: Except commercial projects located in the neighborhood center subdistrict of the IAMP shall provide a minimum of 50-foot setback when abutting residentially zoned properties and a 10-foot wide landscape strip between the abutting right-of-way and the off-street parking area.

We didn't exactly put that language in there but I think we addressed it. Because what we did put in there, if you look at paragraph B, it says note about one, two, line -- well, that's why I put numbers on them.

CHAIRMAN STRAIN: 45 and 46.

MR. MULHERE: 45, right. It says no deviation shall be granted for new development from the required 50-foot building setback when abutting residentially zoned properties or from the 10-foot wide landscape strip.

But where we differed, and I think staff agrees with this, is we are allowing for a deviation under a redevelopment scenario where structures are intended to remain in place and already don't meet that setback. So you're going to be renovating those structures, but they already don't meet the setback.

And so what David wants me to get on the record is that we need to add that to two other sections, that exact same language or that exact same limitation. And that would be to paragraph x -- xi on the bottom of page -- or the third from the bottom on Page 16, which is --

COMMISSIONER CARON: 43.

MR. MULHERE: 4.06.02.C, buffer requirements. We need to add that language there.

And also paragraph four a little higher up there, 4.02.03.A, which is for accessory structures. But they would still also be subject to that limitation.

Yeah, and then the other change back to Page 15, and these are the only two changes I had. Under E little i or 1, 3.05.07.B.1 is a -- allows a deviation from the preservation standards consistent with Policy 6.1.1.

Staff has an amendment that I think you're maybe considering later today that more than adequately addresses what our desire was for this. So we already have a proposed amendment, assuming that gets approved. We really wouldn't need this here. So I would withdraw that one.

CHAIRMAN STRAIN: Okay. Assuming the other one passes.

MR. MULHERE: Yeah. And we'll know by the end of the day, I guess, maybe?

CHAIRMAN STRAIN: Who knows.

MR. MULHERE: Those were really the only two changes. I apologize, I didn't realize we were already there.

CHAIRMAN STRAIN: Susan, do you have any problems with either of those?

MS. ISTENES: No.

CHAIRMAN STRAIN: Ms. Caron?

COMMISSIONER CARON: Okay, I'm just going to ask again, in the case of redevelopment, shouldn't we be correcting these issues? Now -- or are we just -- it's just for if they want to leave a structure?

MR. MULHERE: Right.

COMMISSIONER CARON: But everything else is going to have to come up to current standard, correct?

I mean, this becomes very, I would think, problematic.

MS. ISTENES: It is. It's very, very tricky when you're talking about redevelopment, because you're talking about property rights, you're talking about structures that were built under old codes that are no longer practical or viable. And yeah, there's no easy fix for it. So it is going to be tricky.

But the intent is to at least try to get some redevelopment going on in that area --

MR. MULHERE: Right.

MS. ISTENES: -- and this would help with that.

MR. MULHERE: I think that there's -- we've seen examples of decisions or many examples, and Penny or Fred can get up and testify to that effect, where people have not gone forward because the limitations we have in place. And this community would rather have something versus nothing.

I think if you're going to take the building down, there's probably no reason why you can't meet the setback. But I think if you're going to renovate an existing building and make it better than what it is, we need to meet people halfway, and that's what the intent of this is.

COMMISSIONER CARON: Okay. That's good.

CHAIRMAN STRAIN: Any there any other questions from the Planning Commission?

(No response.)

CHAIRMAN STRAIN: Okay, is there any public speakers?

Fred, did you have something you want to say?

MR. THOMAS: I wanted to make a short comment.

CHAIRMAN STRAIN: Then go right ahead.

MR. THOMAS: My name is Fred Thomas, and for some of you that don't know, in 2002 I completed 40 years of experience in housing and redevelopment.

In the old days when you wanted to redevelop an area, we create a new community someplace else, pay the relocation costs for the commercial and the residential, tear down everything that was in the old area and start from scratch. We haven't got the money to do that anymore, so we've got to sometimes work with the existing structures and the existing things that we're working with. And that's what he was trying to tell you a minute ago.

So we got to work with what we have, and then as we begin to develop we can make things better.

CHAIRMAN STRAIN: I think we're all there, Fred.

MR. MULHERE: Mr. Chair, I forgot the two changes that I did have before I walked in the door. They're relatively minor. Can I hand them out to you?

CHAIRMAN STRAIN: Sure. These are in addition to the changes you made on record.

MR. MULHERE: Yes. They're good.

COMMISSIONER VIGLIOTTI: Are these changes to your changes?

MS. ISTENES: And for the record, I have reviewed these changes that Bob's handing out and I don't have any issues with them.

MR. MULHERE: At least the colors are good.

Mr. Chair, you'll recall we had this discussion at the CRA meeting and advisory board meeting. And so there were -- one of staff's concerns, when I originally wrote this, I said that you could ask for a deviation as a separate administrative, a minor deviation as a separate process.

Staff said, you know, we really don't want to create a new process.

Okay, well, they're probably going to be associated with an SDP, an SIP or a plat. So we said, that's good.

We forgot about signs. And there were 80 signs red-tagged that had been in existence for years out there that need to go through this process, probably. They don't go through that process, so that's why we added the permit.

CHAIRMAN STRAIN: Just out of curiosity, when these signs have to go through this process, sir, how much are they going to be charged?

MR. MULHERE: It's \$1,000 for an administrative deviation.

CHAIRMAN STRAIN: Why? These signs have been existing all this time and --

MR. MULHERE: You know, I -- staff has to -- you know, the problem we have here is the signs got red-tagged, maybe there's no evidence of a permit, maybe they could -- I mean, who's got the burden of proof? I mean, this is not part of my job, but we could have a sign that was out there 30, 40 years, there's no record of a permit, doesn't mean there wasn't one, but anyway, code enforcement red-tagged them.

But planning staff will now be having to carry the burden of legitimizing those, so they will put time into the review, and they --

CHAIRMAN STRAIN: But that's not my point. Who complained about the signs? If no one complained, why are we red-tagging them, why are they coming in to be charged a \$1,000 fee when no one has a problem?

Penny?

MS. PHILLIPPI: I think those problems have been predominantly resolved. There were 80 signs who received notice that they either needed to come down or they needed to go and get a permit and put them up correctly. And we did lose a couple of 50-year-old signs that were landmarks, but the people immediately took them down. We brought it to the Board of County Commissioners and we went through those one by one with code enforcement staff.

And so you'll see businesses all over Immokalee with no sign up at all. And that's why. And I'm assuming at some point there was a fire among county records, so what the Board of County Commissioners resolved was if we don't have a record that you never bought a permit, we're going to work with you to go forward.

So those 80 have already been resolved. What this one will do will work toward the future of -- and current things that may get cited in the interim that didn't get caught in that net.

CHAIRMAN STRAIN: But Penny, is there some control over how people get cited for these signs? I mean, if no one's making a complaint, why are they being cited? Do we know?

I mean, did someone in Immokalee run through the town and start complaining about all the signs?

MS. PHILLIPPI: No, no, no, it's their job. That's what they do.

CHAIRMAN STRAIN: But who's -- if it's not boring anybody for all these years, who cares?

MR. THOMAS: Sir, in the downturn of the economy, we got the police stopping us more often, we got code enforcement going out and doing their due diligence to bring money back into the county, that's what it boils down to. It's those kinds of issues that we've been dealing with because of the downturn in the economy.

I'm just telling you what I know to be true.

We have a lot of situations for another situation that we have where people have been -- had a house -- when I came here '86, there was a house with an out-structure, garage, and another structure that has a big doghouse with a pen on it. But when they go back and look at the old aerials, they don't see it.

And because we made a new transition in '86 to a whole new Growth Management Plan with a separate -- got rid of the separate Planning Commission for Immokalee area, they couldn't find the records, so they started shooting out these citations on all these people because they couldn't find any proof that they had proof to put these other structures in that have been there since I came here in '85, '86.

That's how we got to this point, that's all.

CHAIRMAN STRAIN: Well, the 80 signs, I understand that are resolved; is that what --

MR. THOMAS: Yes.

CHAIRMAN STRAIN: Okay, good.

MR. THOMAS: We're worried about future signs.

MR. MULHERE: I'm going to have to leave that up to somebody else to resolve.

CHAIRMAN STRAIN: Well, I just didn't want to see 80 people having to come in here and spend \$1,000 a pop just to --

MR. MULHERE: I'm glad, I didn't understand that, but that's good that Penny was able to clear that up. So that's good.

The other change is, is -- so you may be familiar with, for example, Lake Placid, where they have a lot of murals in their downtown, and it's kind of an attraction, people come to look at the murals.

In Immokalee -- that's one example, there are others. Immokalee is also fostering a mural program, and so we wanted to be sure that we had language in there under the architectural standards that would be very clear that murals were permitted. We do want to have some level of review, so we suggested at least the CRA staff be able to look what is going to go up.

And the purpose is not for the mural to be a commercial sign. So, while you might be able to put God Bless America and an American flag on there, those are words, those should be permitted, but you might not want to say open from 9:00 to 5:00. So we addressed that as well -- or check cashing.

CHAIRMAN STRAIN: Mr. Schiffer?

COMMISSIONER SCHIFFER: Bob, you have a -- you know, when we were reviewing the sign ordinance,

the people from sign were discussing essentially artwork as signs. So you think you might want to add something in the next section to note that murals are governed by this section --

MR. MULHERE: Yes.

COMMISSIONER SCHIFFER: -- just to make sure that -- because if you're not doing anything in the sign --

MR. MULHERE: I'm sorry, I didn't mean to step on your words. I apologize.

COMMISSIONER SCHIFFER: -- you're doing anything in the sign ordinance, you're doing it in the architectural.

MR. MULHERE: There's a reason for that. The suggestion was we should stay away from the sign ordinance and regulating any kind of content in signs because of the court case that the county just went through. So this would be under the architectural standards and avoid signs at all.

We may look at it as part of this next coming LDC more comprehensive process and maybe create a section if we want to sort of direct things a little bit towards the murals and what we want them to look like and what content we might want. But we wouldn't want to call them signs.

COMMISSIONER SCHIFFER: My concern is the sign folks, not the architectural folks, the sign folks might go through there and start considering these signs --

MR. MULHERE: No, they won't --

COMMISSIONER SCHIFFER: -- like they have through other areas.

MR. MULHERE: They won't. The code enforcement investigator for Immokalee is actually a -- he's on the CRA advisory board and he's at their meetings.

COMMISSIONER SCHIFFER: Okay. Just warning you that it happens down here, so it could happen up there.

MR. MULHERE: I know.

COMMISSIONER MURRAY: Bob?

CHAIRMAN STRAIN: Mr. Murray.

MR. MULHERE: And there was a typo in there. Thank you.

COMMISSIONER MURRAY: Well, that's a tiny thing. But a mural, I've had occasion, I'm sure others have had occasion to go places, I know Miami has it, where you see a building with, you know, huge painting of whales. I know that's in Hawaii.

CHAIRMAN STRAIN: You need the mic., Bob.

COMMISSIONER MURRAY: I'm sorry. Nevertheless, the -- I consider those to be murals, perhaps they're not. Would that fall under your --

MR. MULHERE: I think that would.

COMMISSIONER MURRAY: That's a mural?

MR. MULHERE: Yeah.

COMMISSIONER MURRAY: Surely that wouldn't be construed as a sign, would it?

MR. MULHERE: Well, it would be if that same mural -- it could be, I shouldn't say would be. It could be if that same morel was on the wall of the store, I forget the artist, is it Wyatt? What's the --

COMMISSIONER SCHIFFER: Wyland.

COMMISSIONER CARON: Wyland.

MR. MULHERE: Right, Wyland. If it was on the store of a Wyland retail shop and it said, you know, For Sale or something, then it could be considered --

COMMISSIONER MURRAY: No, I'm talking about artwork --

MR. MULHERE: No, it's not --

COMMISSIONER MURRAY: -- which is what I understand in a mural. I mean, if you want to carry that to its illogical conclusion, you could have a picture of an American flag and everybody could think it's Perkins.

MR. MULHERE: Right.

COMMISSIONER MURRAY: So --

CHAIRMAN STRAIN: Ms. Caron?

COMMISSIONER CARON: Yeah, I just have a question here, the murals are to be reviewed and approved by the Immokalee CRA staff. I mean, what --

MR. MULHERE: Criteria --

COMMISSIONER CARON: -- actual authority do they have? I mean --

MR. MULHERE: They're reviewing all kinds of things right now, right? It's probably -- it probably needs to be addressed in a more detailed way in the upcoming set of amendments.

COMMISSIONER CARON: Bob -- I'm not done with Bob yet.

MR. THOMAS: I'm going to answer your question for you, ma'am. The idea is that we're trying to develop a downtown realm that's a tourist development area. So we want to have some control over what kind of murals that are like Central American kinds of thing, as opposed to somebody coming there and putting up library books and stuff, you know.

MR. MULHERE: But I think the question is a good one, because there's no criteria, there's really no basis to say it's approved or not approved. Maybe that's the wrong word, maybe approved is not the right word. But maybe we just say reviewed. Then they can have some influence on what it is.

COMMISSIONER CARON: And maybe part of that will get addressed in your GMP.

MR. MULHERE: Yes. But I think that's a very good point. And I felt the same thing when I was writing it.

I think if we take out the word approved and just say shall be reviewed, then the CRA staff could have some influence over what the content of the mural was and focus on it that way.

COMMISSIONER SCHIFFER: Bob, suggested word, maybe accepted, that the CRA staff has to accept the sign.

MR. MULHERE: Sure.

CHAIRMAN STRAIN: Okay, any other discussion from the Planning Commission?

(No response.)

CHAIRMAN STRAIN: Anybody else from the public want to speak?

(No response.)

CHAIRMAN STRAIN: Okay, I think there needs to be some minor tweaking of this, but I believe it's in good enough shape to recommend approval subject to that tweaking that you'll take care of afterwards. I think it's clear what needs to be done.

Is everybody in agreement? If so, is there a motion?

Mr. Schiffer?

COMMISSIONER SCHIFFER: I'll make a motion. I believe that we find this to be consistent with the Growth Management Plan and recommend approval.

CHAIRMAN STRAIN: Is there a second?

COMMISSIONER CARON: Second.

CHAIRMAN STRAIN: Seconded by Commissioner Caron. The section is 2.03.07.G, the Immokalee overlay deviation process, interim.

Any discussion?

(No response.)

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

COMMISSIONER SCHIFFER: Aye.

COMMISSIONER HOMIAK: Aye.

COMMISSIONER CARON: Aye.

COMMISSIONER VIGLIOTTI: Aye.

COMMISSIONER MURRAY: Aye.

CHAIRMAN STRAIN: Aye.

Anybody opposed?

(No response.)

CHAIRMAN STRAIN: Motion carries 6-0.

Thank you, sir.

We will take a 15-minute break so Cherie' can rest her fingers, and we'll be back here at 2:30.

(Recess.)

CHAIRMAN STRAIN: Thank you, Ray.

Welcome back from break. We'll move right into the rest of the agenda.

The next one up, though, I've been informed during break has had another rewrite, so we're going to put that

one off until whenever the next time is it can come back to us with a rewritten language. That's the one 1.08.02 definitions, lot corner interior.

So Heidi, are you aware of the rewrite? And I know Susan is because she pointed it out to me.

MS. ASHTON-CICKO: Yeah, I've been working with Susan and Stan Chrzanowski. The new definition, though, will not address cul-de-sacs or curbed roads, just as a heads-up.

CHAIRMAN STRAIN: Well, whatever it does or does not do, we'll need time to read it, so let's just not even get into it today. And I don't care what date you all bring it, as long as we get it ahead enough so we can read it.

We'll go into 4.05.02, it's typical off-street parking design, Exhibit A. That's in Book 4, which is the latest book, Page 87.

Susan, I know a lot of those these are coming back. As a means of introducing it, would you kind of remind us what it is we -- what it's coming back for so we can expedite the review.

MS. ISTENES: Sure. Actually, I'll have Ray put the Page 89 up on the visualizer. And my recollection is the last time we talked about this there was some confusion about what was being added.

CHAIRMAN STRAIN: Right. I think the point that was made was there's more -- there's not just items being added, there's items being physically changed. And I can't remember the outcome of the discussion with Stan, so you're going to have to help me with that.

MS. ISTENES: Stan is on his way, so he may pop in here while we're talking about this. And if there's a question I can't answer we could always come back to it later.

But -- let me steal your pen. Thanks.

The last time I recall the document that you had in the first packet was showing some changes. And so I've been assured by Stan and I've reviewed it myself that this document should not be showing any changes to the code. In other words, what's showing on this document is also listed as code requirements.

What he added was this section right up here which is circled, and this shows the wheel stop detail. Because I guess a lot of people were getting confused and putting the wheel stops a little too far back and they weren't stabilized. So there's a two-inch, you'll see a two-inch gap here before -- when you're abutting a grassed area, and then the wheel stop and then the asphalt paving.

And the other thing that was added was the parallel parking detail. He told me that was adopted in 1991. And then he just went ahead and added that to this detail to show the requirements for parallel parking, depending on the type of parallel parking you are developing. We don't get a lot in the county, but for those areas we do, those are the graphic requirements for that as well.

That, to the best of my knowledge, was the issue.

CHAIRMAN STRAIN: Well, I think I had brought up and maybe it was clarified then, I don't remember it now, the old plans showed the striping to be four inches wide and the new one shows six inches wide. And I don't remember the explanation for that or even if one was provided.

But without Stan here, I guess we can't reiterate it then.

MS. ISTENES: We can certainly pause and go on to something else for now if you still want to get that answered.

And that would be the striping for the handicapped, correct?

CHAIRMAN STRAIN: Yes. If it's a change in a standard, I'd want to make sure we're consistent in the language in the code as well. And if it's a change, did we have to notify it any differently than what this one was notified, which was only clarity.

Because it says that it's only replacing current graphic exhibit with one containing greater detail, when in actuality we're widening the striping that's being used in this example.

MS. ISTENES: I'll reaffirm with Stan. But I know engineering is also watching from home or from the office, and so they may be e-mailing me as well.

So if you just want to go ahead and move on we'll get the answer to that. I apologize. I didn't realize that was still --

CHAIRMAN STRAIN: Anybody want to comment on this right now or you just want to wait till Stan gets here?

Brad?

COMMISSIONER SCHIFFER: I do have comments, but let's wait for Stan.

CHAIRMAN STRAIN: Okay. And Stan's got his name on the next one. And then let's just pick one that his name isn't on. That is 4.05.04.F, parking space requirements. That's Susan. It would be in our Packet 2, Page 69.

MS. ISTENES: This one, if I recall -- and I'm flipping to it now, there was some question, and I think the discussion we had with you was to check as to the reason as to whether or not it is necessary. And we went back in because what we're asking here to do is essentially readopt something that was in the old code. We do not believe it was purposely omitted.

And John and Ray and I met and discussed this a little bit and decided that we as staff would rather have it in for clarification purposes, because we do often get change of use and we do often get asked about parking requirements and where in the code does it specifically say if I have a change in use I have to meet parking requirements.

We figured basically our thing is it doesn't hurt to be more clear. And --

CHAIRMAN STRAIN: Okay. That's on Page 69. It goes 70, 71. Does anybody have any questions on the Planning Commission?

COMMISSIONER SCHIFFER: Well --

CHAIRMAN STRAIN: Brad?

COMMISSIONER SCHIFFER: -- just the reason -- I mean, Susan, I think the reason it was taken out is they tried to weed out unnecessary wording in the code. When somebody does change the use, they're going through an awful lot of other reviews too, I mean, not just the parking. So doesn't this really go without saying?

MS. ISTENES: It should. I agree with you, it should. I mean, I -- my position initially was it goes without saying, just as you suggest.

But John had researched a little bit and found a couple instances where we had been, I don't want to say challenged in a negative way, it was just brought up as a question and request to basically prove it.

COMMISSIONER SCHIFFER: So we don't have somewhere in the code that any new use is treated as a new use and has to meet requirements for a new use, like all the building codes and everything else do? I guess we don't, so --

MS. ISTENES: Not to the extent that it's clear. I mean, to be honest with you, I didn't spend days on this. I just figured it's one of those things that might be a little extra language, but we had had a couple of incidences where it came in handy.

COMMISSIONER SCHIFFER: It's not a battle to choose.

CHAIRMAN STRAIN: Anybody else have any questions?

(No response.)

CHAIRMAN STRAIN: We need to have a motion with a finding.

COMMISSIONER SCHIFFER: I'll make a motion. I move that we find this to be consistent with the Growth Management Plan and recommend forwarding to the Commission with a recommendation of approval.

CHAIRMAN STRAIN: Is there a second?

COMMISSIONER CARON: Second.

CHAIRMAN STRAIN: Seconded by Ms. Caron. And it is for LDC Section 5.04.04.

All those in favor, signify by saying aye.

COMMISSIONER SCHIFFER: Aye.

COMMISSIONER HOMIAK: Aye.

COMMISSIONER CARON: Aye.

COMMISSIONER VIGLIOTTI: Aye.

COMMISSIONER MURRAY: Aye.

CHAIRMAN STRAIN: Aye.

Anybody opposed?

(No response.)

CHAIRMAN STRAIN: Motion carries 6-0.

Let's move on to a non-Stan item. It would be 2.03.08.A.4, aquaculture in the RMFU sending. And that would be on Page 19 of Packet 4.

COMMISSIONER MURRAY: Mr. Chairman?

CHAIRMAN STRAIN: Yes, sir.

COMMISSIONER MURRAY: If you go back to Page 69, I may be --

CHAIRMAN STRAIN: Bob, could you pull your mic., I can't even --

COMMISSIONER MURRAY: I'm sorry, I apologize. If you would go back to Page 69, I may -- probably I'm in error, but I'm looking at the LDC section that you cited is not the same one that's listed on Page 69. It's 3.05.07.H.

CHAIRMAN STRAIN: No, you're looking the book -- you've got to look in Book 2, Bob.

COMMISSIONER MURRAY: I'm looking at the current one that we worked on.

CHAIRMAN STRAIN: No, Book 2.

COMMISSIONER MURRAY: Okay. It's not the one we're --

CHAIRMAN STRAIN: Quite a bit of the items on the agenda aren't from the current book, so --

COMMISSIONER MURRAY: Sorry about that.

CHAIRMAN STRAIN: No, no problem. But you may want to --

COMMISSIONER MURRAY: I thought this was the most recent --

CHAIRMAN STRAIN: -- that's probably why it's going to be confusing.

So we're on 2.03.08.A.4, it's on Page 19 of Book 4.

This is aquaculture. And Jeff, you did a good job on your new language.

MR. WRIGHT: Thanks, Mr. Chairman. For the record, Jeff Wright.

I just wanted to point out a couple things. As I mentioned last time, this language appears twice in your packet. In today's Packet it's on Pages 20 and 22.

As I was preparing this for this afternoon's hearing, I came up with a suggestion or two. First of all, there's language before you that says unless an applicant can demonstrate. And it occurred to me that there's really no application and therefore no applicant.

So I would suggest -- and I've put it on -- I'll put it on the overhead here -- removing the words an applicant can demonstrate that. So it would read unless such removal is authorized under state or Federal law. Again, that's because there's no applicant and there's no application. These are permitted uses.

But that's one change that I had in addition to changes that you see in the packet.

The other change, and you'll notice that this Page 20 deals with where the development rights have not been severed. Page 22 deals with where the development rights have been severed.

And the way that that regulation on 22 operates is that when the development rights are severed, you're frozen in time as of the severance date.

So on this overhead, I have made a change, because if you're frozen in time, you're not going to have any new aquaculture, you're just going to have what's there as of the date of the transfer of development rights. So new aquaculture is not going to be happening where the development rights have been severed. So that's just a small change that I made that the provisions don't read identically, but they do capture the same concept.

And what I tried to do between the last meeting and now was capture the main concepts. First of all, making it simple. Fill removal is prohibited.

Also capturing the concept that if you have a state right to remove the fill and you can make that argument, then you'll have an exception to this rule.

So I tried to capture all your concerns, and I am available for any questions.

CHAIRMAN STRAIN: Okay, anybody have any questions?

(No response.)

CHAIRMAN STRAIN: We'll take the whole section at one time. It's through Page 25.

COMMISSIONER MURRAY: I have.

CHAIRMAN STRAIN: Go ahead, Mr. Murray.

COMMISSIONER MURRAY: The last comment that you made, so do I understand then that there may be or there is a state law that may or does permit the removal of material?

MR. WRIGHT: There's no state law that expressly allows for removal of dirt. In fact, yesterday I talked to Cal Knickerbocker, who's an aquaculture expert with the Department of Agriculture and Consumer Services, and he said this question comes up all the time, and they don't touch the issue of excavation of fill removal.

I'm not sure if that answers your question.

COMMISSIONER MURRAY: Well, yes. And the other side of that would be a prohibition. We've

attempted, for reasons that we perceive perhaps that sometimes it's a mining operation in disguise, that may or may not be true, but that was, I think, a genesis of one of the points that we were attempting to seek a limiting or a prohibition so that we couldn't have that kind of stealth operation.

So I'm just -- what you're leaving it open for, should there become a law, I guess then we're out of it, that subordinates us; is that right, that's the way you're writing it?

MR. WRIGHT: That's right. And there's one other phrase that we could add to this, and that is at the end of each of these sections that I'm proposing here, we would add the clause: Or necessary for exercise of a state or federal right.

Now, that's something I don't have before you, but it's something on the way down, I actually bumped into Rich and he mentioned some of his concerns with it. I don't want to speak for Rich. But there's always the possibility that somebody, for example, could say, hey, I have a state right to dig a pit in this configuration and you're telling me that I can't remove the fill. The result of you telling me I can't -- that prohibition on removing fill is I have to have a smaller operation. I can't -- in other words --

COMMISSIONER MURRAY: Can't get full use of your property.

MR. WRIGHT: Exactly. It will affect my pocketbook.

So by adding that clause that if removal is necessary for exercise of a state or federal right, then we could at least, it's not necessarily airtight, but at least have a defense for that argument.

COMMISSIONER MURRAY: I wouldn't be unhappy with it, per se.

CHAIRMAN STRAIN: Jeff, if you were to insert that phraseology, you basically are putting on an invitation to challenge the position that we don't want these excavations to be made for fill taken off-site.

I would rather let them put that argument forward and not entice them to do such. I'd rather make it proactive on their part instead of ours. So if we don't need the language and there's nothing here against it, I'd just as soon we didn't add it. I only think it's going to invite problems, not defer problems.

COMMISSIONER MURRAY: Well, does it get into the question of rights under the Act that we always cite about full use of one's property? And if we're mindful of that, shouldn't we --

CHAIRMAN STRAIN: If you want full use of your property and you're buying a property that's too small and you think you can use trickery through state statute to get full use because of a clause we have here, I think that's erroneous. I think you need to buy more property and limit the property use to what you can keep on-site, and let them prove otherwise.

I don't think we want to make the invite to let them think that they have that right to begin with. I would suggest not to go there and let them -- put the burden of proof on them.

COMMISSIONER MURRAY: Well, okay, I will agree to disagree in that regard.

CHAIRMAN STRAIN: Okay. Anybody else have any questions on Pages 19 through 25?

(No response.)

CHAIRMAN STRAIN: Is there a recommendation from the board?

COMMISSIONER SCHIFFER: I'll make a motion.

CHAIRMAN STRAIN: Okay.

COMMISSIONER SCHIFFER: I move that we forward this amendment as being consistent with the Growth Management Plan and with a recommendation of approval.

CHAIRMAN STRAIN: Subject to the changes recommended by the county attorney in the -- that are on the board in front of us?

COMMISSIONER SCHIFFER: Correct.

CHAIRMAN STRAIN: Is there a second?

COMMISSIONER VIGLIOTTI: I'll second.

CHAIRMAN STRAIN: Seconded by Mr. Vigliotti.

Is there discussion?

(No response.)

CHAIRMAN STRAIN: That is for Section 2.03.08 in our code.

All in favor, signify by saying aye.

COMMISSIONER SCHIFFER: Aye.

COMMISSIONER HOMIAK: Aye.

COMMISSIONER CARON: Aye.

COMMISSIONER VIGLIOTTI: Aye.

CHAIRMAN STRAIN: Aye.

Anybody opposed?

COMMISSIONER MURRAY: Aye.

CHAIRMAN STRAIN: Motion carries 5-1.

MR. WRIGHT: Thank you.

CHAIRMAN STRAIN: Okay, next item up is 2.01.00. This is the parking use of recreational vehicles. That would be on Page 85 of Packet 1.

MS. ASHTON-CICKO: Mr. Chair, when that was originally heard you had some questions as to whether the section had been moved in its entirety to the Code of Laws.

CHAIRMAN STRAIN: Right.

MS. ASHTON-CICKO: I did verify that the entire section was not moved. And we're still proposing that the LDC language be stricken but that it be placed in a new proposed ordinance that would be heard by the Board of County Commissioners at the same time that these LDC amendments would be heard.

So I have distributed the proposed ordinance by e-mail earlier this week. Now, if you desire, we can continue this till April 1st.

CHAIRMAN STRAIN: Well, the only issue was whether or not all the language was intended to be moved or just parts of it. I haven't had time to read your distribution. Did you include now all the language or just parts of it?

MS. ASHTON-CICKO: No, I included all of the language. And the document that I e-mailed to you had the LDC language -- there's no strike-throughs or underlines, but as to the portion that came from the ordinance 08-64.

So the new portion that was in an 08-64 ordinance that has been adopted by the board, I depicted in underline, just so you could follow what was different from the LDC. And in brackets I noted where there appears to be some discrepancy as to whether a few of the sections apply to the Estates or they don't.

And this draft ordinance is going to the Golden Gate Estates task force that works with code enforcement today for their input. So I don't have the benefit of their input at this time. But there were -- the two parts that I noted does not apply to the Estates I wanted to bring to your attention in case you had a recommendation on that issue that you wanted to forward to the board.

But again at this point we don't have any recommendations or input from the task force.

CHAIRMAN STRAIN: Okay, so we're going to wait regardless til the task force comes back with a rec --

MS. ASHTON-CICKO: Right, and so we could continue that to April 1st, which would give you more time to review it --

CHAIRMAN STRAIN: Anybody have any objections to moving it to April 1st or whatever date you're able to fit it in?

(No response.)

CHAIRMAN STRAIN: While I was looking at that issue in the Code of Laws, I was looking for a couple of things, I found something else that was -- actually it was Municode that I thought to be interesting.

Ray, I need you to put this on the overhead.

If this commission recalls, we discussed an item that moved a lot of the formation rules for the various committees in the county and commissions such as ours, attempted to move them to the Code of Laws. Well, they are in the Land Development Code.

I went in to check on the one from the Planning Commission and I found this on Muni.Code. What does it mean?

I know what it says, but we were discussing I thought this issue at our last meeting and we said no, we don't think the Planning Commission should be moved from the Land Development Code because of its nature and it's quasi-judicial. But I went onto Municode and this is the note I got. Does this mean it got moved to another section of the LDC on Municode or it got moved out of Municode LDC and put into the Code of Laws, which I thought was interesting, because we haven't even heard it?

MS. ASHTON-CICKO: This section relating to the Planning Commission will be added back in through Municode, based on the direction that you gave at the last LDC hearing.

CHAIRMAN STRAIN: How did it get taken out without us knowing about it?

MS. ASHTON-CICKO: There was an ordinance that was done previously that moved the language to the Code of Laws. So in anticipation of the LDC amendment being approved Municode took that section out, and they're working with the County Attorney's Office. So we will put that back in. But that has not been taken out. So there is a glitch.

CHAIRMAN STRAIN: Okay. That's interesting. Thank you.

Let's move on to the next item. And still no Stan. What did he take, one of the C.A.T. transit systems to get here?

MS. ISTENES: He is on his way, I did get confirmation of that. We're okay.

CHAIRMAN STRAIN: Now we have a pile of sections that are in our new book on Page 27. They're a series of scrivener's errors, multiple strike-outs and items like that. So let's go to that one next.

MS. ISTENES: I believe, and I'm looking through my packet too for the notes, but -- and John, maybe you can just give me a nod from back there. John, was this the one where you re-did the citations or the references?

In other words -- because my notes didn't say anything. But I know you had wanted us to go back and double check and make sure this was accurate.

Yes. And that's what John did.

CHAIRMAN STRAIN: It goes from Page 27 to Page 38. Anybody have any questions on Pages 27 to 38? (No response.)

CHAIRMAN STRAIN: Is there a motion?

Go ahead, Ms. Caron.

COMMISSIONER CARON: And this language was done exactly, the exact LDC language was transferred to Ordinance 08-11, dash 11? For all of these?

CHAIRMAN STRAIN: Pardon me?

MS. ISTENES: I'm sorry, yes, that's what we double checked.

CHAIRMAN STRAIN: Okay, is there a motion?

COMMISSIONER SCHIFFER: I'll make a motion.

CHAIRMAN STRAIN: Mr. Schiffer.

COMMISSIONER SCHIFFER: And with a great deal of trust. I find that these to be -- these amendments to be consistent with the Growth Management Plan and forward to the Commission with a recommendation of approval.

CHAIRMAN STRAIN: Is there a second?

COMMISSIONER VIGLIOTTI: So moved.

CHAIRMAN STRAIN: Seconded by Mr. Vigliotti. The sections involved are 2.01.00. 2.04.01, 2.04.02, 2.04.03, 4.02.02 and 4.02.29.

Is there any discussion?

(No response.)

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

COMMISSIONER SCHIFFER: Aye.

COMMISSIONER HOMIAK: Aye.

COMMISSIONER CARON: Aye.

COMMISSIONER VIGLIOTTI: Aye.

COMMISSIONER MURRAY: Aye.

CHAIRMAN STRAIN: Aye.

Anybody opposed?

(No response.)

CHAIRMAN STRAIN: Motion carries 6-0.

The next one up is the PUD procedures on Section 10.02.13. It's in your packet number two, Page 11.

MS. ASHTON-CICKO: Mr. Chair, I'm recommending that this one be pulled.

CHAIRMAN STRAIN: Okay.

MS. ASHTON-CICKO: We determined that it's not needed.

COMMISSIONER SCHIFFER: Withdrawn.

CHAIRMAN STRAIN: Yeah, withdrawn. Any objections from anybody on that?

(No response.)

CHAIRMAN STRAIN: Okay, the next item up is 10.03.05.B, and I can't read the rest of it. Notice requirements for public hearings. It's in Book 4. It says 15 on our sheet, but I believe it's Page 149.

MS. ISTENES: Yes, correct. Thank you. This was -- excuse me --

MS. ASHTON-CICKO: Actually, I'm --

MS. ISTENES: There was --

CHAIRMAN STRAIN: Heidi, you're going to pull this one too?

MS. ASHTON-CICKO: No, I'm sorry, I pulled the 10.02.13 but I do recall that there was some language that zoning wanted, so we do need to go back to that. The entire amendment isn't being pulled. So --

CHAIRMAN STRAIN: So now we --

MS. ASHTON-CICKO: We'll proceed and then we'll go back to it, if that works.

CHAIRMAN STRAIN: Okay, fine. I'm sorry Susan.

MS. ASHTON-CICKO: Sorry about that.

CHAIRMAN STRAIN: We're on Page 149.

MS. ISTENES: Okay. Let me get my head back here.

This item -- and I don't know how to explain it without putting both things on the visualizer, and I may have to do that. The previous version of this item contained a notification date change. Originally your amendment said it was 21 days and we were changing it back to 15.

We've since discovered that it is 15 already in Municode, so it does not need to be changed. It was changed previously. So the top part of this amendment has been removed.

The bottom part here though still does need to be added back in. And I believe this meets with your last discussion on this item. You'll see that in paragraph two.

CHAIRMAN STRAIN: We're on Page 149. You referred to a top part. Which is the top part?

MS. ISTENES: Well, it's gone now.

CHAIRMAN STRAIN: It's kind of hard to find if it's gone.

MS. ISTENES: That's why I said I'll probably need to put it on the visualizer for you. And I just will need to kind of find it real quick. But if you all want to look at the second paragraph, I'll do that.

And if you have any questions, I can do two things at once, usually.

CHAIRMAN STRAIN: I don't see any problem with the second paragraph. If that's the only change, I mean, if the first paragraph wasn't needed, I don't know if we need to review it.

MS. ISTENES: I honestly don't think you do. It was something you all asked us to look at again. And what happened was, when I did that, I found that there was a discrepancy on folio views of Municode versus the straight Municode site.

And what had happened was the staff member who had recommended the change was looking through folio views. And so we confirmed with the County Attorney's Office that the correct documents to look at are the actual Municode website, that they're actually going to be doing away with folio views. I don't use folio views so I didn't even consider that. But apparently some people still are. So that -- and that's why --

CHAIRMAN STRAIN: Okay. Well, then let's just focus on the one paragraph you want to keep.

Anybody have any concerns or questions? If not, is there a motion?

COMMISSIONER VIGLIOTTI: Motion to approve.

CHAIRMAN STRAIN: Made by Mr. Vigliotti. Is there a second?

COMMISSIONER SCHIFFER: I'll second.

CHAIRMAN STRAIN: Seconded by Mr. Schiffer.

The section is 10.03.05.

Is there any comments?

(No response.)

CHAIRMAN STRAIN: Hearing none, all those in favor, signify by saying aye.

COMMISSIONER SCHIFFER: Aye.

COMMISSIONER HOMIAK: Aye.

COMMISSIONER CARON: Aye.

COMMISSIONER VIGLIOTTI: Aye.

COMMISSIONER MURRAY: Aye.

CHAIRMAN STRAIN: Aye.

Anybody opposed?

(No response.)

CHAIRMAN STRAIN: Motion carries 6-1-- or 6-0.

The next one we're going to go back to 10.02.13, it's on Page 11 of Book 2. It's a PUD procedures item.

MS. ASHTON-CICKO: That's correct, Mr. Chair. The -- on Page 12, F.4 is the change that I was requesting withdrawal. So that change doesn't need to be made. But on Page 12, line 14 inserts the words sunset in place of the word approval for the extension.

CHAIRMAN STRAIN: Okay.

COMMISSIONER SCHIFFER: Question.

CHAIRMAN STRAIN: Go ahead, Mr. Schiffer.

COMMISSIONER SCHIFFER: I understand we're going to unstrike lines 26 and 27.

CHAIRMAN STRAIN: Yes, that's where I was going next.

MS. ASHTON-CICKO: Correct.

COMMISSIONER SCHIFFER: And then leave the rest of it.

CHAIRMAN STRAIN: So line 26 and 27 is actually in, not out.

MS. ASHTON-CICKO: Uh-huh.

CHAIRMAN STRAIN: Okay. Okay, so if it's back in, what is the recourse to the original owner if they're basically complete on a development?

MS. ASHTON-CICKO: I think in practicality, the way it would work is that whoever is currently the owner of the property would be responsible. But it doesn't relieve the prior owner of the obligation, so that you could still request the prior owner to help try to get you the information, if he can.

I don't think that the county would go after the prior owner, but it just doesn't relieve him of the obligation to the extent he has any control.

CHAIRMAN STRAIN: Well, how do you -- so a prior owner then can never relieve himself of control of a process?

Ms. Caron?

COMMISSIONER CARON: Yeah, I think he does it in a sentence starting on line 28. Transferring responsibility for the filing of annual monitoring report to an entity other than the original owner may be demonstrated in the form of an executed agreement between the original owner and a new entities.

So when PUDs are all built out, everything gets assigned over to a foundation or an association or whatever, and you just have to -- it's one more piece of paper you have to get signed off on at the time that it gets turned over to the association. I think it's pretty clear.

CHAIRMAN STRAIN: Okay, is that --

MS. ASHTON-CICKO: I think it just keeps another check in balance in favor of the county.

COMMISSIONER CARON: Yeah.

COMMISSIONER MURRAY: I have a question.

CHAIRMAN STRAIN: Mr. Murray?

COMMISSIONER MURRAY: Heirs, successors and assigns, I mean, what I'm thinking of is somebody gets rid of their property, they sell it, they cease to have any ownership. How can you compel them to perform? Suppose in the case of bankruptcy even, how can you compel them to perform?

On what basis of law would you do that?

MS. ASHTON-CICKO: Well, I think that that will be analyzed at the time the issue comes up and determined who are the appropriate people to go after for the report. But this just keeps some responsibility on the person who creates the development to begin with, as opposed to someone who passes it on and doesn't have any responsibility, therefore they may be less careful in how they pass it on.

COMMISSIONER MURRAY: I applaud your effort to try to achieve that, but I will tell you as a person very deeply involved in an argument of that sort between a developer who went bankrupt, I think even intentionally, leaving us holding the beloved bag, we couldn't even get him to perform any of the basic things, let alone that. So I can't imagine, would the county then expend sums of money in an effort to chase a party who ultimately I think you can't compel?

MR. KLATZKOW: No, we take a very practical approach to that. I mean, quite frankly, you can't get blood out of a stone. If somebody is no longer in business, we understand that. But that -- so it will be on a case-by-case basis.

COMMISSIONER MURRAY: You're a practical man. Why would we put something in there we know is not going to probably -- I mean, it's nice to have the statement in there, but it's not enforceable. That's what I'm gathering.

COMMISSIONER SCHIFFER: Mark?

CHAIRMAN STRAIN: Go ahead, Mr. Schiffer.

COMMISSIONER SCHIFFER: I mean, I favor the wording. It does make the owner take care and be responsible to transfer that so he doesn't have this problem. So if we take it out, the owner can be sloppy and we may have the problems that Mr. Murray has.

CHAIRMAN STRAIN: This may not resolve the problem, but it does give the county an edge if they want to try to make it resolvable. So it's better than nothing.

Okay, are there any other discussions? We're on Page 11 and 12.

(No response.)

CHAIRMAN STRAIN: Is there a motion?

COMMISSIONER SCHIFFER: I'll make a motion that we keep line 26 and 27 on Page 12 and then find this to be consistent with the Growth Management Plan, then recommend approval.

CHAIRMAN STRAIN: Is there a second?

COMMISSIONER CARON: Second.

CHAIRMAN STRAIN: Motion made, seconded by Ms. Caron.

Discussion? It's item LDC Section 10.02.13. Any discussion?

(No response.)

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

COMMISSIONER SCHIFFER: Aye.

COMMISSIONER HOMIAK: Aye.

COMMISSIONER CARON: Aye.

COMMISSIONER VIGLIOTTI: Aye.

COMMISSIONER MURRAY: Aye.

CHAIRMAN STRAIN: Aye.

Anybody opposed?

(No response.)

CHAIRMAN STRAIN: Motion carries 6-0.

Okay, I notice there's members of the public here, and I don't know which ones you guys are in here for, but I will try to accommodate if we know.

Richard, you're the least expensive person here today, so what items are you waiting for?

If you don't mind coming up and telling us, we'll try to move on to those.

MR. YOVANOVICH: I believe it is on Page 69, the recreational uses in the preserves, as well as Page 81, the stormwater uses in the preserves.

There was language in there, grandfathering language that I worked out with staff and the County Attorney's Office. Those are the only -- I'm here just to make sure that that language is approved and acceptable to the Planning Commission.

CHAIRMAN STRAIN: Okay. What we'll do is -- and I didn't see that fellow hiding behind you below the deck of that podium that you're standing in front of.

MR. YOVANOVICH: I know he makes more than I do, so if you want to take him first.

CHAIRMAN STRAIN: Let's clean his couple issues up first, then we'll go right into yours as long as Steve has no objection to it, and then we'll move forward from there.

Hi, Stan.

MR. CHRZANOWSKI: Good afternoon, Commissioners. And I'm in no hurry, I work for the government.

(Laughter.)

COMMISSIONER SCHIFFER: Remember, we pay him, so let's get him out of here.

CHAIRMAN STRAIN: Let's start then. We'll go right into your -- you have three items, Stan, and we'll start out 1.08.02. It's the defin -- oh, no, that one's been continued, so we'll go to the second one, 4.05.02, typical off-street parking design, Exhibit A. It's on Page 87 of the new packet, Book 4.

And Stan, when we discussed it earlier, I had a lingering question that was about the change in the striping width. You may have answered it before but we've had so much happen --

MR. CHRZNANOWSKI: That was a change that Florida DOT made many years ago, that they want -- because of the age of drivers in the State of Florida, they thought the four inches was not sufficient for us elderly people.

And I'm in my sixties, usually I'm the youngest person when I go to a restaurant. So they're making an accommodation to those of us that have a little more trouble seeing as we get older. It's just a wider striping. If you look on the way home, you look at the road striping, you'll see it's all six-inch.

CHAIRMAN STRAIN: And you're enforcing that regardless of the graphic that used to be in the code that said four-inch.

MR. CHRZNANOWSKI: Yeah. That graphic, by way of explanation, if you look at the bottom right hand of this graphic, if you can read that, it says it was prepared in 1999. And then if you look at the other date on the left-hand corner, it says '96. What does it say, '96?

CHAIRMAN STRAIN: Thereabouts, or '98, something like that. It's old.

MR. CHRZNANOWSKI: It's an old graphic. And it's 10 years old. And that's what it was. The only thing -- if you look at that graphic, the only thing we've added is -- that even had the parallel parking on it. The only thing we've added is in the upper right-hand corner, that wheel stop dimension that Susan mentioned earlier.

What happened was that Municode used to have a lot of problem with our exhibits. And this exhibit never, it was looked at years ago. It just never made it into the ordinance properly. And we should have straightened it out a long time ago. But the exhibit that's in there is kind of correct. It just looks bad and it misses a few things, so this is basically housekeeping.

CHAIRMAN STRAIN: Okay. Is there any discussion?
Mr. Schiffer?

COMMISSIONER SCHIFFER: Stan, one thing, the handicap ramp detail, where it is, you know, where you have the access drive. That's not really a recommended detail anymore. And you can see if you're coming straight ahead, all of a sudden this curve and the drop and everything.

What most people are doing is bringing the ramp down, having a flat area. It will be a five-foot area just like the width because of the ramp, and then ramping it straight back up rather than going around.

But could this give the impression that you have to do it this way?

MR. CHRZNANOWSKI: It could, I suppose, yeah. You want that changed?

COMMISSIONER SCHIFFER: I don't think that's a good idea, do you?

MR. CHRZNANOWSKI: Well, this way is legal.

COMMISSIONER SCHIFFER: So is the other.

MR. CHRZNANOWSKI: But you're right. There's -- we could simply make a reference to State DOT -- must conform to State DOT handicap code and do that.

COMMISSIONER SCHIFFER: I mean, I think it's difficult to get it redrawn but it's probably easy to add a note. So maybe if you added a note that, you know, that gives the impression that this is one method, all complying methods are available or something.

MR. CHRZNANOWSKI: It's not difficult to get it redrawn, it's on the computer. How do you want it drawn, the -- both sides coming down to the middle?

COMMISSIONER SCHIFFER: And you know what I mean, don't you --

MR. CHRZNANOWSKI: Yes.

COMMISSIONER SCHIFFER: -- the sidewalk, it will slope gently, be level, slope gently. Because this one here, the reason people don't like it is that it does put the curve and people walking have trouble with this one.

And then my other question is you have the sign in the five-foot setback, which I don't think is exactly right either. The concern there is you're not allowed to narrow that sidewalk.

You see what I mean? Look in front of the handicap space, you have a post with the sign. You cull it out --
MR. CHRZNANOWSKI: Right, we can put the sign behind the sidewalk.

COMMISSIONER SCHIFFER: Yeah. Because you wouldn't want somebody to say it's allowed there.

MR. CHRZANOWSKI: Yes, sir.

COMMISSIONER SCHIFFER: Okay. The other question is over there there's this note. We talked about it last time. It says 10-foot, 15-foot and 20-foot landscape buffers allow vehicle overhang into the buffer. And then there's parentheses, two-foot setback behind curb does not apply to 10, 15 and 20-foot buffers.

What exactly does that mean? Does that mean that you're not allowed to add that two feet to the buffer?

MR. CHRZANOWSKI: Yes. It means that the two-foot overhang into the 20-foot buffer is permissible.

COMMISSIONER SCHIFFER: Okay, but isn't it the same when it says does not apply to the buffer? So let's say I have a 10-foot buffer. Am I allowed to have essentially eight foot of buffer plus two feet of overhang to get my 10?

MR. CHRZANOWSKI: Yes. You want that reworded somehow to make that clearer?

COMMISSIONER SCHIFFER: Yeah, because I don't think it is. If somebody else reads it and thinks it is, I'll bow to that. But it seems --

CHAIRMAN STRAIN: I read it like you did, I thought they need 10 plus two with that diagram.

COMMISSIONER SCHIFFER: And Susan, do they?

MS. ISTENES: That's my understanding, yeah. I'm going to -- I will confirm that, but yeah.

Yeah, you have to have the whole 10 foot in buffer.

COMMISSIONER SCHIFFER: Then maybe what we could do is, see that -- the picture of that condition is straight above. Maybe you could draw an arrow somewhere in there that stops at that two feet and call that the buffer width or something.

MR. CHRZANOWSKI: Okay, because if you look at the note, it says the edge of the required landscape buffer, that's for a five-foot buffer only. We figured if it were 10, 15, or 20 that the two-foot wouldn't encroach in that much into it. But for a five-foot it would.

So I guess if you guys want -- I'm sorry, if the council wants us to make it so that the two-foot is in addition to all buffers, I'll word it that way.

COMMISSIONER SCHIFFER: I'd rather not. But what is the requirement, Susan?

MS. ISTENES: I believe it's in addition to, and I will double check that for sure, just in case I'm wrong.

CHAIRMAN STRAIN: I think what you need to do is come back with whatever standard has been applied, so we don't have a lot of nonconforming buffers out there. And let's just see what that is and make sure this reads the same way in which we've applied it.

MS. ISTENES: Correct.

CHAIRMAN STRAIN: Then we'll be there.

COMMISSIONER SCHIFFER: Thank you.

CHAIRMAN STRAIN: I think this one's going to come back for a revisit again. Anything else on this one while we're at it?

(No response.)

CHAIRMAN STRAIN: Okay, let's move on to 4.06.01 and 6.06.05. It's on Page 73 of Packet 2. And this is the site triangle one.

MR. CHRZANOWSKI: In this case we had two different references. One called for a 25-foot site triangle, the other called for a 30, and we're just simply going to the larger of the two to make them consistent.

CHAIRMAN STRAIN: Okay. Anybody have any questions?

(No response.)

CHAIRMAN STRAIN: Susan, did anybody ever respond about that wall on Mission Hills Drive and 951? The one that you're familiar with too.

MS. ISTENES: No. But I've been checking it out.

CHAIRMAN STRAIN: I'm just curious, because the liability for -- I believe now in checking -- it's a county facility and I'm just wondering why we'd want that kind of liability in violation of our own code.

MS. ISTENES: Well, the last time I went by there it looked like the facility it was protecting, or whatever the wall was intended to do because it's kind of a strange wall, isn't even there any more. So my next question was why is the wall still there.

CHAIRMAN STRAIN: Right. And I would wonder if we need to follow it up just from a point of liability.

I think I have a -- actually took a picture of it. Here, it might be interesting for the overhead.

MS. ISTENES: I'll send an e-mail right now.

CHAIRMAN STRAIN: That orange spot there, you can't see it from the overhead. That's the actual -- that's where the wall -- that's the shadow from the wall. The wall is on the left side of that orange spot, which is right along the edge of the sidewalk. And it might be a problem. The building behind it, I don't even know what that is.

But -- so anyway, if it's a problem it needs to be fixed. If it isn't, then I'm leave it up to staff to figure that out. I just was curious now that the issue came up.

Anybody else have any questions on this issue?

(No response.)

CHAIRMAN STRAIN: If not, is there a recommendation for this section?

COMMISSIONER SCHIFFER: I'll make a motion that we find this amendment to be consistent with the Growth Management Plan and forward with a recommendation of approval.

CHAIRMAN STRAIN: Is there a second?

COMMISSIONER VIGLIOTTI: Second.

CHAIRMAN STRAIN: Mr. Vigliotti, made by Mr. Schiffer.

Discussion? It's for Sections 4.06.01, Figure D and 6.06.05, figure E.

Anybody, anything else?

(No response.)

CHAIRMAN STRAIN: If not, all in favor, signify by saying aye.

COMMISSIONER SCHIFFER: Aye.

COMMISSIONER HOMIAK: Aye.

COMMISSIONER CARON: Aye.

COMMISSIONER VIGLIOTTI: Aye.

COMMISSIONER MURRAY: Aye.

CHAIRMAN STRAIN: Aye.

Anybody opposed?

(No response.)

CHAIRMAN STRAIN: Motion carries 6-0.

We're weeding our way through them.

Now, Stan, thank you for coming over.

MR. CHRZANOWSKI: I'm done? Thank you.

CHAIRMAN STRAIN: You're done. Thank you, sir.

MR. CHRZANOWSKI: Sorry about being late, but --

CHAIRMAN STRAIN: That's okay. Susan was taking care of things for you.

And I guess we'll be moving into the native -- and the preservation standards. And Steven, if we can take up the first two that Richard's here for so that his clients don't have to have him sitting here paying his bill.

The first one would be in Packet 4 on Page 69. And this one is the recreational uses in preserves, Section 3.05.07.H.1.h.i.

Okay, anything you want to start with?

MR. LENBERGER: For the record, Steven Lenberger, Department of Engineering, Environmental, Comprehensive Planning and Zoning Services.

I can go through the changes you wanted. They're pretty quick. First --

CHAIRMAN STRAIN: Well, let's just start with the pages and maybe we'll ask our questions as you go through the changes you have to each page.

How does that sound?

MR. LENBERGER: That's fine.

CHAIRMAN STRAIN: Let's assume that the staff write-up isn't in question at this point, so let's take us through Page 76. Does anybody have any questions through Page 76?

(No response.)

CHAIRMAN STRAIN: Any changes from you, Steve, through Page 76?

MR. LENBERGER: The first change would be on Page 76, at the last sentence was added to Section H, little

H. You wanted determinations to be clarified as far as harm to listed species. And I added the language there, determinations of harm to listed species shall be made by the Florida Fish & Wildlife Conservation Commission or the U.S. Fish & Wildlife Service, and pathways and structures or improvements within preserves containing listed spaces shall, and the word be was omitted, so we have to insert that, be in accordance with permits or authorizations from these agencies.

CHAIRMAN STRAIN: Okay, that's through Page 76. And Brad, we're on Packet 4. We started on Page 69.

COMMISSIONER SCHIFFER: Okay, thanks.

CHAIRMAN STRAIN: The very last sentence on that page starts on number 50, line 50. It says the recommended widths for pedestrian pathways is five feet but shall be kept to a maximum width of eight feet.

Now, I read the word shall, and I remember from past experience shall is pretty mandatory. But then the next sentence says widths greater than eight feet may be allowed in high use areas or where pathways serve as fire breaks. So I guess the shall isn't mandatory in regards to the maximum width of eight feet, because you can go greater than eight feet by someone's determination that it's a high -- that it potentially is a high use area.

And I'm just wondering if it's shall and it's supposed to be eight feet how we have a deviance to it and how that is decided upon. Who makes the decision that the use potential in the future for this path is a high use area?

MR. LENBERGER: That would be made -- well, we'd have to see what the applicant was proposing. It would be made by the county. I have talked to transportation staff and they would look at the volume of traffic and whether it would be a footpath or shared use path and make a determination if one is -- one a little wider than what is indicated here would be necessary.

CHAIRMAN STRAIN: Is there -- from the County Attorney's Office, is there a problem in contradiction where it says in one sentence it shall be kept eight feet and in the next it says it may be made wider based on certain conditions?

MS. ASHTON-CICKO: I think the language could be clarified. It says a maximum and then it goes on to allow above the maximum, and is a little confusing the way it's written. So we can work with Mr. Lenberger to clarify that language, unless you want to do it right here.

CHAIRMAN STRAIN: In item ii on Page 77, it's a continuation of the same section, it talks about with golf carts, trams and bicycles, and there it's 10 feet. The last sentence, golf cart paths for golf carts use shall be designed for golf course access only.

What are you trying to restrict there?

MR. LENBERGER: As I did explain in a narrative, a couple controversial issues that came up with regards to stakeholders, there were a certain amount of stakeholders that didn't want any golf cart paths in preserves, but there were others from the development community that felt that reasonable use of the preserve for access to the golf course should be made.

So we added language to say that yes, they are allowed for golf course access, and that's why we added that language.

CHAIRMAN STRAIN: Okay. The way I read that I was concerned you're trying to limit the path for the golf course uses, but people could walk, you could have a shared use path. As long as it was to access the golf course it still would function that way.

MR. LENBERGER: Yes, the use of the path, and I did mention in the narrative that some golf courses do allow early morning or late afternoon use. That would be up to the property owner.

CHAIRMAN STRAIN: Well, then let's take through Page 77. Are there any questions, or Steve, do you have any more clarifications?

MR. LENBERGER: No more. Only on 78 we added language.

CHAIRMAN STRAIN: On 77, B, it talks about shelters without walls. So basically a shelter is just a roofed structure; is that right?

MR. LENBERGER: Correct.

CHAIRMAN STRAIN: Page 78, what are your corrections, sir?

MR. LENBERGER: We added the vesting language. Rich and Heidi from the County Attorney's Office worked with this. And it's letter H, which is line, I believe, 18 starts the vesting language, and we worked that out with the Attorney's Office and Rich.

CHAIRMAN STRAIN: Anybody have any questions?

(No response.)

CHAIRMAN STRAIN: Okay, Page 79, any questions?

(No response.)

CHAIRMAN STRAIN: No more questions. If anybody wants to speak on that item, Richard, you're the only one left -- well, there's a young lady back there, too. Just come on up if you have anything.

Other than that, we'll assume that that part of it's okay. I don't think it needs to come back for the clarification. If there's a way to clarify it, make it a little bit better, fine, I think the intent's clear.

So is there a motion on this one from the Planning Commission?

COMMISSIONER MURRAY: I'll move.

CHAIRMAN STRAIN: Mr. Murray?

COMMISSIONER MURRAY: Yes.

CHAIRMAN STRAIN: Mr. Murray made the motion. Is there a second?

COMMISSIONER SCHIFFER: I'll second.

CHAIRMAN STRAIN: Seconded by Mr. Schiffer. This is for Section 3.05.07.H.

Any discussion?

(No response.)

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

COMMISSIONER SCHIFFER: Aye.

COMMISSIONER HOMIAK: Aye.

COMMISSIONER CARON: Aye.

COMMISSIONER VIGLIOTTI: Aye.

COMMISSIONER MURRAY: Aye.

CHAIRMAN STRAIN: Aye.

Anybody opposed?

(No response.)

CHAIRMAN STRAIN: Motion carries 6-0.

Next one is Page 81, same packet, Packet 4. Okay, Steve, do we have anything here you want -- this is the same --

MR. LENBERGER: Two things, where I added on Page 84, we added the additional criteria, I believe it's line 7 where it says or, the paragraph that starts with or. That's where you have the existing data. If you remember from the last meeting the stakeholders wanted to add that extra ability or extra criteria to allow for modeling.

And the other change was vesting language, the very last paragraph on Page 85, which is J. And that's language again that was worked out between Rich Yovanovich and Heidi.

CHAIRMAN STRAIN: Okay, are there any questions through Page 85?

(No response.)

CHAIRMAN STRAIN: Steven, under F, the last line, these facilities may be placed in a drainage easement. I had made a note there; some drainage easements may not allow those. But I guess the assumption is assuming the drainage easement allows them. It goes without saying, I guess.

Okay, never mind, I'll pull that question back.

Anybody else have anything through Page 85?

(No response.)

CHAIRMAN STRAIN: Okay, is there a recommendation on this one?

Ms. Caron?

COMMISSIONER CARON: Well, I have one question before we go on. In every instance this criteria is supposed to be for when treated stormwater is allowed in preserves, but treated has been taken out in a lot of areas, and so it just says stormwater may be discharged into preserves. It shouldn't say treated stormwaters?

MR. LENBERGER: We could have said that in every paragraph where it might come up. But we added it in B, it talks about on Page 82, A and B. Talks about nothing in this section shall exempt any system from complying with the stormwater management design standards as set forth by the South Florida Water Management District.

And B, below that, it says preserve areas shall not be used to meet water quality requirements as set forth in Section 521.A of the basis of review.

And it says permit applications for the South Florida Water Management District are the water management regulations of 3.07.00. So that's stating that has to be treated before discharge to preserves.

We didn't want to include treated in every sentence, because if you accidentally omitted it in another area, that's implying that it doesn't have to be treated if you missed it somewhere, so --

COMMISSIONER CARON: Okay.

CHAIRMAN STRAIN: Anybody have any other questions?

(No response.)

CHAIRMAN STRAIN: Is there a recommendation on this one?

COMMISSIONER MURRAY: So moved.

CHAIRMAN STRAIN: Mr. Murray made the motion.

Is there a second?

COMMISSIONER SCHIFFER: I'll second.

CHAIRMAN STRAIN: Mr. Schiffer. This is for Section 3.05.07 LDC.

Are there any comments?

(No response.)

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

COMMISSIONER SCHIFFER: Aye.

COMMISSIONER HOMIAK: Aye.

COMMISSIONER CARON: Aye.

COMMISSIONER VIGLIOTTI: Aye.

COMMISSIONER MURRAY: Aye.

CHAIRMAN STRAIN: Aye.

Anybody opposed?

(No response.)

CHAIRMAN STRAIN: Motion carries 6-0.

Okay, Cherie', are you doing okay?

THE COURT REPORTER: Yes, thank you.

CHAIRMAN STRAIN: Let's move on to the top of that section of review. It's Section 3.05.07, A through B. It's on Page 143 of the very, very first packet, going back months. Okay.

MR. LENBERGER: There were no changes to the amendment. What you asked for is clarification of the intent of the right-of-way acquisitions portion from the GMP, which is on Page 144, line 33.

And it says right-of-way acquisitions by any governmental entity for all purposes necessary for roadway construction, including ancillary drainage facilities and including utilities within the right-of-way acquisition area shall be exempt from mitigation requirements.

And we had met with Nick regarding this to find out the intent. And basically it's -- we do not permit roadway projects. It's not considered a development that we review. So it was to exempt from permitting through our department. So that's why we added to the exception section on page 149, because it will be exempt. It's not permitted by our department.

CHAIRMAN STRAIN: Go ahead, Mr. Murray.

COMMISSIONER MURRAY: Sometimes we will have well-field sites that the public utilities group or division chooses to have in their property. You don't approve those either, but they are part of the submission. Why would we take an exemption here?

Do you understand my question?

MR. LENBERGER: No, I understand the question.

It was put in the Growth Management Plan. We don't normally permit activities in the right-of-way. We haven't. And this is just to clarify that it is exempt. It was put in the Comp. Plan.

COMMISSIONER MURRAY: I thought it was more than exemption, I thought it was that there is no mitigation.

MR. LENBERGER: Well, the intent -- we did speak to Nick about this, he says they were exempt from permitting by our department. They still have to go through permitting obviously through the state and federal government, if necessary but they do not come to our department for permitting.

COMMISSIONER MURRAY: So they would be -- within the county there would be no mitigation requirement of them because you're saying they would have to go to the state or the federal government.

MR. LENBERGER: There would be no county requirements for review from our department, and therefore no mitigation which our department may have, and that including preserve requirements would not apply to roadway projects.

COMMISSIONER MURRAY: Well, I can understand with lengths, miles and miles of property, it could be significant mitigation. On the other hand, we try very hard I think to do the right thing.

So you're saying that, for instance in a roadway, let's say typical, what is it, I guess, 200 feet, maybe you don't know that, maybe I don't even know that, but let's say for the sake of argument 200 feet, whatever they need, whatever is left over on the side, that would be for utilities, that would be for whatever, and there would be no mitigation associated with it.

MR. LENBERGER: That's correct.

COMMISSIONER MURRAY: Okay, I understand at least.

CHAIRMAN STRAIN: Any other questions?

COMMISSIONER SCHIFFER: On this?

CHAIRMAN STRAIN: Yes, we're still on the -- well, Page 143.

COMMISSIONER SCHIFFER: Okay, I'm down the road.

CHAIRMAN STRAIN: Oh, Page 143, the whole section, Brad, all the way to its end, which is --

COMMISSIONER SCHIFFER: On 148, number 10, it's line 14. And it's -- you're allowing fire and fuel breaks within the preserve and you can count that area. If I'm on the edge of the preserve, I'm trying to get fire-wise rating, which is 30 feet, I have a 20-foot setback, so I want to dig 10 feet into the preserve, am I allowed to do that?

MR. LENBERGER: We also review in the preserve management plan section. If you have a preserve management plan that specifies you're going to have clearing, a certain amount of width in accordance with Division of Forestry for fire safety, yes, the cleared area would be, in your example, 30 feet.

COMMISSIONER SCHIFFER: And I can do that on the perimeter, just a yes or no, or is it --

MR. LENBERGER: It could be the perimeter of a property.

COMMISSIONER SCHIFFER: All right, thank you.

CHAIRMAN STRAIN: Anybody else have any questions on this entire section all the way through Page 149?

(No response.)

CHAIRMAN STRAIN: Steven, the question that Mr. Murray was working on there as well. If the transportation department wants to put a road through a cypress head, they would go to DEP, South Florida, Corps of Engineers, whoever else was involved in permitting that access way through the cypress head.

The exactions made by those agencies for mitigation they'd still have to meet.

MR. LENBERGER: That's correct.

CHAIRMAN STRAIN: The mitigation that the county would require, if it's above and beyond the mitigation of those other agencies, would now not come into play because of this language; is that right?

MR. LENBERGER: That's correct.

CHAIRMAN STRAIN: Okay. Does the county have a higher standard for those kind of mitigation issues than the other agencies?

MR. LENBERGER: Well, there's different types of mitigation. In the context of this amendment it's talking about a preserve requirement to preserve a certain amount of vegetation on-site.

There's also mitigation -- and what you're referring to is wetland mitigation, for example. We accept agency mitigation for property in the urban area. There are a little bit more stringent requirements in the rural fringe mixed use district in the Growth Management Plan.

CHAIRMAN STRAIN: Would this kind of a policy exempt the transportation department from adhering to those more stricter rules in the rural fringe?

MR. LENBERGER: Yes, it would.

CHAIRMAN STRAIN: So then for all the road systems needed for the RLSA and all that, this paragraph basically gives them a free ticket in regards to county requirements, but they still adhere to state and federal requirements.

MR. LENBERGER: It exempts the public -- the right-of-way acquisitions by governmental entities.

CHAIRMAN STRAIN: Right, from the county requirements only in the RLSA; is that right?

MR. LENBERGER: It would exempt them from any requirements in the right-of-way.

CHAIRMAN STRAIN: From county requirements.

MR. LENBERGER: Yes.

CHAIRMAN STRAIN: Okay.

MR. LENBERGER: This is referring to the mitigation preserve requirements.

CHAIRMAN STRAIN: Right. And do you know how our requirements differ from the federal or state requirements for those areas, so we know how much of an impact this is having on what we would expect to be preserved in areas like the RLSA or the rural fringe?

MR. LENBERGER: I would have to look. I can pull out a copy of the Growth Management Plan and take a look for you. There are a few examples in there, talks about high quality wetlands.

CHAIRMAN STRAIN: And so if we find something that's a high quality wetland, with this paragraph, transportation really could utilize that if they wanted to for a road, assuming they got through state and federal levels where they may not get through such a road in a local level, or they have to mitigate it.

MR. LENBERGER: I'd have to look at the requirements as far as the local of it. You have to remember, we don't permit any projects in the right-of-way. We haven't, and this is clarifying that.

CHAIRMAN STRAIN: I'm just wondering where the incentive is now for our local transportation department to avoid impacts to more pristine areas.

MR. LENBERGER: Well, the mitigation -- well, first of all, to answer that question, the mitigation would be obviously higher for high quality wetlands in accordance with state and federal permitting. So yeah, they would be higher mitigation standards and it would cost more to mitigate.

CHAIRMAN STRAIN: Okay. Ms. Caron?

COMMISSIONER CARON: Yeah, on Page 148.B, the first sentence just kind of hangs out there in nothingness. Specific standards applicable outside the RMF -- RFMU and the RLSA districts. So are those the development standards that are below?

CHAIRMAN STRAIN: Uh-huh.

MR. LENBERGER: That chart there is for preservation requirements in the urban area.

COMMISSIONER CARON: Right.

MR. LENBERGER: There are more stringent requirements for the rural fringe mixed use district.

COMMISSIONER CARON: Well, then what does that first sentence mean? It doesn't say anything.

MR. LENBERGER: Specific standards applicable outside the rural fringe and rural land stewardship areas. It's basically applying this criteria to the urban areas.

COMMISSIONER CARON: So are as follows.

MR. LENBERGER: Yes.

COMMISSIONER CARON: I think it should just say that. Or it should be the headline -- you, know, or it should be bolded as a headline to the paragraph.

Do you see what I'm saying? Right now it's just sort of a sentence that doesn't really connect. So either B is in -- and it's sort of the paragraph header that should be separated from the paragraph that explains the header. These are the specific standards outside the RFMU and the RLSA.

Then with the word outside, just start a new paragraph under there so that it becomes --

MR. BELLOWS: I believe I understand what you're saying and I think are as follows after District would work.

COMMISSIONER CARON: Oh, yeah, or say are as follows.

MR. BELLOWS: That's what I would prefer, but --

COMMISSIONER CARON: Whatever you want to do. It's just not reading.

CHAIRMAN STRAIN: Mr. Murray?

MR. LENBERGER: No, but --

MR. BELLOWS: I'll work with Steve on it. I know what you're talking about.

COMMISSIONER MURRAY: Steve, just following up on that mitigation question, do you know whether or not the state, if they put a road in, whether they have mitigation exemption?

MR. LENBERGER: Specifically for roads, I do not know if the state permits the roads. Generally when a project is permitted by, for example, Water Management District, or it's a Water Management District project, a number of those are looked at by the DEP. They have certain authority and delegations. But I don't know how it works, particularly for road projects.

COMMISSIONER MURRAY: I'm not giving you a task, but it would be interesting to find out, I think, because if we're depending upon the state, and they have exceptions, I think it all tends to go away for our purposes.

CHAIRMAN STRAIN: Okay. Steve, did this particular element go through the stakeholders groups discussions?

MR. LENBERGER: Yes, it did.

CHAIRMAN STRAIN: Anybody else have any questions, comments?

(No response.)

CHAIRMAN STRAIN: If not, is there a motion?

COMMISSIONER MURRAY: I'll move it.

CHAIRMAN STRAIN: Mr. Murray made a motion to recommend --

COMMISSIONER MURRAY: Of course.

CHAIRMAN STRAIN: -- approval? Okay.

COMMISSIONER VIGLIOTTI: Second.

COMMISSIONER SCHIFFER: And I'll second it. Also --

CHAIRMAN STRAIN: Mr. Vigliotti already beat you to it.

Now it was discussion --

COMMISSIONER SCHIFFER: I was going to note that it was consistent with the Growth Management

Plan.

CHAIRMAN STRAIN: Mr. Murray, did you --

COMMISSIONER MURRAY: Of course.

CHAIRMAN STRAIN: -- agree that it's consistent with the -- okay.

And Mr. Vigliotti, did you agree?

COMMISSIONER VIGLIOTTI: Most certainly.

CHAIRMAN STRAIN: Okay. And we are talking about Section 1.08.02, 3.05.07.

Discussion?

(No response.)

CHAIRMAN STRAIN: The only caveat is you and Ray will clarify that one sentence Ms. Caron pointed out.

With that, we'll call for the vote. All those in favor, signify by saying aye.

COMMISSIONER SCHIFFER: Aye.

COMMISSIONER HOMIAK: Aye.

COMMISSIONER CARON: Aye.

COMMISSIONER VIGLIOTTI: Aye.

COMMISSIONER MURRAY: Aye.

CHAIRMAN STRAIN: Aye.

Anybody opposed?

(No response.)

CHAIRMAN STRAIN: Motion carries 6-0.

Let's take a -- Cherie', we'll take another ten minute break and come back at 3:50. And then we'll finish up for the last hour. Okay?

(Recess.)

CHAIRMAN STRAIN: Okay, everyone, welcome back from break. We have about an hour to finish up. Don't know if we have that much to fill an hour but we'll try our best.

COMMISSIONER SCHIFFER: We can do it. Don't worry.

CHAIRMAN STRAIN: We'll try real hard.

The next item up, and we're still on the preservation standards, is 3.05.07.H.1.E. It's on Page 47 of the last packet, Packet 4.

And Steve, I'm sure you probably heard me ask Susan to help refresh our memories if you recall what is it we sent it back for and why it's back to us rather than have to let us discover it, that would help.

MR. LENBERGER: Okay, I will do that.

CHAIRMAN STRAIN: We're on Page 47. Okay, sir.

MR. LENBERGER: First thing you asked me was a question, and that was on Page 48, line 8.

CHAIRMAN STRAIN: Oh, that's the same one we just got done talking about.

MR. LENBERGER: Well, a little bit. This is under GMP Policy 6.1.1(10) of the Conservation and Coastal Management Element. It talks about the off-site criteria, and the criteria will be based upon the following provisions, and they start on Page 48 and line 1.

And you'll notice that the right-of-way acquisitions for all purposes necessary for roadway construction including ancillary drainage facilities and including utilities within the right-of-way acquisition area are included in the criteria for off-site mitigation.

So we did speak with Nick as you asked us to. And I had clarified it in the amendment, and I -- just let me turn to the page. It's on Page 59, little J, which I believe is line 10.

And what Nick told us is that during the last time the GMP was amended was that other language was included, right-of-way acquisitions by governmental entities. The private sector wanted to be able to mitigate their portion if they bought and developed right-of-way, public right-of-way, to be allowed to mitigate it off-site, not to have that preserve requirement on-site.

And that's what Nick told us, so we added that. We clarified the language in little j to say right-of-way acquisitions by non- governmental entities for all purposes necessary for roadway construction including ancillary drainage facilities and including utilities within the right-of-way acquisition area.

COMMISSIONER MURRAY: I have a question.

CHAIRMAN STRAIN: Go ahead, Mr. Murray.

COMMISSIONER MURRAY: When a developer, and I'm assuming you were talking developers in this case. Developer wants to develop the property and wants to put in a road. I've heard Mr. Feder indicate very clearly several times that even though a road may be offered to the county, it may be dedicated to the county, if it isn't accepted by the county, if it isn't taken in by the county, it's not a public road.

So when they're creating that road, it's not a public road. So how do we -- your statement was about public roads, right? I heard that, that's why I reacted to it.

MR. LENBERGER: If they're going to dedicate that to the county, I would assume the county accepts it. We don't do dedication acceptance, transportation department is. But we were told that we were to allow them to mitigate, and that's why we included it in here.

COMMISSIONER MURRAY: I'm not questioning -- I'm not really questioning the ultimate purpose, which is if you're going to let the county not mitigate or mitigate, whichever in this case happens to apply, what I guess I'm concerned about is that it gives somebody an opportunity to mitigate. But if the county were doing it, it wouldn't mitigate. Am I correct in that?

MR. LENBERGER: That's correct.

COMMISSIONER MURRAY: It seems to be out of kilter to me. Maybe I'm wrong, but it seems out of kilter. I don't know if that's a cool deal for them. I'm assuming there's a good deal of -- if they get the opportunity to mitigate, is that a penalty for them in this case or is that a benefit?

MR. LENBERGER: The development community went to Nick when Nick was proposing the Growth Management Plan changes that they wanted the ability to mitigate it off-site.

COMMISSIONER MURRAY: Okay. Maybe I can make myself a little clearer. If the land is flat and nothing is happening to it, it's just growing foliage, that's fine, it has a certain value. When you start digging it up and putting appurtenances in and on, and doing all those things, the value of the land changes.

So let's say that the value of the land, just for purposes of example, the value of the land was a nickel a square foot, and by the time they did their mitigation it had a value of 73 cents a square foot. Are they getting a deal out of that or what? If my proposition is correct the way I phrased it.

MR. LENBERGER: Well, there's a couple of ways you're looking at this is if the developer wants to dedicate that to the county and assuming the county will accept it and have a public road, and they mitigate the preserve requirement that would have been required for that acreage for the road off-site, and they're building a public

road, one would assume that there's some benefit of producing that road for development in the future. So yes, there would be a benefit there, if that's what you're asking.

COMMISSIONER MURRAY: Well, it's a little bit more complex than that, and I appreciate your inability to answer because you don't have all the facts that relate to this. And I don't mean to insult you in any way.

But in truth -- well, I'm not going to pursue this any further because it's not fair to you, but it's just a thought. I like the idea that mitigation occurs. I don't really have a problem with that. But I just see it as being out of kilter.

And if you get back to the value of it. If some developer puts a road through, not only have they benefited the county if the county accepted the road, but in truth, Steve, the value of the land that they're developing has also increased in value, and so they achieve a certain result with it.

I'm not sure that this is a meaningful discussion with you, but I wanted to explore that, if it has any value. Thank you for your answer.

CHAIRMAN STRAIN: Okay, Steve, did you have any other changes or comments on --

MR. LENBERGER: Not on 48, no.

CHAIRMAN STRAIN: Let's move through the document then like we have in the past and take it through up to page -- well, the document itself starts on Page 52. So let's take the two pages up to 53.

Are there any questions from the Planning Commission or any other changes, Steve, from your side?

MR. LENBERGER: No other changes.

CHAIRMAN STRAIN: Next two pages, 54 and 55, anybody?

(No response.)

CHAIRMAN STRAIN: 56 and 57?

(No response.)

CHAIRMAN STRAIN: 58 and 59?

(No response.)

MR. LENBERGER: We did make some changes in response to your comments. Affordable housing on Page 58, little e under F, off-site vegetation retention, applicability. And we clarified it, the affordable housing: The maximum percent of native vegetation retention allowed off-site shall be equal to the percent of affordable housing units without limitation as to the size of the preserve.

That was to address the -- all the affordable housing units that you talked about.

CHAIRMAN STRAIN: Okay.

MR. LENBERGER: And there is also on 59, under II, little b, I believe it's line 31 or 32, I can't tell exactly. And you had a question about flowways. Preserve shall remain on-site if located contiguous to, and it lists different things. And we had natural flowways, and we added the language natural flowways required to be retained per the requirements of the South Florida Water Management District.

You also asked that we speak to Robert Wiley or Mac Hatcher regarding the new FEMA maps. The new FEMA maps won't affect this, but we did talk about the watershed management plans. And I said, your concerns, what -- will they wind up designating the whole county as a flowway. That was a question.

And what they did tell me is, well, no, but they will identify channels that convey water. That's what they related to me.

So that's why we thought about it, I discussed it with my supervisors, and that's why added natural flowways required to be retained per the requirements of the District. So that way it's not just any flowway, but if the District feels it's necessary to retain that flowway, the natural flowway, then that would be left there.

CHAIRMAN STRAIN: Okay. And Heidi, you had something you wanted to mention?

MS. ASHTON-CICKO: Yeah, just on Page 59, line 10 through 14, which Mr. Murray was discussing with Steve, that doesn't refer to property that becomes public roads. So we would need to clarify that language, if that's the intent.

Because as it reads right now, it deals with private road acquisition. So if it's acquisitions that are later conveyed to the county for public roads, that needs to be clarified.

MR. LENBERGER: Okay. That's what Nick relayed to me, so we would have to clarify that.

CHAIRMAN STRAIN: Okay, so item J is going to be clarified for right-of-ways to be conveyed to the county, right?

MR. LENBERGER: Yes.

CHAIRMAN STRAIN: While we're on that, item J, and actually, items -- all the items A through K of subsection little I are subject to the conditions of subsection double ii; is that correct?

MR. LENBERGER: That's correct.

CHAIRMAN STRAIN: Okay. That helps.

Page 60 to 61. Any questions?

(No response.)

CHAIRMAN STRAIN: Steve, I have one, and that's on line 8 and 9, applicant shall make monetary payment to Collier County to be administrated by the Conservation Collier program.

Why do we need that language? Why don't we just say applicant shall make monetary payment to Collier County for the purchase and management of off-site conservation lands. How it's administrated, we're creating a whole 'nother bureaucratic agency in this Conservation Collier program, and I honestly don't think that was the intent of the taxpayers. At least as one voter, I wasn't aware of that.

If the BCC wants to continue that, then that should be their option, but I don't know why we need to have it written in our code.

COMMISSIONER MURRAY: I agree. Doesn't matter.

CHAIRMAN STRAIN: If the county receives the money, how they administrate it is up to them, right?

MR. LENBERGER: Well, Conservation Collier is the program which purchases land and manages it off-site. The county, other than that, as part of my knowledge, would only purchase land for mitigation, like for road impacts, state and federal mitigation requirements, things of that nature. Conservation Collier is the program by which the county buys lands for conservation purposes.

CHAIRMAN STRAIN: What did we do before they were created? I mean, they haven't been around that long.

MR. LENBERGER: We didn't have a program just to buy lands for conservation purposes. There obviously were programs to buy parks, you know, and there also programs to buy mitigation lands for projects, which the county does, but not to just buy lands for preserves.

CHAIRMAN STRAIN: So we never bought any conservations lands prior to Conservation Collier being put into play?

MR. LENBERGER: To my knowledge, we buy -- as I thought I said, we buy lands for mitigation and lands for parks.

CHAIRMAN STRAIN: Okay.

MR. LENBERGER: I'm not aware of any preserves that we purchased. I know the Freedom Park was, I guess, somehow involved with mitigation that the county bought it, but also Conservation Collier money, so I know it was kind of a hybrid there, I'm not really sure of all the details.

COMMISSIONER MURRAY: I have a recollection.

CHAIRMAN STRAIN: Go ahead, Mr. Murray.

COMMISSIONER MURRAY: There was a parcel of property, relatively narrow, not far from Naples Lakes Country Club that was being acquired. It was going to be operated by the Parks and Recreation Department and Collier, the organization we're referring to here, the -- what's the name of the organization.

MR. LENBERGER: Conservation Collier.

COMMISSIONER MURRAY: Thank you, I couldn't get it.

This land was wetland and going to put in a nice sort of circular, sort of, elongated pathway for people to go through and do their nature study. That would be an example of one where there is a cross, okay?

Parks and Rec was going to do -- they were going to have their ranger come every night and shut the gate and do the thing. So I don't know, does that present the problem in terms of this?

MR. LENBERGER: As far as management of the land, I don't see a problem there. I know lands that Conservation Collier purchases are limited in what they can do with those lands as far as development.

COMMISSIONER MURRAY: I guess what I was trying to stress was that the property, we didn't know what to call it, whether it was a park or a preservation. And so, you know, that's the reason I give you an example. You didn't have one. That one comes to mind because it was such a weird one.

So I don't know, we don't want to pick fly specks out of the pepper, so we'll let that one go for the moment.

CHAIRMAN STRAIN: Steve, on that same paragraph, it says the monetary payment will be based on price,

the average cost of land in the urban designated area or 125 percent of the average cost of all other designations. Why don't we just use the -- like you get two appraisals and the average of two appraisals? Why are we doing this little game?

Because I've watched Parks and Rec do that with their land purchases in the AUIR, and they never lower them because they use a wide range of purchases from prior years that were always high, so they can keep impact fees high. I don't know why we're using a number created like this. Why don't we just take the appraised value?

MR. LENBERGER: Of the average of all land purchased by Conservation Collier; is that what you're saying?

CHAIRMAN STRAIN: No, why don't we take the appraised value of the land in question and then it's 125 percent of that?

Aren't we talking about off-site conservation lands within the county? The applicants will make a monetary payment to Collier County. What are they making it for, the land that they're donating; is that correct? Or in lieu of donation? Or by land -- it says or monetary payment or by land donation.

So what land are we talking about that they're going to get a value based upon? If you look at Conservation Collier's land purchases, their biggest one is the Pepper Ranch. And another one is off of Industrial Boulevard up there off by the railroad tracks, they overpaid tremendously for those programs.

So now someone's going to be saddled with that as an average that they've got to weigh their maintenance costs or their monetary payments against?

MR. LENBERGER: The structure of this was done in response to stakeholders. They felt that if they started to have to do an appraisal of land, the cost would go up. And this is in response to them that they would just use the average value of the land that Conservation Collier purchased, and they would use it in two categories within the urban area and outside the urban area. They didn't want to have to do the appraisal. Things got complicated the last time we did this and they felt it was too cumbersome, that developers would not use this alternative if we did that.

CHAIRMAN STRAIN: Okay.

MR. LENBERGER: I do have that old amendment here, and I can open it up.

CHAIRMAN STRAIN: No, Steve, that's -- the B is written in the same way. We've got the county accepting a donated land but administrated by a program, Conservation Collier program.

And again, I don't care what the county does with the land and how they administrate it, but I don't see why we have to keep referring to the Conservation Collier program. It's building up another bureaucracy. I just don't see why we need it.

So I'm going to have a standing argument against that. I'm not going to be redundant any further with that. But it will continue through the next two pages until it gets to the last paragraph on Page 61. There you talk about PUD zoning and when a PUD master plan and PUD amendment is not required.

There is a threshold for changing master plans. I believe it's -- I think if you just refer to, in the last line, unless the option to use the off-site native retention alternative is included in the PUD. Not the last line, I'm sorry.

There's a line in here that refers to the master plan. Middle line. Preserves or portion of preserves identified on a PUD master plan shall require an amendment to the PUD master plan to use the native vegetation retention alternative.

But that really should be subject to Section 10.02.13.E, which allows the five percent or five-acre maximum before it triggers a need to come in and change your PUD master plan. That's the only thing I'm suggesting.

We don't want it for any small change. I think we can stay with the triggers in the PUD section of the code that refers to the threshold of changes.

MR. LENBERGER: That was 10.02.13.E, is that what you're saying?

CHAIRMAN STRAIN: Right. And if you and Susan could check that for applicability. In there it talks about a preservation can be decreased up to five percent of the total acreage previously designated as such or five acres in area, and still wouldn't reach the threshold of a substantial change. And I just want to make sure we don't cause any undue hardship in that regard. If we've already got a threshold like that, why don't we keep it in play.

MR. LENBERGER: Just add subject to.

CHAIRMAN STRAIN: 10.02.13.E. But check it out, and if you feel that works, then that's what I'm suggesting.

MR. LENBERGER: Okay, I'll have to rely on zoning for input on that, but I will.

CHAIRMAN STRAIN: Anybody else have any questions through Page 61?

Go ahead, Ms. Caron.

MR. LENBERGER: I just have one more question on that, if you don't mind. I'm still going to keep the rest in there, the words unless the option to use the off-site alternative is included in the PUD. We still want to be able to have applicants present that up front, don't we?

CHAIRMAN STRAIN: Yes. I wasn't suggesting taking that out.

Ms. Caron?

COMMISSIONER CARON: To your issue about inserting Conservation Collier everywhere and in everything, I think that you have a valid point, it was the same one that I made when we were doing the GMP for Immokalee when they wanted to reference agencies that may or may not be with us in the future, or could or could not be with us in the future for whatever reason. That the more general county is probably a smarter way to go for Land Development Code amendments and for GMP amendments on these things, because things can change.

What if the entity, you know, a year from now isn't Conservation Collier. What if, you know, the BCC has decided on something else, you know? I think it just -- it's extraneous information.

Right now the people who manage it and take care of everything and make the purchases happen to be Conservation Collier. But those things could change in the future, and so to be the broader county is probably the way to go on things like this.

CHAIRMAN STRAIN: I don't see by dropping that language what it's hurting.

COMMISSIONER CARON: It doesn't change the --

CHAIRMAN STRAIN: It goes to Collier County and Collier County can defer it anywhere they want. So why wouldn't we want to leave that flexibility in for the BCC.

COMMISSIONER VIGLIOTTI: I agree.

CHAIRMAN STRAIN: We've got three. Anybody else?

COMMISSIONER MURRAY: I'm fine with what you just said.

COMMISSIONER SCHIFFER: Me too.

CHAIRMAN STRAIN: Susan's running up.

MS. MASON: Good afternoon. For the record, Susan Mason with the Environmental Services section.

The other option could possibly be to say Conservation Collier program or successor body. I know that's used in some other languages. That way we could make sure that the money is spent for conservation. And say parks wants to come in and create a ball field or something like that with that money, they have a designated separate budget that they use for conservation lands.

And that would help in case the board does change who administers those programs. That might help give some assurance to people who want to make sure the land stays in conservation and not used for some other general budget.

CHAIRMAN STRAIN: But it says that. For the purchase and management of off-site conservation lands within the county, so --

MS. MASON: It was just a suggestion, if -- depending on what your concern was.

CHAIRMAN STRAIN: Ms. Caron?

COMMISSIONER CARON: I think that's valid. But I do think it is covered in the beginning. And if that's not strong enough, you guys, when you bring it back can say you don't think that's strong enough.

Because I would agree with you, Susan, we don't want to be collecting money to help with conservation and then have it go to roads or whatever, parks, or whatever else might crop up who happens to need money at the time. Should be for what it's supposed to be for.

CHAIRMAN STRAIN: Steve, I think there's been several changes, then. I think the inclusion of that PUD reference in the last paragraph may help. You had other changes that you referred to earlier in the document. I think they're already made.

And then our suggestion, I think it's as a basic consensus from this group that the reference to Conservation Collier doesn't need to be kept in, just to Collier County. And it states for the purpose of off-site construction lands and how the County BCC decides to use that, that gives them some latitude.

I'm not sure it needs to come back to have that done. What do you all feel is the level of comfort? Do you want it to come back or you want to --

COMMISSIONER SCHIFFER: I think I'd make a motion to approve it.

CHAIRMAN STRAIN: Okay. Would there be a second?

COMMISSIONER VIGLIOTTI: I'll second it.

CHAIRMAN STRAIN: Okay. So a motion is made -- oh, Heidi?

MS. ASHTON-CICKO: There would just be two portions, two references to Conservation Collier where you would need to keep it in, or I'd recommend you keep it in. And that would be on line -- it's either 18 or 19, where it says defined by the FLUE, purchased by Collier County through the Conservation Collier program.

And the reason you need to keep it in is that the land values are based on the values of the Conservation Collier program. So that's why you would need that in there, 125 percent. And those are of the values of the purchases through Conservation Collier, unless you decide to totally change the purchase language.

And then the other part would be, I think that's line 32 and 33, or any other land designated by Conservation Collier donation acceptance procedures.

CHAIRMAN STRAIN: And I went through and did a strike-through of the offending statements, and I agree with you, those are the two I did not strike through. So I think that's right.

Steve, do you follow that?

MR. LENBERGER: Yes, I did. Thank you.

CHAIRMAN STRAIN: So there's been a motion made by Commissioner Schiffer, seconded by Commissioner Vigliotti, subject to the changes that we discussed, which are the Conservation Collier changes in addition to the PUD zoning language, if needed, after review by staff.

And it's found consistent with the Growth Management Plan, correct, Brad?

COMMISSIONER SCHIFFER: Yes.

CHAIRMAN STRAIN: And Bob?

COMMISSIONER VIGLIOTTI: Yes.

CHAIRMAN STRAIN: Any further discussion?

(No response.)

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

COMMISSIONER SCHIFFER: Aye.

COMMISSIONER HOMIAK: Aye.

COMMISSIONER CARON: Aye.

COMMISSIONER VIGLIOTTI: Aye.

COMMISSIONER MURRAY: Aye.

CHAIRMAN STRAIN: Aye.

Anybody opposed?

(No response.)

CHAIRMAN STRAIN: Motion carries.

Okay, we're on to Page 63 of the same packet, 3.05.07.H.1.G.

Okay, Steve, you want to tell us what the change was in this one?

MR. LENBERGER: On Page 67, we changed the last sentence on the first paragraph to read, fire management plans shall be consistent with wildlife habitat management plans approved by Collier County, as recommended by you.

And on line 10 we added, and fire-wise safety plans.

CHAIRMAN STRAIN: Okay. Anything else through Page 68, Steve?

MR. LENBERGER: I don't believe so.

CHAIRMAN STRAIN: Okay, does anybody on the Planning Commission have any questions concerning these?

(No response.)

CHAIRMAN STRAIN: Steve, I have a question on Page 68, last paragraph. It talks about the preserve site plan.

MR. LENBERGER: Okay.

CHAIRMAN STRAIN: And it's suggested -- it's telling things that have to be on the plan: The location of pathways and other approved uses within the preserve must be included in the preserve site plan.

This is for only going forward; is that correct? It's not used to go retroactive for existing facilities? It goes back to that existing language that Richard was talking about in the prior ones. I'm sure it was meant to be applied in this one too.

MR. LENBERGER: Preserve management plans, if they are amended, would have this. It doesn't tell you you have to do one, no.

CHAIRMAN STRAIN: So if any existing plans are okay, they're --

MR. LENBERGER: They're okay, yes.

CHAIRMAN STRAIN: Does that need to be said or does that go without saying?

MR. LENBERGER: The only time preserve management plans have been required, some very old projects that don't have any preserve management plans or they're so skimpy and they have major issues. Totally overgrown vegetation, exotics, extreme fire hazards, the residents are concerned, then those usually prepare a management plan with the current code.

CHAIRMAN STRAIN: Well, you remember I was helping some homeowners groups with one particular management plan. And in that one it was an old plan, they don't have all of their pathways located on their plan. To do so would have required extensive surveying and items like that. So again, would that form of plan be subject to this new language or is it independent of this new language?

MR. LENBERGER: I think I know the project you're talking about. I wasn't involved in all the details, you'll have to excuse me. But if it came in for a preserve management plan to address issues, they would write it in accordance with this criteria.

CHAIRMAN STRAIN: They came in for fire-wise approval, that's the problem. They came in because their homes were threatened from fire, the fire marshals went out there and said absolutely, the overgrowth has got to be cut back. It took a bit of time to get it done but it was successfully completed.

And I just want to make sure that had they come in for the same reason after this is passed, they would now have to go back and survey for a series of cart paths and other things to be accurately reflect those on any kind of amendment to their plan. It wouldn't seem to be fair, but is that what this is --

MR. LENBERGER: Well, preserve management, when you do a preserve management plan you'd have to identify on an aerial or however you want to do it the habitats on-site, because you're managing for fire. And there's no requirement here to survey for those, it's just approximate, you just draw them in.

CHAIRMAN STRAIN: That's fine. If you're not going to require a surveyed location, then I don't have a problem with it.

COMMISSIONER SCHIFFER: One question.

CHAIRMAN STRAIN: Mr. Schiffer?

COMMISSIONER SCHIFFER: Yes, last time we saw this under 2, it would be H.1.G.2, there was a paragraph about a structural berm which you took out. It didn't show up anywhere else, right?

MR. LENBERGER: Right. We deleted that, that's correct.

COMMISSIONER SCHIFFER: It's dead totally, okay.

MR. LENBERGER: Yes.

CHAIRMAN STRAIN: Okay, are there any other questions?

(No response.)

CHAIRMAN STRAIN: If not, is there any -- is there a motion?

Mr. Schiffer?

COMMISSIONER SCHIFFER: Yeah, I move that we find this amendment consistent with the Growth Management Plan and with a recommendation of approval.

CHAIRMAN STRAIN: Is there a second?

COMMISSIONER VIGLIOTTI: So moved.

COMMISSIONER MURRAY: Yup.

CHAIRMAN STRAIN: Mr. Vigliotti seconded it.

Discussion? This is for Section 3.05.07.H.1.G.

(No response.)

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

COMMISSIONER SCHIFFER: Aye.

COMMISSIONER HOMIAK: Aye.
COMMISSIONER CARON: Aye.
COMMISSIONER VIGLIOTTI: Aye.
COMMISSIONER MURRAY: Aye.
CHAIRMAN STRAIN: Aye.

Anybody opposed?

(No response.)

CHAIRMAN STRAIN: Motion carries 6-0.

Okay, the last one of this group is on Page 129 of Packet 4. Steve, you need to refresh our memory on this, at least mine.

MR. LENBERGER: I sure can. It's a long one. There's a lot of strike-through. And I did add some narrative, Page 131, starting on line 37, excuse me. And it includes the GMP policy for sea level rise. And you were asking about how to do this and how would we model for this. So we had technical staff look at it.

They provided analysis, basically three paragraphs and that additional language I've added, that where staff is going to recommend that that be removed, that requirement, to provide an analysis. And the explanation is provided there.

CHAIRMAN STRAIN: Okay. Does your new language reflect that removal?

MR. LENBERGER: The new language is left as is in the Comp. Plan. Comp. Plan would have to be amended to remove it.

CHAIRMAN STRAIN: But you're not going to implement it by this language here?

MR. LENBERGER: We are going to accept, as we have in the past, a statement from a design professional that it will be fully functional.

CHAIRMAN STRAIN: Okay. Anybody else have any questions?

(No response.)

CHAIRMAN STRAIN: Were there any issues or any changes, Steve? And this takes us through Page 147?

MR. LENBERGER: Yes, they were some more. We made changes on 143, under D, little i, I believe that's line 14.

CHAIRMAN STRAIN: Right.

MR. LENBERGER: Provide results of any environmental assessment and/or audit to the property. And then we have along with a narrative are the measures needed to, and we added remediate if required by DEP.

CHAIRMAN STRAIN: I remember that.

MR. LENBERGER: Further down on the next paragraph on line, I believe it's 41, starts on 40, it says include in, and then we wrote or with, the environmental site assessment.

And then we added the last sentence, which starts on line 46. And we wrote there -- and we did remove one sentence, I'd have to look back and find it -- but we wrote the county shall coordinate with the FDEP where contamination exceeding applicable FDEP standards is identified on-site or where an environmental audit or an environmental assessment has been submitted.

The language we removed -- and I can look up real quick for you if you'd like -- we removed the language that said for sites where contamination is found, provide an analysis of the measures needed to clean up the site or encapsulate the contamination to meet FDEP standards. And we've replaced it with the language I just read to you.

CHAIRMAN STRAIN: All right.

MR. LENBERGER: There is another change on 144. I just -- on little f, additional data, I read into the record.

COMMISSIONER CARON: Steve, before you go on, what does it mean for you to coordinate with those agencies?

MR. LENBERGER: We will bring it to their attention when contaminations are exceeding those levels. The Comp. Plan speaks in several locations about coordination with other agencies. And if they feel remediation is needed, then it will be up to the DEP, it is their authority to do so.

COMMISSIONER CARON: So we are just going to turn over that authority to them and not have any potentially stricter requirements here?

MR. LENBERGER: We will base our decisions on what the DEP says. Obviously some types of

contamination can be remediated, others might put restrictions on property. We did talk about maybe not being able to dig a well in a certain location, a lake. If the DEP says that to us, then obviously the developer's not going to be able to do that, the DEP's not going to let them.

COMMISSIONER CARON: But if we think the -- what if the DEP says it's okay to drill a well here and we as the county think it's not?

MR. LENBERGER: I don't know where we would. We would rely on the DEP.

COMMISSIONER CARON: So there would never be an instance where we might want to have something stricter than the DEP?

MR. LENBERGER: If you wish to propose some, you know, but we're not proposing that.

CHAIRMAN STRAIN: Okay.

MR. LENBERGER: The other change on additional data, 144, little f. I read into the record where some of the sentence was accidentally deleted, so I just added that there, the county manager or designee may require additional data, and then it goes on, or information. The last copy you had did not have the whole sentence.

CHAIRMAN STRAIN: Okay.

MR. LENBERGER: And then we changed 145 at your request again, we looked into the single-family exemption, on line 16, little B, under five, exemptions. And you had concern about the duplex and how that would affect the cluster development. So Ray was nice enough to help me. I went through the section of the code with Ray and we looked it over and we included language right from this section.

And that's all the changes that I see.

CHAIRMAN STRAIN: Okay, are there -- this is through Page 147. Are there any questions from the Planning Commission?

COMMISSIONER MURRAY: Yeah, I have.

CHAIRMAN STRAIN: Go ahead, Mr. Murray.

COMMISSIONER MURRAY: Just a clarification on Page 145, reference that lower case B, and on line 19 where it speaks developed on fee simple lots. Are there any occasions, and maybe Brad knows more than I do, or certainly knows more than I do on this, whether it's not restricted to fee simple but could be warranty deeds?

In other words, you're looking it into fee simple lots. And maybe I should be talking to Bad in this in colloquy.

MR. LENBERGER: This was taken from the section, I guess, excepting single-family from Site Development Plan submittal, if I'm not mistaken. Ray can help me here.

MR. BELLOWS: Yeah.

COMMISSIONER SCHIFFER: I mean, the important thing with the fee simple lot is that to define a townhouse, that's part of the definition, that it essentially owns the land beneath the townhouse and it goes to the sky. So in other words, it's not units above units, which would disqualify them. And that's why that's put in.

COMMISSIONER MURRAY: So there would never be warranty deed or -- could be a quitclaim, but that would be an aberration.

COMMISSIONER SCHIFFER: I've never heard anybody discussing that. But fee simple meant that the person who lives there owns the lot underneath it or the owner does.

COMMISSIONER MURRAY: I just questioned because that's what came to my mind, I wondered. I know that when we do, I know this is restricted townhouses here. I know when they do condos, they do warranty deeds. So just a question.

CHAIRMAN STRAIN: Okay, no other questions?

(No response.)

CHAIRMAN STRAIN: Is there a recommendation from the board?

COMMISSIONER SCHIFFER: I'll make a motion that we find this consistent with the Growth Management Plan and recommend approval.

CHAIRMAN STRAIN: Is there a second?

COMMISSIONER HOMIAK: Second.

CHAIRMAN STRAIN: Seconded by Karen.

Discussion? This is for Section 10.02.02.A. Any discussion?

(No response.)

CHAIRMAN STRAIN: Hearing none, all those in favor, signify by saying aye.

COMMISSIONER SCHIFFER: Aye.

COMMISSIONER HOMIAK: Aye.

COMMISSIONER VIGLIOTTI: Aye.

COMMISSIONER MURRAY: Aye.

CHAIRMAN STRAIN: Aye.

Anybody opposed?

(No response.)

CHAIRMAN STRAIN: Motion carries 5-0.

Ms. Caron temporarily is out of her chair.

COMMISSIONER SCHIFFER: Donna, bang on the wall.

CHAIRMAN STRAIN: Thank you, Steve. I think that wraps it up, and appreciate it. Got through it. Yours was absolutely the -- probably the most complex to have to get through. So your stakeholders groups turned out to be very productive. Thank you.

MR. LENBERGER: Thank you.

CHAIRMAN STRAIN: Okay, let's move into the next -- we've got 20 minutes left before we continue to another day and time. The next one up is 1.08.02, definitions, dwelling, multi-family. It's in Packet 4 on Page 1.

Susan?

MS. ISTENES: Before I get started, I might suggest you look on the second page under Item D where it talks about timeshare estate facilities. And if we are coming back to discuss timeshares, we may want to hold off on this one.

(Ms. Caron returned to the boardroom.)

CHAIRMAN STRAIN: Well, I think we have another issue we've got to bring up too. The definition that you have on the very first page after the italicized section is not the complete definition from the old code. If you could put it in and then strike it out if it's no longer needed, that would probably be better.

MS. ISTENES: Okay.

COMMISSIONER SCHIFFER: Question.

CHAIRMAN STRAIN: Mr. Schiffer?

COMMISSIONER SCHIFFER: In the definition in A, why are we getting into the ownership issues with that? In other words, a dwelling multi-family, why does it matter how they're owned or if they're owned or one owner? Central management, central ownership, management, cooperative. Why do you do that?

Because it really is just a form of housing, it's really -- doesn't have anything to do with the ownership, does it?

MS. ISTENES: No. And the word may is used there. I think it's really just used more as descriptive text, where you might come upon a situation, you know, like an apartment complex or what have you, and trying to figure out if it falls within a multi-family definition or not.

I agree with you in keeping kind of what we talked about before, it doesn't really follow along those same lines. This is again intended -- and I think we're intending to put back the old, but we've modified it as well during our subsequent meeting, so --

COMMISSIONER SCHIFFER: I think the thing we missed is describing that it's a building with multiple units. We call it a multiple family dwelling. And I guess maybe that kind of does it. But it really is units. I mean, I could theoretically design one big house that could have multiple families dwell in it.

So anyway, that's -- just seems odd that we're not -- and you know, why don't we look -- you really do want to just bring in the old definition or do you want to fix this definition?

MS. ISTENES: I'd like to get done with the hearings soon, as we're going to the board. In all honesty. I need to put this back, and I'm not sure it's necessary broken, per se at this point, except for the timeshare estate facilities, which again may affect this.

CHAIRMAN STRAIN: But for this exercise, and maybe this is how we should look at it, we need to get something brought back in. If it doesn't hurt to leave some of that language in temporarily and correct it in the future as we look further into the code, just to get this done, that may be the way to accomplish it, Brad, unless you feel it's harmful language.

COMMISSIONER SCHIFFER: Well, I'm not -- it's just not defining the building, it's defining the ownership. But that's -- we can leave it in.

My other question would be on C where we discuss that the dwelling units are available for rental of periods less than one week. And my thought and concern is that transient is defined as 30 days, or essentially a month. Why are you saying a week?

COMMISSIONER MURRAY: Really?

COMMISSIONER SCHIFFER: Well, at least -- well, it's certainly in the building code. We deal with this concern about whether it's, you know, transient housing or not, and it's determined by one month. I don't know what the state statutes determine. Heidi might know that.

MS. ISTENES: I don't know. I mean, that's -- building and zoning are different. So we may want to have something different for zoning than the building code. That's not a great answer, but it's -- we don't base our zoning decisions necessarily on the building code. It's really how we want things to function in our community and what the community wants their community to be.

COMMISSIONER SCHIFFER: What this is saying, if you're renting it for a week or less, then you can be a motel, motor motel and stuff.

MS. ISTENES: Right. Essentially what they're saying is that if -- and think about this a little bit because it ties into timeshare, because timeshares are generally a week. So this is saying less than a week. And it's saying basically you're considered a motel or hotel and you can only be permitted in districts where those uses are allowed.

COMMISSIONER SCHIFFER: But here's the thing. I'm not sure we want to take any multi-family dwelling. So essentially a condo is a multi-family dwelling, big units, right? And then we're telling them that if they're available for rental of less than a week they can be considered all these other options, which, you know, we discussed earlier we don't want.

In other words, I don't want somebody to take a condo or buy a condo, start renting it out and then -- and remember the paragraph that I was concerned with before, he will fit in there, he will be a central manager, central ownership and then now that condo is considered a hotel or motel.

MS. ISTENES: I think what it's stating is basically you're going to have multi-family dwelling units for multi-family uses, meaning for all intents and purpose, permanent residents, not transient. I guess I'll define it that way.

And so it's -- it is essentially putting a limit on the amount of time you can rent a multi-family dwelling unit and not be in a commercial zoning district or a -- for a hotel-motel.

COMMISSIONER SCHIFFER: But my concern is that here I am happily looking for am I a multi-family. I'm going to be a condo building, I'm going to buy out all the owners, I'm going to start renting this thing for, in your case less than a week. And now -- which fits in A. And then now you've essentially said no, you're really not a multi-family, you're a hotel, and therefore --

CHAIRMAN STRAIN: But see, isn't that the purpose of the definition? So that if you try to do something outside this definition, then you have to meet the standards to be a hotel-motel and thus you couldn't fit the definition

--

MR. BELLOWS: Correct. That's the intent of the language.

CHAIRMAN STRAIN: That's the whole purpose, I think. I think you just hit the nail on the head, really.

COMMISSIONER SCHIFFER: So I wouldn't -- in other words, that would keep me from allowing to do it because my zoning is for only multi-family, not hotel.

MR. BELLOWS: Yeah.

COMMISSIONER SCHIFFER: Okay, good. Thank you.

CHAIRMAN STRAIN: Ms. Caron?

COMMISSIONER CARON: Yeah, I just had one question. In B above it talks about guesthouses and employee quarters that can be in addition to these multi-family dwellings. It says, and shall be limited to one per unit.

MS. ISTENES: Yeah, the last time we met on this, you all -- my notes say you all wanted me to put in a limitation. There was a concern over how many of these servants' -- or employees' quarters could you have per unit.

COMMISSIONER CARON: Yeah, because the way it's worded, if you had a 300-unit condo, I guess you could have 300 guesthouses, and they wouldn't get counted toward density. I realize that's absurd, but really, it could be quite excessive. And it wouldn't -- or employee quarters, you know, it could be.

And/or my other thing was did -- it doesn't mean you could have only one, period. Meaning you could only have either one guesthouse or one employee quarter?

MS. ISTENES: One per dwelling unit.

COMMISSIONER CARON: So I just wasn't really sure what the intent was.

MR. BELLOWS: Good question. I think clarifying it to state one per dwelling unit. And I think that's similar to the concept of a guesthouse for the single-family lots where it's one -- you have one guesthouse.

COMMISSIONER CARON: Right, I think maybe carryover language from something like that. But when you come to multi, and so you have a 300-unit building, you don't want 300 guesthouses and 300 employee units.

MR. BELLOWS: Well, it would certainly take away their ability to have sellable units if they try to do that.

COMMISSIONER CARON: I understand the absurdity. But you have to understand how it could go the other way. And really, you know --

MS. ISTENES: I guess the alternative is to not allow any.

COMMISSIONER CARON: I don't think that's the point. I mean, I don't think that's the point. I'm not trying to say we shouldn't have these things.

MR. BELLOWS: Unfortunately there's no criteria or calculation we can apply to what's a reasonable amount for multi-family development. The only think I can think of is a factor that would prohibit something like that is that's taking away from the developer's ability to sell units as individual units. These are basically non-rentable space, or supposedly.

CHAIRMAN STRAIN: Well, don't we have a limitation on this, though. Guesthouses -- or is it just in the Estates, where they're limited to 20 percent of the main house?

MR. BELLOWS: Of the floor area, yeah, air conditioned floor.

CHAIRMAN STRAIN: Right. If someone wanted to build a guesthouse per unit or per dwelling unit, they could do that, but their guesthouses still wouldn't exceed 20 percent of the main unit that they're part of; is that correct?

MR. BELLOWS: Well, I don't know if this language applies to that. I mean, that language -- we'd have to put --

CHAIRMAN STRAIN: Why don't we find out. Because if there's such a limitation on the size of guesthouses and employees' quarters, it will restrict then the --

MR. BELLOWS: My recollection of ---

CHAIRMAN STRAIN: -- way they are approached from a dwelling viewpoint --

MR. BELLOWS: -- the guesthouse provisions of the LDC, it really pertains to single-family lots, an acre or more in size, so that could be RSF-1 and Estates lots.

And I don't think there's any provision in the code dealing with multi-family guesthouses in regards to limitation of size. We would have to come up with something to that nature, or just limit it to one per dwelling unit like here, and knowing that that's taking away the amount or ability to sell those units.

CHAIRMAN STRAIN: Go ahead, Brad.

COMMISSIONER SCHIFFER: I was going to say, it's not. If I can sell -- design a nice unit that has a servants' quarters, that's an asset.

And I think I've seen, you look at some of these units in the paper and you see like two means of egress and a back door, and it looks like they can shut off the back, the small part of it and actually make it a guesthouse. Guests could come and go, a maid could come and go. So I think that's a pretty desirable thing to have.

But I think it's -- I mean, there's a limit here. It's clear that you don't count them. If you want to do it, you can't do more than one per unit, and it's a start.

CHAIRMAN STRAIN: Okay. You're going to bring this back anyway, right, Susan?

MS. ISTENES: Correct.

CHAIRMAN STRAIN: Okay. I'd suggest if you look at a better way to word this, and you find one, that would be helpful too.

Let's move on to the next one then, 4.06.05.D.4. Page 91 of the packet that we're on.

MS. ISTENES: Okay, that one is actually --

CHAIRMAN STRAIN: That's five words. Does anybody on the panel have any concerns over the five words?

COMMISSIONER SCHIFFER: I don't.

CHAIRMAN STRAIN: Anybody else?

(No response.)

CHAIRMAN STRAIN: Hearing none, is there a recommendation?

COMMISSIONER SCHIFFER: I move that we find this to be consistent with the Growth Management Plan and recommend the -- forward recommendation of approval.

CHAIRMAN STRAIN: Is there a second?

COMMISSIONER MURRAY: Yeah.

CHAIRMAN STRAIN: Mr. Murray seconded. Discussion? It's for Item 4.06.05.D.4.

(No response.)

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

COMMISSIONER SCHIFFER: Aye.

COMMISSIONER HOMIAK: Aye.

COMMISSIONER CARON: Aye.

COMMISSIONER VIGLIOTTI: Aye.

COMMISSIONER MURRAY: Aye.

CHAIRMAN STRAIN: Aye.

Anybody opposed?

(No response.)

CHAIRMAN STRAIN: Motion carries.

Next one is 5.03.02 and it's on Page 93 of the same packet.

MS. ISTENES: And the actual amendment itself begins on 98. And I believe I've highlighted everything that was changed. My notes say you had wanted to add the words or wall in certain places that they were missing. And I -- hopefully I covered all that. It was to read a fence or wall in many places.

Under C on Page 98 you had wanted to add the word required under A and B, and that has been added.

On Page 99, write out the word one on D.2. That's line 20.

COMMISSIONER SCHIFFER: Question on that, though. Should you then remove the parentheses one, or -- anyway, that's what I thought when we did it.

I have another 99 question, is that you see in E which -- look at line 27, you know, the agricultural shall exempt from height and type of construction, and then you say requirements. Can we get rid of the word requirements, because it is going to have to meet requirements on how its built.

Your point is you're not going to tell anybody what type of from construction it is. That's your real --

MS. ISTENES: Correct. Yes, I can take that out.

COMMISSIONER SCHIFFER: So you're not concerned about that type of construction's requirements, just

--

MS. ISTENES: Correct. That's fine.

CHAIRMAN STRAIN: Let's take it up to Page 99 for anyone. Anybody else have any questions through that page?

(No response.)

CHAIRMAN STRAIN: Susan, I got a couple. In the prior document that was crossed out, for example, Page 96.C, under residential zoning districts, the strike-through takes out what were defined by this terminology as residential zoning districts.

And likewise over on Page 97, item D, takes out what's defined as an agricultural district. In your new language you don't include that. What was the thought as to why you didn't tell people what you were referring to when you said residential and agricultural in the new language?

MS. ISTENES: The -- actually what I did was I lumped them all to -- first of all, the code already defines what residential and agricultural and commercial is in a different area.

In this case they also had other zoning categories lumped in with them. So if you like see on Page 98.C it says residential and TTRVC. And then on Page 99.D, commercial and industrial excluding TTRVC, that's how I'd lump them together.

So what you would --

CHAIRMAN STRAIN: Where's the Estates? Where would someone know how to put the Estates? They'd have to go to another section of the code and look up on the Estates section to see if it's considered residential, which residential is allowed but --

MS. ISTENES: That would be agricultural.

CHAIRMAN STRAIN: I know. But for someone perusing through the code to understand how the fences applied to them, they wouldn't know where they'd be looking.

MS. ISTENES: Okay.

CHAIRMAN STRAIN: I'm just -- didn't know the downside to -- I don't know why we would want to take out those ref -- I understand why you --

MS. ISTENES: It's just a duplication. But I understand your point, I mean, I can put it back.

CHAIRMAN STRAIN: It might help for some categories is what I'm suggesting.

Okay, let's go on to the next pages then. Susan, you want to continue? Let's go just to 100 to 101.

MS. ISTENES: One 100, on page -- line 9, 8 and 9, there was a discussion about concrete and concrete masonry. I also added composite fencing, because that's becoming a pretty popular material.

And then hopefully I captured what you were looking for as far as precast concrete and concrete --

COMMISSIONER MURRAY: I'm happy.

MS. ISTENES: -- masonry.

CHAIRMAN STRAIN: We're still on the 100 to 101. Anybody else have any issues?

COMMISSIONER SCHIFFER: No.

CHAIRMAN STRAIN: Susan, I just think it's interesting, the safe distance site triangle. We have this in the other section of the code. If you want redundancy we don't need it here again, do we?

MS. ISTENES: No.

CHAIRMAN STRAIN: I mean, I don't know why it pops up right here, but I understand --

COMMISSIONER SCHIFFER: It pops up in a lot of places in the code. So I'll -- do you want to leave it here or not?

COMMISSIONER CARON: Why wouldn't it make it easier?

CHAIRMAN STRAIN: No, it does. I'm saying that, that's fine. I'm not objecting to it, I just was noticing based on a prior statement.

MS. ISTENES: Yeah, definitely.

CHAIRMAN STRAIN: Okay, want to look at -- are we done with -- through 101? 102, 103.

COMMISSIONER SCHIFFER: Question.

CHAIRMAN STRAIN: Go ahead, Mr. Schiffer.

COMMISSIONER SCHIFFER: And it's really in H.1, there's a couple of places in there, B has it, C has it, where you use the word opposite for residentially-zoned district. And doesn't our word adjacent mean that?

In other words, the property across the street is residential. If you're on a property you would be adjacent to the residential property rather than the word opposite.

I guess you'd have to -- somebody would have to look in the definitions, but --

MS. ISTENES: Are you suggesting that opposite should be replaced --

COMMISSIONER SCHIFFER: Replaced by adjacent. Because a while back we went through that definition and --

MS. ISTENES: I read them as different, though.

COMMISSIONER SCHIFFER: And what do you think adjacent means?

MS. ISTENES: Next to, like contiguous in A above.

COMMISSIONER SCHIFFER: That was our adjoining. And then we had adjacent, to be adjacent it could be across the street. I mean, you can just look in the definitions in the LDC and you can see. So just, if you could --

MS. ISTENES: Look at that and make sure it's consistent?

COMMISSIONER SCHIFFER: And if you think it means what you want this to mean, I think I'd rather use a defined term than --

MS. ISTENES: Okay.

CHAIRMAN STRAIN: Anybody else? And we're page through -- what are we on, 102? 103.

(No response.)

CHAIRMAN STRAIN: Susan, on Page 102.H, this starts out in line 13, wall requirement between residential and non-residential development. But not in all cases do we require a wall between residential and non-residential development. It depends on the type of buffer, doesn't it?

I mean, if you have a C buffer, you're required to have a wall. But if you have a B buffer it's optional. If you look at the buffer requirement, land use classifications, Table 2.4, you don't have a C buffer in every case where you have a residential and non-residential use between one another.

So maybe where wall -- wall where required between residential and non-residential development?

MS. ISTENES: Just change the title, you're saying?

CHAIRMAN STRAIN: Yeah.

MS. ISTENES: So what did you suggest?

CHAIRMAN STRAIN: I hadn't really thought of what the suggestion is, I just popped one off. It says -- I mean, instead of wall requirement, where a wall is required between residential and non-residential development. And then you go into that section. Then that kind of will help with that Table 2.4 for landscape buffers.

MS. ISTENES: Okay, that works.

COMMISSIONER SCHIFFER: Mark, I have a 103 question in the sound walls. Do we have any control whatsoever, approval of these sound walls? I mean, is this just part of a blank check for sound walls?

And I think there's nothing more that deteriorates. After having driven through Miami on Sunday once again, these things are horrible. So why are we so kind to them?

MS. ISTENES: Well, my understanding is that they are erected as part of -- and I may not be saying this completely. In other words, there may be other situations where they may be erected, but when you're widening road right-of-ways, I guess this tends to be part of the negotiation with acquiring property for right-of-way expansion with adjoining property owners because, of course as we know, many of them are already developed.

And so my understanding is that transportation department is involved with noise studies and the evaluation of the increase in noise due to expansion of right-of-way, and depending on whether or not a noise wall is warranted, makes it either appear or not and at a certain height, depending on the noise generated.

So to answer your question, I'm not sure there is a lot of control over them. I believe they're being put in right-of-way easement or some type of easement on private property. And maybe Heidi has a little more information than I do. And then I think they're being just dedicated back or -- for maintenance purposes back to the home owners. So it may even be considered to be in county right-of-way. I'm not entirely sure.

CHAIRMAN STRAIN: We're out of time here, folks, we were supposed to stop at 4:50. And Kady is going to be pulling her hair out in a minute if we don't wrap this up. So somehow let's get to a quick resolution on the sound walls.

Brad, are you suggesting that be removed, the whole --

COMMISSIONER SCHIFFER: Well, the reason we're putting it in -- it's not in there now, this is new, correct?

MS. ISTENES: Yes, this is new.

COMMISSIONER SCHIFFER: So this is us opening a door. That's why --

MS. ISTENES: It's already opened.

CHAIRMAN STRAIN: But I think it's a good door to open. I would think sound wall, especially along I-75, certainly make your developments more compatible. So I'd rather see them rather than not. I know --

MS. ISTENES: Well, these exist already. So for example, along Vanderbilt Beach Road and Santa Barbara they were erected as part of that road widening project.

MS. ASHTON-CICKO: I think it's more than a two minute discussion, because at least for county noise abatement walls, some are in the right-of-way, some are currently, if it's associated with the road right-of-way, then I believe it's subject to an administrative variance as to height. And I believe that's how most of them are currently processed now?

MS. ISTENES: No.

MS. ASHTON-CICKO: Oh, I thought they were --

MS. ISTENES: No --

MS. ASHTON-CICKO: Okay, I misunderstood the process.

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CHAIRMAN STRAIN: Well, if we want to continue this discussion, Brad, I'll leave it up to you. We'll just continue the whole item until the 1st --

COMMISSIONER SCHIFFER: No, I'll pass here. But remember when you -- in 10, 20 years when you drive down this place and say hey, this looks like Miami, look at all these walls, send me a note and say hi.

MS. ISTENES: If we're going to have the walls, it would be really nice to be able to have landscaping in front of them. That really -- if you look at the ones in front of, for example -- name just went out of my head.

CHAIRMAN STRAIN: Before you go any further, Susan, we're wrapping it up. Let's go ahead and leave this one open for now. I don't see us needing to end this discussion today on this. We can continue it to the next meeting and bring up specifically the sound walls and the possibility of landscaping requirements, or something else. I think it's a good idea. So let's not rush into that one just to finish up.

But I know we've got to be done, so here's where we're at. On the 1st of April we have our regular meeting. We have three items on that meeting. Looking at them, I think we can finish them up in the morning and move on to these LDC amendments for part of the day.

The LDC amendment I'd like us to continue to start with no earlier than say 10:00, just in case something changes on our agenda, would be the shoreline calculations on April 1st, and then any others that staff want to bring forward by that day.

And if I can have a motion for continuation of this meeting subject to that criteria, I think we're good to go.

COMMISSIONER MURRAY: So moved.

COMMISSIONER SCHIFFER: Second.

CHAIRMAN STRAIN: Mr. Murray made a motion to continue, seconded by Mr. Schiffer.

All those in favor, signify by saying aye.

COMMISSIONER SCHIFFER: Aye.

COMMISSIONER HOMIAK: Aye.

COMMISSIONER CARON: Aye.

COMMISSIONER VIGLIOTTI: Aye.

COMMISSIONER MURRAY: Aye.

CHAIRMAN STRAIN: Aye.

Anybody opposed?

(No response.)

CHAIRMAN STRAIN: Motion carries 6-0.

We are continued to a time certain no sooner than 10:00 on April 1st. And we'll start with the shoreline calculations at that time. Thank you. We're adjourned.

There being no further business for the good of the County, the meeting was adjourned by order of the Chair at 4:59 p.m.

COLLIER COUNTY
PLANNING COMMISSION


MARK P. STRAIN, Chairman

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