

TRANSCRIPT OF THE MEETING OF THE
COLLIER COUNTY PLANNING COMMISSION
Naples, Florida
February 26, 2010

LET IT BE REMEMBERED, that the Collier County Planning Commission, in and for the County of Collier, having conducted business herein, met on this date at 8:30 a.m. in SPECIAL SESSION in Building "F" of the Government Complex, East Naples, Florida, with the following members present:

CHAIRMAN: Mark Strain
Donna Reed-Caron
Tor Kolflat
Paul Midney (absent)
Bob Murray
Brad Schiffer
Robert Vigliotti
David J. Wolfley
Karen Homiak

ALSO PRESENT:

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

CHAIRMAN STRAIN: Good morning, everyone. Welcome back to a continuation of the very tedious meeting of the Land Development Code Amendments, February 26th, 2010.

Everyone please rise for Pledge of Allegiance.

(Pledge of Allegiance was recited in unison.)

ROLL CALL BY SECRETARY

CHAIRMAN STRAIN: Will the secretary please do the roll call.

COMMISSIONER VIGLIOTTI: Mr. Eastman?

MR. EASTMAN: Here.

COMMISSIONER VIGLIOTTI: Commissioner Kolflat.

COMMISSIONER KOLFLAT: Here.

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 present.

Commissioner Murray.

COMMISSIONER MURRAY: Here.

COMMISSIONER VIGLIOTTI: Commissioner Wolfley.

COMMISSIONER WOLFLEY: Here.

COMMISSIONER VIGLIOTTI: Commissioner Homiak.

COMMISSIONER HOMIAK: Here.

CHAIRMAN STRAIN: Thank you.

PLANNING COMMISSION ABSENCES

Planning Commission absences. We are meeting once a week for the entire month of February. We're actually meeting more than the Board of County Commissioners meets in that regard for meetings. So we all have to be aware that we need to be here once a week starting in March.

The first one or next one up is March 4th.

Does anybody know if they are not going to make it here on March 4th?

(No response.)

CHAIRMAN STRAIN: We'll still have a quorum, then.

Our regular meeting is March 4th but on that particular day we're going to be doing the Immokalee Master Plan.

The meeting that we have after that will most likely be a continuation of this meeting on March 10th. I won't ask you today if you are going to be here on the 10th, I'll ask you that on the 4th.

COMMISSIONER MURRAY: What a guy.

CHAIRMAN STRAIN: After that we have our March 18th is a regular meeting, and I'm not sure what that is going to involve yet. I know we have a couple issues on it. So that will be our next regular meeting.

And we have another continuation of this LDC meeting, if we don't finish on the 10th, March 24th.

The reason we have all these meetings is because we don't seem to have a code that wants to stay consistent. We just got another package given to us today. It's the third package of a pile, more of code amendments. We already have Package 1 and 2. I'm certainly not faulting staff on any of this; it's just the way things seem to have evolved. Every year we talk about having way too many amendments. I honestly wish we didn't have so many because it's sure making it difficult for people to know what our Code is.

ADDENDA TO THE AGENDA

With that in mind, we have some changes to today's agenda that are being put off til March 10th.

The first one is the very first thing that was supposed to be up, Section 2.03.03.E.1. It was a private amendment for the C-5 Commercial Surgical Manufacturing. That particular item was requested to be put off to the March 10th meeting. I didn't see any reason why we should object to that.

Is that okay? Anybody have any concerns?

If not, the other one that was discussed for being moved to the March 10th meeting and Mr. Mulhere is here to, I believe, confirm that. Yesterday, I think, or the day before, there were some staff responses to the requested changes for the Immokalee Deviation Process. And, based on those, I suggested to Bob, rather than us beat those up back and forth and try to understand them at this meeting, that he first try to work out those with staff and come back with a boilerplate of what their -- where they are, you know -- where they agree and where they don't agree, so we haven't got to go through all that in the process.

I think that's what you're going to do. Is that right, Bob?

MR. MULHERE: Yes. Bob Mulhere, for the record, representing the Immokalee CRA on this.

I did talk to my client, Penny Phillippi, and rather than occupy three or four hours of your time, it's best for us, I think, to -- although she wasn't very happy, she agreed the best thing for us to do is to get with staff and see what issues we still had that were of separation. And I've already spoken to Susan a couple of times and we're going to meet on Monday to try to finalize that.

My objective would be to get a revised document out to you all by Wednesday or Thursday, which would give you enough time before the 10th.

CHAIRMAN STRAIN: Okay. And if you find you need more time and you want to move it until the last meeting in March, I mean, that's fine, too, Bob.

I think we're served better if --

MR. MULHERE: You are right.

CHAIRMAN STRAIN: -- you guys work out your differences and we focus on where everybody is in agreement and not, and then step forward like that.

MR. MULHERE: Yes, that's good. Thank you.

CHAIRMAN STRAIN: So, if anybody is here today for the Immokalee Deviation Standards, they are going to be at least off until the 10th. That was 2.03.07.G. It was Page 1 of the second book.

And I believe there is one more item. County Attorney is reviewing Ordinance 08-64. It's a proposal that starts on Page 85. And I honestly don't -- I think it's 85 of the second book or the first -- it doesn't matter. Whatever Page 85 deals with Ordinance 08-64, I believe that's going to be put off until at least March 10th as well.

Is that right, Mr. Klatzkow?

MR. KLATZKOW: Yes.

CHAIRMAN STRAIN: I think those are the only changes.

Are there any other changes that staff is suggesting to be delayed from today's meeting or are we set to go on the rest of it, in order, as it's written?

MS. ISTENES: Good morning. Susan Istenes.

We have no other changes. Thank you.

CHAIRMAN STRAIN: Ms. Caron?

COMMISSIONER CARON: Just a question. Page 85 in which book, did we say?

MR. KLATZKOW: That was my book, but I got so many now. This was the parking exemption.

COMMISSIONER CARON: The parking. Thank you.

CHAIRMAN STRAIN: And it looks like it's in the first book, from what I can tell. Okay.

These books, in the future, and I know this won't affect this amendment cycle, but maybe we ought to run a continuous series of numbers instead of starting each book over with one, or two, dash one, so we have a Book 2 starting with Page 1, something of that nature, to keep a better track.

MS. ISTENES: It is actually one book. It just, you know, it sounds like a lot, but it's just divided, otherwise it would be in one, huge book. So, hopefully, it's making it a little bit easier for you to at least keep track of the amendments by having them separated.

CHAIRMAN STRAIN: The only problem I would suggest is that we start the numbering over with each piece,

maybe just run the numbers in order.

MS. ISTENES: Okay.

CHAIRMAN STRAIN: Okay. First item up is a private amendment. It's Subsection 2.03.04.A.1.a. Industrial Zoning Districts, Tony Pires.

Tony, I think the best thing, since it's yours, you can present it. We'll hear staff's comments and then we'll go into questions.

COMMISSIONER MURRAY: What page are we on?

CHAIRMAN STRAIN: We're on Page 57 of Book 1.

COMMISSIONER MURRAY: Thank you very much. And it came to pass.

MR. PIRES: Ray, do you want these?

MR. BELLOWS: Those are extras.

MR. PIRES: I have enough papers in my files also for the Planning Commission.

Good morning, Mr. Chairman, members of the Planning Commission. My name is Tony Pires with the law firm of Woodward, Pires & Lombardo. And I filed this particular private amendment and request the favorable recommendation of this amendment to the Board of County Commissioners.

The subcommittee of DSAC and DSAC in its entirety have unanimously recommended this petition and the code of amendments, changes, for approval.

Previously provided with the application, some of the rationale and basis for the proposal is outlined in the original submittal, that the proposed language and the uses outlined are consistent with and no more intense than the -- a number of existing uses that are permitted uses in the current I industrial district that are deemed consistent with the Growth Management Plan and the Comprehensive Plan, and therefore we believe these proposed uses would be consistent with the Comprehensive Plan and are, in fact, compatible with the Industrial District and the other uses.

I e-mailed to you, the board members -- the commissioners, on the 24th an additional set of SIC codes with outline of additional uses, I believe, are once again, similar to this in intensity and are consistent with the growth management plan, again, by virtue of them being listed as permitted uses in the industrial district.

By way of example, auction rooms is outlined in the submittal, that SIC Code 5999. It is listed as an allowable use, permitted use, in the industrial district. Dinner theaters and tea rooms.

Now, I know the staff has stated in their staff report a number of issues about compatibility, and that they have stated that the, quote, unquote, retail uses or quote, unquote, commercial uses in the industrial district are there to support the industrial uses. In other words, you have a little snack bar so the workers can go there. You have a little bank so the workers can go there.

Dinner theaters, I think, are of a different type of use. Typically you don't see those, I would submit, in industrial. So again, that use is -- and tea rooms, I'm not sure how many tea rooms we have in the industrial districts in Collier County, quite frankly.

And I can't imagine the 6-foot five, 300-pound construction guys going to a tea room. Now, maybe they do. I'm not sure I can hold the cups properly. Maybe they learned.

Coin-operated laundries, and again, typically those are more of a commercial retail operation and are not inconsistent with the industrial district or, again -- a similar type of use. Photocopying services, I outlined, like Kinko's.

In this particular property I think it's also important to recognize its location, for a number of purposes, and here is a zoning map.

Thank you.

And, once again, that's from the zoning atlas in Collier County and it reflects the location of this property in yellow relative to the C-5, and also Pine Ridge Road.

And there is an aerial photograph. Yellow is the property. And you can see where it is relative to Pine Ridge Road. It's about 600 feet away from this particular area.

Again, we believe the proposed uses are no more intense than other uses and no more inconsistent, quote, unquote, than other permitted uses deemed consistent with the Growth Management Plan.

Interestingly enough, there have been a number of discussions and correspondence with staff over the years involving this issue, going back to 2006. And Mr. Schmitt, Joe Schmitt, in December 12th to 13th of 2006, at a county commission hearing on this, where the county commission had tasked staff with analyzing how many uses of this type are in this industrial district -- and there was a conversation and Mr. Schmitt stated that all of it -- secondhand. And then

there are some arguments that secondhand furniture is really more wholesale operation than retail. And what we have here is a secondhand operation.

Mr. Schmitt sent a letter of May 22nd, 2007, and stating that staff determined that the antique mall at that time falls under the used merchandise stores classification. This industry includes stores engaged in the retail sale of used merchandise, antiques and secondhand goods. Again secondhand goods, back in December he stated, arguably, in the merchandise and the furniture area, could be considered wholesale.

This type of use that we propose, we believe is very similar to auction rooms and auction houses. David Weeks, in his memorandum, made an observation stating that, historically the zoning code, 1982 and prior, allowed more commercial uses in the I District than today's Land Development Code.

And, to my take of things, that would mean that more commercial uses that used to be in the code, not being deemed necessarily, were not incompatible with industrial uses, but the board made a policy decision to not to have them in there.

And I believe, from the historical background of this, the limitation is a concern with regards to preserving the, quote, unquote, integrity from a vacancy standpoint and availability standpoint of industrial zoned space in Collier County.

I think you all know, if you go through the Pine Ridge Industrial Park, you go through the industrial parks on J & C Boulevard, go to the industrial district off of Airport Road, off of Radio Road, huge vacancies.

I think the rationale in the past was that there was a shortage projected of industrial space in Collier County. I do not think you have seen that same rationale today. I think that was part of the rationale why this type of use should not be allowed in the industrial district, the one that we're proposing today.

Susan Istenes, in her staff report, made a number of observations that we -- I think worth a comment on. One, at Page 3, she states, commercial building vacancy rates located in commercial zoning districts are currently relatively high. What is not stated in her report is the same holds true for industrial.

Additionally she states that maintaining the integrity of the industrial zoning district offers protection of existing manufacturing and industrial operations from the encroachment of incompatible, nonindustrial land uses in occupancies that might impede ordinary business operations.

I think that's broad and speculative, and we believe that this use, propose uses, do not affect the integrity of the industrial zoning district.

Also, staff has indicated, Ms. Istenes, that the proposed commercial retail land use is not comparable to those uses permitted by right in the industrial zoning district.

I believe, by virtue of the SIC code and the materials previously provided, that it is in fact comparable to those.

Non-industrial support services are listed, like barber shops and others. Again, we've listed other uses that, really, I would not consider them to be industrial support services. I would consider a large number to be non-industrial. So this a not plowing new ground.

Additionally, she states in her report at Page 4 that retail, commercial and industrial land uses are not compatible both in their form and function. However, I believe the code by itself, by allowing the various uses in the industrial area, shows that they are, in fact, compatible.

The -- also states in their conclusion that a variety -- the proposed amendment will open up the industrial zoning district to allow a variety of retail land uses that are currently only permissible in commercial zoning districts, thus competing with industrial land uses.

Again, I don't believe there is any competition. I don't think that there is any competition. It's 10 or 15 years out.

Again, from the availability of industrial space that we have in this county, the huge vacancy rates. If you go up and down Shirley Street, Mr. Halter indicated to me this morning, he's been there since 1998; he has not seen the level of vacancies in the industrial district since 1998. It's worse than before.

With regards to the Southwest Florida Industrial Market, I think we all know that it is in deep trouble, and in a report that was online in Florida Real Estate Journal of December 15, 2009, relating to the Southwest Florida industrial market, states that the overall vacancy rate in the Fort Myers/Naples industrial market rose to 17.5 percent during the quarter, up 1.7 percent from the second quarter of 2009.

Overall demand remains at historically low levels with leasing activity during the third quarter totaling a negative 254,000 square feet. This decrease in leased volume is related to the continued slowdown of the general

economy and, in particular, limited construction related employment.

Overall absorption, another testament to the decline in tenant demand, also fell significantly for the third quarter. As can be expected with such a dramatic quarter over quarter increase in vacancy, the market recorded 156,881 square feet of negative absorption.

So again, the reason I mention that is that, in the past, part of the rationale for -- in addition to the issues about alleging incompatibility, alleging inconsistency was that we need to make sure we have adequate industrial space in this county because we're going to run out.

I don't believe we're going to run out. I think there is plenty out there and I think that these proposed uses are compatible and consistent with other uses and compatible and consistent in the industrial district.

I'm available for any questions that you may have.

CHAIRMAN STRAIN: Anybody have any questions of Tony?

Go ahead, Brad.

COMMISSIONER SCHIFFER: Tony, in your proposed wording here, you have in brackets, without limitations as to percentage of gross floor area.

Why was that put in?

MR. PIRES: The Land Development Code, at the present time, in the industrial district -- and, once again, just for clarification, just to make sure, is that, under accessory uses, B3, states, retail sales and/or display areas as accessory to the principal use, excluding automotive sales and/or display areas, not to exceed an area more than 20 percent of the floor area of the permitted principal use.

COMMISSIONER SCHIFFER: But you are requesting this to be permitted for principal use, thus --

MR. PIRES: Without that particular cap, that's correct.

COMMISSIONER SCHIFFER: Would anybody go to that cap, if this was an allowable, principal use?

MR. PIRES: Under that category of uses for the one outlined in the proposal.

COMMISSIONER SCHIFFER: That's my question. Thank you.

CHAIRMAN STRAIN: Anybody else have any questions of Mr. Pires?

(No response.)

CHAIRMAN STRAIN: I've got some questions but I want to hear staff's comments first, and then I'll -- I might pursue some more questions with you.

MR. PIRES: Thank you very kindly. Thank you.

CHAIRMAN STRAIN: Does staff want to weigh in on this?

MS. ISTENES: Good morning, again. Susan Istenes.

I think our analysis is pretty complete in our staff report. David Weeks is here. I think one of the key issues here, obviously, is consistency with the comp. plan. So he would, I'm sure, be able to answer any questions you may have as well, related to the comp. plan.

CHAIRMAN STRAIN: Okay. Does anybody have any questions based on the staff report or of David at this time?

(No response.)

CHAIRMAN STRAIN: Tony?

MR. PIRES: Yes, sir.

CHAIRMAN STRAIN: Staff's report, and I read it when I first got it and I didn't read it again since then, but my recollection is that they are concerned that this will open up a lot of commercial and -- out of industrial uses, and you articulated how you don't see that as that much of a concern in today's market.

But let's assume that the market changes and let's assume time goes on. There are some options here that may be explored in order to make sure we don't have an unnecessary use of industrial property by commercial uses. And one of them, I think I had mentioned to you when we had talked one time, and that was, if this were to be approved, on this particular use, because it is considered more commercial than industrial, limit this use to a certain distance from an arterial roadway. We have had similar applications come in. The one most recently was the dealership up on Airport Road, just north of the Dodge dealership there. And, if we did that, I think we would be protecting the heart of the industrial. And I am not -- if you're closer to an arterial road; it seems to make more sense. And I do believe Pine Ridge is considered an arterial road.

Does anybody --

MR. KLATZKOW: Yes, it is.

CHAIRMAN STRAIN: Okay. Do you know the distance of your property from Pine Ridge Road?

MR. PIRES: Yes, sir.

Based upon the little clicking and measuring on the Property Appraiser's website, it reflects the distance from Pine Ridge Road to the southwest corner of the property where this is located in yellow as approximately 608 feet, approximately 600 feet.

CHAIRMAN STRAIN: So my suggestion would be that, if we are in favor of this, honestly, with the gentleman being there ten years and with the problems in the economy now, I'm not sure there is, from my perspective, I didn't see that much wrong with it, but I did understand staff's concern. I think if we were to limit it to, the platted tract must be within a portion of the -- the edge of the platted tract, or the boundary of the platted tract must be within 600 feet of an arterial road, that would severely limit the amount of applications where this could occur in Collier County and thus protect more than a substantial amount of industrial in the county and leaving a limited amount open to possible -- this particular SIC code of commercial.

Anyway, that's my suggestion. It certainly is open for suggestion and for discussion.

Mr. Murray?

COMMISSIONER MURRAY: I think it's a good suggestion in general but I'm a little concerned with using the 600 feet because it pertains directly to this. What would that mean to someone who had 700 feet or, you know -- could we not come up with a different number that might be more reasonable for an overall application, such as a thousand feet. Now I'm using an arbitrary number, too, but it is arbitrary on purpose.

I think your suggestion is a good one. I just -- what happens when somebody comes in with 650 feet? Do we run into a snag on that? That's my concern. I hope I've stated it correctly.

CHAIRMAN STRAIN: No. I certainly understand. If this project had been a thousand feet away, then the suggestion might have been a thousand feet. I was simply trying to get something to work that's been in existence a long time without opening up a floodgate to address the concerns staff had, which I think was a legitimate concern.

I don't think it matters, Bob. I just didn't know if we wanted to open it up further. If this satisfies the immediate problem, we may not ever have this problem arise again, and so --

COMMISSIONER MURRAY: Well, yes. And so I agree with that part of it, but I'm aware that it may very likely become an issue as we continue along this path of economic woe, that there may be others. That was my concern in that.

I can be happy with the 600 feet, 608.

MR. PIRES: Well, and, once again, it's based upon clicking a mouse on the Property Appraiser's website. I don't have a survey that reflects it, so a higher number would be something that would be requested.

CHAIRMAN STRAIN: Well, this would have to come back with the proper language inserted, if that's the recommendation of this board.

MR. PIRES: Okay.

CHAIRMAN STRAIN: And by the time it came back, I would hope that staff would find out an accurate measurement to know our concern and, at the same time, write it in a manner that -- the 600 feet is to the property boundary of a tract, and it includes the whole tract if the boundary falls within that 600 feet. And they have good ways of massaging that language so it reads right.

MR. PIRES: And, Mr. Strain, in your comment you mentioned about platted tracts and if they have to have to be metes and bounds, I think you can say, to the parcel of land and to try to protect against people re-describing their property, and it could be, you know, those parcels in existence as of a particular date.

CHAIRMAN STRAIN: And anything we can do to tighten it up I think would help the concerns, but I don't -- in this economy, I think, if this gentleman is doing a business there, more power to him. I'm very pleased to see that someone is succeeding enough to want to go on and actually put together the time and money it takes to come through one of these hearings to stay in business.

Any other questions?

Mr. Klatzkow?

MR. KLATZKOW: Yes. I just heard Mr. Pires say something.

Are you suggesting that perhaps we just put a grandfather clause in on this one, just to allow your guy to continue the use that's been there for a very, very long period of time, but to get the staff concern if this use does --

MR. PIRES: What I was saying was, from the standpoint of any parcel that would qualify, but that you couldn't try to recreate a new parcel boundary after the accepted date. Because a platted tract is easier to control.

CHAIRMAN STRAIN: Okay. I mean, I think all of that is good input. And as staff is listening, when this gets voted on, if this is deemed the direction to go, they can incorporate as much of those limitations as they can.

Ms. Caron?

COMMISSIONER CARON: I think that perhaps grandfathering this particular business that has been there forever might be a better way to handle this situation. It seems to be an anomaly. It's been there since '98. I'm certainly not looking to put the guy out of business. Let's grandfather him in without destroying the code. Let's try to maintain some integrity here in the industrial district and in the commercial districts and deal with it that way. The simplest way is often the best way.

CHAIRMAN STRAIN: Is there a way to legally grandfather this in?

MR. KLATZKOW: I think, between now and your next meeting, we can look into that and get back with a recommendation to you.

CHAIRMAN STRAIN: Okay. And if that isn't one that seems to easily work, then would you explore the other recommendation?

Is that a consensus from this board?

Mr. Schiffer?

COMMISSIONER SCHIFFER: I have a question, and it's actually to staff.

I am a fan of allowing this. I think used merchandise shouldn't be, maybe in -- some of the commercial lease, some of the used merchandise I'm picturing.

We allow art galleries and all of that in these areas, correct?

MS. ISTENES: I would have to check on that but I don't recall that art galleries were permitted in industrial areas?

CHAIRMAN STRAIN: There is a -- Ms. Caron?

COMMISSIONER CARON: I can guarantee it because I've been to them, in this industrial district.

MS. ISTENES: I can look.

I did want to make one other comment, though.

CHAIRMAN STRAIN: Go ahead.

MS. ISTENES: Just for the record. This isn't a lawful use so when you use the word grandfathering, you imply that it was lawful at one time and now it's not. It's just not. It's an illegal use.

CHAIRMAN STRAIN: That's exactly --

MS. ISTENES: So anyway, I'll work together with the county attorney's office --

CHAIRMAN STRAIN: That's why I suggested to the county attorney -- that's why we would like you to look at that. And if it is a way to do it and that's a simpler way, fine. But it may be difficult to grandfather something that has never been legal in the first place, even though it's been open. So, maybe, by making it legal, it irons it out, so either way.

I think the sentiment of this board seems to be that this needs to go forward with a positive. Staff has been given direction, two different directions to come back with some or one that, hopefully, fits.

David has got that troubled David Weeks look on his face this morning.

MR. WEEKS: For the record, David Weeks, Comprehensive Planning Section.

Commissioners, I remind you that, whatever recommendation you make as far as an actual amendment to the code, grandfathering being an exception, because that really is a, in my mind, is a zoning consideration, and in few -- very few instances does the Future Land Use Element dictate to the zoning code how a use is allowed.

So, generally speaking, and in most circumstances, a use that is grandfathered is a zoning issue, it is not a GMP, Growth Management Plan, issue.

In this particular case, what is being discussed, though, is amending the industrial zoning district which implements the industrial future land use designation. I just respectfully remind you that, whatever your recommendation is as far as an actual change to the code, you'll need to have -- you'll need to make a finding that it is consistent with the industrial designation. And in the staff memo we -- as you've already acknowledged, we do raise some concerns about that consistency.

CHAIRMAN STRAIN: Ms. Caron.

COMMISSIONER CARON: David, in Mr. Pires' memo, he did point out a couple of instances that seem dramatically inconsistent with industrial zoning. For example, dinner theaters and tea rooms. I would assume, since this has been brought to your attention, you'll be trying to correct that in another cycle or --

MR. WEEKS: I was going to say that -- yes.

I would take the opposing point of view. Rather than saying these other types of commercial uses are a justification for allowing this additional use, that we should take the opposite approach and say, we need to re-examine those uses and find out, why are they in there?

Now, the presumption is going to be because the county commission has approved the industrial district with those uses in there, that, knowingly or unknowingly, the county commission has determined that they are consistent.

But I agree with your comment, that it raises the question. We need to go back and take a look at those uses and reevaluate whether they should be allowed or not.

Some of the other uses that Mr. Pires has identified, such as the barbershop, I do think they fall within that support commercial category. Those are -- as I noted in the memo, the intent is to allow some commercial uses within the industrial area that seemingly have no relationship to industrial designation but they provide an important service to the industrial users. The industrial designations -- excuse me, the industrial zoning district -- one more time.

The industrial areas in the county tend to be very large, typically hundreds of acres. They serve as major employment centers. For that reason we believe it's acceptable to have some support commercial uses. Don't force the employees and patrons of the industrial areas to leave to go get lunch or to take care of certain types of personal business, even a haircut. Retain them within that park. It's better for transportation purposes, for one reason.

But again, there are some uses that I have to scratch my head, why is a dinner theater allowed in an industrial designation? Off the top of my head, I can't answer that.

CHAIRMAN STRAIN: Mr. Schiffer.

COMMISSIONER SCHIFFER: Dave, I think when you trace it back you'll find that they changed the zoning to fit a circumstance exactly like the one here. I know in the architectural standards there was a lot of anomaly stuff, and everything had a business name to it, so that's what you'll find.

MR. WEEKS: Last couple of comments, just, really, in the vein of what the Planning Commission was discussing as one alternative, that is, a certain dimension from the external roadway, Pine Ridge Road in this case.

The industrial designation used to have very specific language that did allow for lands around the perimeter of the industrial designation to have commercial uses, so as to serve as a transition. That language has since been removed but any existing commercial zoning around the perimeter is still recognized, that is, we didn't make it nonconforming. The plan still recognizes that.

I submit to you that that already exists. There is a strip of C-5 zoning along Pine Ridge Road right now that would function as that transition, just as there is on most, if not every other industrially designated area, there is a strip along the perimeter of C-4 or C-5 zoning, in most cases, that would function as that transition.

So, when the discussion about having a certain dimension under the prior language of the future land use element, I think, absolutely, no argument, that that could be found consistent. But, with the language change now, I just -- I question how that decision can be made.

But, on the other hand, I certainly recognize the authority of the Planning Commission, and ultimately the board, to make the consistency determination.

CHAIRMAN STRAIN: Mr. Murray.

COMMISSIONER MURRAY: David, how -- if you have a recollection, how deep does that transitional area go from commercial to industrial?

MR. WEEKS: The plan never specified a dimension, so it left it flexible. Again, with only a few exceptions, because I can't think of one up around the railhead, these industrially designated areas do have existing commercial. The commercial along the perimeter, that C-5 zoning, typically, predated the future land use element coming along and saying, you can have this transition.

COMMISSIONER MURRAY: I understand.

CHAIRMAN STRAIN: David, before you leave, I hate creating a problem where there isn't one. Can you tell me how many dinner theaters we have in the industrial zoning now?

MR. WEEKS: To the best of my knowledge, we have no dinner theaters in the industrial or, I don't think, anywhere, for that matter, in the county any longer.

CHAIRMAN STRAIN: Can you tell me how many tea rooms we have in the industrial area now?

MR. WEEKS: To my knowledge, none.

CHAIRMAN STRAIN: Okay. Then, before you waste all of your time on changing something that is not impacting anybody, why do we want to do that? And, if we were to have a dinner theater come along, I think we ought to welcome it with open arms instead of saying, no, you don't go here.

So maybe -- and I don't think we're hurting the industrial processing. I don't think the coastal area is where the industrial market is going to turn. I think Silver Strand, when it goes, Tradeport, when it goes, the Immokalee airport, when it goes, and where the working -- more of the working population seems to be, is going to end up being our industrial hub.

And that may be more to the master planning or desires of Collier County as a whole. Limit industrial internally, yes. But when our road systems get internally clogged and everything else happens, those big semis have to steer around more neighborhoods to get to these smaller little enclaves of industrial, we may find that it's not as desirable where it's located now anyway.

So I'm just thinking, let's not create problems or cure problems where ones don't exist.

And another thing, if you have a lot of heartburn about this as a Comprehensive Plan issue, it looks like this gentleman's been there ten years. The whole process where his involvement to get to us today started at, what, two, three, years ago, I don't know how long ago, and he's been given, more or less, a grace period to get through this process, maybe, if he's thinking of staying in business for five more years, he gets another five year grace period.

And then, all of a sudden, we don't have to worry about the grandfathering, we don't have to worry about the distance, changing the Comp. Plan or changing what you may perceive as a problem, and the Board of County Commissioners just gives them a five-year grace period and it's over with. They have already given him some, apparently, because he's here today without being penalized.

Yes, sir.

MR. WEEKS: In response, I'm not sure what -- let me ask.

What does the additional five-year grace period grant the gentleman, other than -- I mean, the ability to operate for another five years, but then what?

CHAIRMAN STRAIN: Well, I don't -- I'm trying to figure out if he intends to stay in business forever. And if five years works for him to work his way out of it and it's an easier way to get this accomplished, fine. If he's saying that it doesn't or the applicant says it's unacceptable, they still have an application, then we have to deal with it. I'm trying to think of time frames and solutions to everybody's problem.

Mr. Murray.

COMMISSIONER MURRAY: I was -- I've got to talk about that, then, because I think we're going to see more of these. And if grace period is a potential solution, I would certainly be an advocate for that because it does suggest sunset. And, when things turn around, we can revert to our original intent. So that is something to explore, I truly believe.

CHAIRMAN STRAIN: And maybe -- and, Tony, at some point maybe you would get together with staff and talk that over. And, if there is an acceptable time frame in there or with a time frame with an option for more, depending on how badly needed industrial is at the time, I think that's the way to solve this.

I'm just looking for options, all of which try to let this gentleman operate where he is at. I think the mind-set of the whole board is there, it's just that we all have different ideas on how to get there and they all need to be explored a little further.

MR. PIRES: Thank you. We'll have those conversations.

CHAIRMAN STRAIN: Okay.

MR. PIRES: Thank you very much.

COMMISSIONER SCHIFFER: I just have a question. I don't know the situation that well. Is this a code enforcement case or something?

MR. PIRES: No. Years ago there were some complaints that led up to code enforcement further investigations, but it was put in abeyance by the Board of County Commissioners, in providing the property owners various alternatives. One could be try to go and change the Comprehensive Plan, which is a very expensive, timely process, with -- and it appeared to be staff would not be inclined to even go that particular route.

When the cycle came available last year for amendments, then I was looking at the code, I thought, maybe this

is an opportunity, after looking at all of the uses.

So there is no code enforcement case pending over him. There was an abeyance period to December of last year. It has been extended by the board to December of this year. And so, having further discussions about a further time frame as a solution is appropriate and acceptable.

COMMISSIONER SCHIFFER: And this business has a business license that was given to it by the county and everything?

MR. PIRES: Yes. And the question is whether or not it's a business license for retail or wholesale basis, and that's the difficulty. I believe it is currently of a wholesale nature.

COMMISSIONER SCHIFFER: Thank you.

CHAIRMAN STRAIN: Okay. Anybody have any other questions on this issue, or comments? If not, we'll move on to more exciting things.

And the next one up is on Page 143. It's Section 3.05.07.A-B. It's on the preserve standards and definitions. And this was a staff generated amendment.

So, Steve, it's --

MR. LENBERGER: Good morning. For the record, Stephen Lenberger, environmental section, from the engineering environmental comprehensive planning and zoning services department.

The amendment -- the amendments here, all but one of them, are GMP related. They are in response to changes that occurred in 2007 to the Growth Management Plan, and particularly the conservation coastal management element.

The last time I was here, and the last meeting, I had wanted to go through and see if you had any questions line by line.

Did you wish to do it the same way, and see what questions you have, or how do you want to handle this?

CHAIRMAN STRAIN: Okay. Yes. We can start with first page and we'll work our way through it just like we have before.

Page 143. Does anybody have any questions on Page 143?

(No response.)

CHAIRMAN STRAIN: Page 144. We're still on the staff write-up.

Steven, the -- Page 144, I know it's further in the document, too, but this right-of-way acquisitions language, one of the nice things about making the right-of-way subject to mitigation, if they have preserves where they could avoid them, they try to avoid them more. This language would completely eliminate any reason for transportation just not to plow down every cypress head that they want to go through, unless you can tell me differently, because they would have no penalty. They have no reason not to. They just go in straight lines.

Is that an assumption I should be making?

MR. LENBERGER: The County would not impose a restriction on it, no, but they still have to go through permitting with the state and federal agencies.

CHAIRMAN STRAIN: And how does the county restrict it now? What is it -- without this language, what would happen when -- I can't say Nick anymore. But Nick set the pattern, so let's say Nick wanted to plow down a cypress head because he knew he could get away with it. The agencies -- what did the county do before in regards to stopping him from doing that?

MR. LENBERGER: We -- our department does not permit road projects. They would design the roads, the MPO would design the roads and the Board of County Commissioners would approve future roads and they are permitted by the transportation department and eventually they are put into right-of-way. They are not permitted through our department at all.

CHAIRMAN STRAIN: Okay. Well, then, this paragraph, who does it apply to, what department?

MR. LENBERGER: I was taking -- this amendment came into being because it was clear and requested for infrastructure to support highways and utilities adjacent to the right-of-way. They were not actually part of the public dedicated right-of-way. And this amendment was put into place to allow that -- also to be clear and to pretty much take the permitting out of the county's hands, our department, and to let transportation permit it. Things that might not be in the right-of-way would be utility lines and also water management areas.

The state requires water retention areas for these new highways, and they often are located outside of the dedicated public right-of-way.

CHAIRMAN STRAIN: Right. And to put those retention areas in, they basically bulldoze down everything,

build berms around it and apply gravel, or whatever other drainage necessities they need, to accept the drainage.

And I know they need drainage, and I'm glad they are having it, but -- so now you are saying the environmental review or sensitivity, as a corridor or a road approaches an area, and all their drainage requirements and edge requirements, are not going to be reviewed by anybody but the very people that are wanting to do this, is that --

MR. LENBERGER: Permitted by the state and federal agencies. They will require mitigation. And, if those areas are more pristine, it's going to cost the county quite a bit more money to impact those areas.

CHAIRMAN STRAIN: Okay. If they are going to already do that, then why do we have this language needed? Can you explain that to me?

MS. MASON: Good morning. For the record, Susan Mason with Environmental Services Section.

One other way, besides a road building that's in, like, a virgin area, this would be applied would be for an existing PUD or development that has already a designated preserve on site and the county, as part of their expansion project, was going to take part of their property and make it -- what once was preserve, that was required, into stormwater, for instance.

The way the code before this went into the GMP, that PUD, for example, would then become out of compliance. They would no longer meet their minimum requirement for preservation if that area was taken and that development would have to make up that requirement somehow.

And this would make it so those people, if they did come into an agreement with the county or state as part of a road building project, would not have to mitigate for that --

MR. KLATZKOW: Mr. Chairman?

CHAIRMAN STRAIN: Go ahead, Mr. Klatzkow.

MR. KLATZKOW: I'm pretty sure I know why this is here, but I can't give you testimony. I would suggest you get Transportation in here and tell you exactly why --

CHAIRMAN STRAIN: This is absolutely confusing me. If we have federal requirements --

MR. KLATZKOW: This has nothing to do with federal or state requirements.

CHAIRMAN STRAIN: Well, I know that.

MR. KLATZKOW: But you need Transportation to tell you that because you are not getting the answer here.

CHAIRMAN STRAIN: Okay.

Are there any other questions on Page 144? And we're going to have to defer this particular issue until Transportation gets here.

Go ahead. Mr. Murray.

COMMISSIONER MURRAY: Just to nail it down, if an individual on private property wanted to put a road in, they would have mitigation requirements, would they not?

MR. LENBERGER: Whoever would be building a road, if they were building it in wetland areas or whatever permitting requirements in the area, there would be mitigation required, private or public.

CHAIRMAN STRAIN: Well, this particular phrase here from Item 33 or Line 33 through 35, especially 35, sets out, shall be exempt from mitigation.

You've now said, though, that the state and the fed have their particular. I'm -- this is more than confusing to me, this is concerning, because of the fact that what Susan Mason just testified to suggested that a PUD would be okay, but that certainly doesn't apply in this document.

MR. KLATZKOW: This is a very clear answer. If you can get Transportation here, it will be fine.

COMMISSIONER MURRAY: Okay, that's it.

MR. LENBERGER: If I may. If you turn to Page 149, we've included an exemption for these right-of-way acquisitions under the exceptions section. And you'll notice it's an exception from the native vegetation retention standards. So that's what this is referring to. It's not referring to the state and federal mitigation; it's referring to the native vegetation retention where this is located.

CHAIRMAN STRAIN: But the language on Page 144 does not match the language on Page 149. So now, can you tell me where you are using the language on Page 144, then, to be more exact, otherwise why did we have the language presented on Page 144 in the manner in which it is?

MR. LENBERGER: We've expanded the exemptions, right-of-way acquisitions, utility easements and access easements for ingress, egress. These are things that we don't normally require retention of native vegetation for when calculating preserve requirements. Obviously, you know, they could be cleared by adjoining properties which need

ingress/egress. This is to clarify it. That's why we didn't split the language exactly. We expanded upon it to try to make clearer.

CHAIRMAN STRAIN: Well, I think we're going to wait for Transportation and we'll explore it further on that particular issue.

And if there are no other questions on 144, how about 145. Anybody have any questions on Page 145?

(No response.)

CHAIRMAN STRAIN: Okay. Stephen, on the Number 2 on 145, towards the bottom, it talks about a tree count. I'm assuming somewhere in here, and I -- there is a -- oh; it is on the next page, the minimum diameter for trees that have to be included in the count. Does that all apply to that? So a tree count can't be any sized tree, it has got to have a certain diameter to it or a size to it?

MR. LENBERGER: Right. We spell that out.

CHAIRMAN STRAIN: Any other questions on 145? If not we'll move to 146.

Any questions on 146?

(No response.)

CHAIRMAN STRAIN: The top paragraph of 146, is that reading that we basically have a 30-foot drip --

MR. LENBERGER: Excuse me. Do you want us to get Transportation here now, for this meeting, or for the next meeting?

CHAIRMAN STRAIN: Well, I know Nick is going to be here this afternoon. We can talk to him this afternoon about it. It doesn't matter. I mean, there is no sense in anybody making a special trip. They've got things they've got to do, and if they are planning to be here today, or someone is, who can answer it -- Nick always has a way of answering things, so we certainly can see what he's got to say when he gets here.

MR. LENBERGER: Sorry to interrupt you.

CHAIRMAN STRAIN: On Page 146, up towards the top, it talks about a drip line or within 30 feet of the trunk, whichever is greater. So, basically, if you have a slash pine, a retained required tree, you can't be any closer than 30-foot to that tree; is that right?

MR. LENBERGER: As a base standard, yes. You can't be within 30 feet or within the drip line, but if you look at the sentence after that, it says, encroachment may occur within these distances where evaluation by a certified arborist determines that it will not affect the health of the trees.

CHAIRMAN STRAIN: Right. And I saw that, and I circled part of it. Doesn't this have an impact on the minimum preserve setback?

MR. LENBERGER: There will be no -- there are no setbacks for retaining just trees. The last sentence in that paragraph says, areas of retained trees shall not be subject to the requirements of 3.05.07, capital H, and that's the preserve requirements, that include the setback requirements.

CHAIRMAN STRAIN: So if you have a tree with a 30-foot required setback from the trunk of the tree, you are saying it's -- that retained tree shall not be subject to the requirements of 3.05.07.H?

MR. LENBERGER: What we're saying is we broke this down into two categories, native vegetative communities -- this came from the stakeholders, and native trees. This is also how Lee County handles it.

CHAIRMAN STRAIN: But, I mean, we have still got to understand that, that's where --

MR. LENBERGER: That's okay. I'm trying to explain.

So the preserve setback is a different issue. Retained trees is to try to preserve the integrity of a tree so it will survive. This is why that distance was put in, 30 feet or the drip line. And we are -- understand, there are instances where you could get closer, and arborists are basically the people who will tell us that. That's why we left an option in there where they can do an evaluation and determination whether it will affect the tree or not. As you know, some trees are more sensitive to disturbance, like pine trees as opposed to hardwood trees as opposed to cabbage palms.

CHAIRMAN STRAIN: Okay. You may be answering the question, but, I'm sorry, I haven't had enough coffee or something today.

You've got a tree that's 28 feet from where someone wants to build, and it's one of the trees that qualifies as a retained tree. The drip line is, say, 20 feet, but the requirement here is you have got to be 30 feet from that trunk. So that means the 25-foot setback that would be required from the edge of the preserve in which this tree sits would have to be expanded to the distance to make it 30 feet to the trunk of that tree; is that correct?

MR. LENBERGER: It's not within a preserve.

CHAIRMAN STRAIN: These are trees that are not within a preserve, so it only applies to trees not in a preserve?

MR. KLATZKOW: That's correct.

CHAIRMAN STRAIN: Well, why would anybody -- okay.

MR. LENBERGER: We -- there was concern, and part of the reason the Growth Management Plan was amended, to try to resolve these issues. In the past, areas of trees were determined to be native vegetative communities. And, as a result of that, if they -- if that portion of it was retained as part of the preserve requirement, it had to be restored.

And many times, in many areas, the understory has been completely wiped out, there is no mid-story, there is no ground cover that's native, it's been converted to a pasture or lawn, and that was determined to be a hardship on applicants. And staff understood that. We listened to stakeholders and that's why we proposed and they proposed separating it out.

If you just have trees on site and your understory has been eliminated and converted to lawn or pasture, they just retain the trees and the same percentage requirement. But if you have a true native plant community, a native vegetative community, then that would be the preserve requirement. So we broke the two out.

The setback to preserve is to protect the integrity of the preserve. For individual trees, you have had disturbance around the tree, it was determined that 30 feet would be a good setback, and/or the drip line of the tree.

If your concern is -- I'm not sure.

CHAIRMAN STRAIN: No. I am trying to understand it.

MR. LENBERGER: Okay.

CHAIRMAN STRAIN: I mean, the whole purpose of this code is so we can read this and understand what it means. I honestly can't understand what this is getting at. And I'm sorry if it seems simpler, maybe since you wrote it, word for word. I can't figure it out.

I'm trying to understand. We have preserve requirements, we enforce those. Now, if you decide to go beyond those preserve requirements and leave a native tree on your property, even though it's not in a preserve, you more or less treat it as a restricted area in which to use your property.

MR. LENBERGER: It's not restricted in the sense of use. It's restricted in the sense of constructing something next to it that could kill the tree. If a certified arborist says it isn't going to matter, then you can go closer.

CHAIRMAN STRAIN: Okay. Let's take a house in the Estates. They go clear the pad. I mean, I know all of the Estates isn't a preserve, but let's use this as an example because it's --

MR. LENBERGER: Well, it won't apply to the Estates.

CHAIRMAN STRAIN: I know that. Okay.

Let's take a house in Grey Oaks.

MR. KLATZKOW: It won't apply to a single-family lot, to a single-family home.

CHAIRMAN STRAIN: Okay. What does it apply to?

MR. LENBERGER: It applies to developments such as commercial projects and the subdivisions. The same that would be required to retain preserves. And what this is saying is, this is an attempt to -- saying, it's not all preserve. You just have trees; just retain the percentage of trees that are required. I mean, part of the flexibility on there, we tried to give leeway and listen to stakeholders.

So it's one or the other. It says here, on A on Line 45, general standards and criteria, it says, the following criteria shall be used to administer the preservation standards in all unincorporated areas of the county.

And number one is, native vegetative communities. And it talks about that, all naturally occurring strata and then it talks about native trees where the property has been legally cleared and only native trees remain and the native ground cover replaced with lawn or pasture. It's providing some relief, saying the county still gets the benefit of retaining trees on site but we're not imposing the more stringent requirements for preserves on these properties.

CHAIRMAN STRAIN: I'm all for seeing more trees preserved. I'm just worried that we need to incentivize the preservation of trees. This, to me, may be doing the opposite because if you preserve a tree, now you are restricting yourself.

And I'm just wondering, will we have the opposite impact we're trying to have with it because you can't go out and force them to preserve the tree if they don't want to because they have already provided the minimum preserve area. Is that correct?

MR. LENBERGER: Let me give you a scenario, I guess, to explain this.

CHAIRMAN STRAIN: Okay.

MR. LENBERGER: Let's just say 50 percent of the property has native vegetation and the other half of the property, other 50 percent, is just pasture with trees, okay.

In the old scenario those trees, if those trees are fairly dense, staff would say your whole site is vegetated with native vegetative community, therefore you need 25 of your percent of your site, or whatever the percent was for that particular type of development, we have to put that in a preserve.

What we're saying here is that your preserve area, your native vegetation area, your 50 percent, you would have to preserve a percentage of that, say 25 percent, for argument's sake. And, where your trees are, we're not going to make that as preserve; we're going to say you have to preserve 25 percent of the trees. But you don't have to make it a preserve, it's just retaining trees.

And we included flexibility in here. Where it's within the drip line, we try to include flexibility, if they couldn't retain it, you know, where they did. We tried to spell out. We tried to add flexibility along the way.

CHAIRMAN STRAIN: Okay. I appreciate your example. It helps.

Now, how do you or who defines the 50 percent that is considered native and the 50 percent that is considered just trees?

MR. LENBERGER: That would be evaluated by the environmental consultant staff when the project came in. Usually it's pretty cut and dry, you know, the examples I've seen. Most people like to use the Estey Avenue example. You see the trees there.

CHAIRMAN STRAIN: I remember that one.

MR. LENBERGER: It's all lawn underneath it. That's just trees.

CHAIRMAN STRAIN: How would this have applied to that Estey Avenue example, since many of us were here when that came up?

MR. LENBERGER: Well, the Estey Avenue has got some history with it, as far as legality of clearance, so I'm not going to get into that issue, but let's just assume it was legally cleared, then they would only retain, say -- I don't remember the total acreage.

CHAIRMAN STRAIN: Let's say 20 acres, total.

MR. LENBERGER: Okay. Let's just say it was 25 percent. 25 percent of the trees would be retained as a -- creating a preserve area equaling 25 percent of the site.

CHAIRMAN STRAIN: Okay. Now you used the word preserve again.

We have Estey Avenue. That particular site is on the northwest corner. It's been -- let's assume it's been previously legally cleared and let's assume it's 10 acres.

MR. LENBERGER: Okay.

CHAIRMAN STRAIN: They have remaining a bunch of standing, large trees. Those trees, because it's not native preserve, because it was cleared, you are going to require 25 percent of those trees to be saved?

MR. LENBERGER: Correct.

CHAIRMAN STRAIN: Okay. But they wouldn't be in a preserve?

MR. KLATZKOW: Correct.

CHAIRMAN STRAIN: Because you used the word, preserve, and you said you were going to preserve the trees.

MR. LENBERGER: I'll say retained.

CHAIRMAN STRAIN: And I'm confused again.

You are going to save 25 percent of the trees. And, of the 25 percent you save, you have got to be a minimum of 30 feet from the nearest trunk?

MR. LENBERGER: Correct.

CHAIRMAN STRAIN: Okay.

MR. LENBERGER: Unless you have an arborist evaluate it and saying that it's okay to get closer.

CHAIRMAN STRAIN: Okay. That's fine.

Am I the only one that didn't understand that? I guess so. Well, now I get it.

But thank you. I appreciate you walking me through it, because I just didn't follow it.

COMMISSIONER MURRAY: I have a question.

CHAIRMAN STRAIN: Go ahead, Mr. Murray.

COMMISSIONER MURRAY: Let's say, for the sake of argument, we use that same example, that structures were ultimately built there and they had an arborist certify that they could be closer than 30 feet. Reality is that very often, in insuring the buildings, the insurance companies require that the branches be trimmed back to avoid destruction to the building in windstorms.

What are the implications there?

MR. LENBERGER: This amendment doesn't address the trimming. We would -- I would assume the trees would be trimmed according to arborists' guidelines, and we would -- we don't regulate that here. This is retention of the trees.

The tree trimming would have to be done, hopefully, by a professional. The professional is going to evaluate the distance. I would hope that an arborist would trim the tree properly.

COMMISSIONER MURRAY: I think hope is not a good word here.

MR. LENBERGER: We don't regulate --

COMMISSIONER MURRAY: We bring it to the edge in terms of requirement and then we let it drop off into space because, quite frankly, it would be a lawn company that would be hired to do that. Whether they have certification or capability is a question that often is raised.

MR. LENBERGER: Are you suggesting we increase that distance?

COMMISSIONER MURRAY: I'm suggesting that we're not yet there, to where it is you want to get because it's a set of arbitrary standards that, in reality, you're going to meet with another set of arbitrary standards, and you are going to have a problem. You are going to end up with code cases; you are going to end up with issues.

So I don't think you have satisfied -- I don't think you have achieved your results.

MR. LENBERGER: Well, also, too, though, if the tree dies, we do have criteria for replacing the tree, if it dies.

CHAIRMAN STRAIN: Any other questions on Page 146?

If not, we'll move to 147. Any questions?

(No response.)

CHAIRMAN STRAIN: Why did you drop Paragraph 5? Well, former Paragraph 5. It's been crossed out.

MR. LENBERGER: Yes. I'm looking.

CHAIRMAN STRAIN: Okay.

MR. LENBERGER: It really doesn't have any -- it's kind of feel good language. It really is not enforceable. It says, to the greatest extent possible native vegetation in quantities and type as set forth in 4.06.00 shall be incorporated into the landscape designs in order to promote the preservation of native plant communities and to encourage water conservation.

Here we kind of set criteria for retaining trees. I don't think this is needed at this point.

CHAIRMAN STRAIN: Well, it just sounded like positive things, but, if there is -- if it's going to be accomplished by not having that paragraph in here, then I'm satisfied with it. I'm curious what your reasoning was.

Number 6, it says you are going to determine, the third line, the amount of, basically, where native vegetation used to be at the time prior to the illegal clearing. How is that found out?

Say you have a clearing that is now discovered to be 15 or 20 years old. How do you know what the native vegetation was prior to that time? And I'm assuming the native vegetation would be not inundated with exotics.

MR. LENBERGER: We look at historic aerials, if we have them available. They are not available in all portions of the county, particularly the eastern reaches. But that's an initial approach. And, normally, when environmental consultants look at products, we look at the signatures of the landscape in an environmental sense. And you can pretty much read the type of vegetation on a site, areas of, for example, Melaleuca or Brazilian Pepper or Cypress. But that's how we look at it.

There was concern from the consultants we dealt with, on this, and this is why we put in the ability to get an after the fact clearing permit, particularly for those older parcels. That's why we include the triple I in there. We want the ability to make it legal. And, if they had an in-ag. use, the ability to get an ag -- after the fact agricultural clearing permit.

CHAIRMAN STRAIN: And then, triple I, down towards the bottom, it's a bona fide agricultural operation. Do we have a definition of what a bona fide agricultural operation must be?

MR. LENBERGER: It's under the Right to Farm Act, but we haven't had any questions as far as someone

coming in for an agricultural use. They usually grow crops, usually be cattle, something pretty obvious. We haven't had any problem interpreting that.

CHAIRMAN STRAIN: Okay. I do know that you tend to let rows go fallow for certain numbers of years before you do a rotation and I just wanted to make sure that that wasn't disturbing that.

Any other questions on 147?

(No response.)

CHAIRMAN STRAIN: How about 148; any questions on 148?

COMMISSIONER SCHIFFER: I have one, Mark.

CHAIRMAN STRAIN: Go ahead.

COMMISSIONER SCHIFFER: And this is Number 10, you are discussing that you can trim back preserves to meet -- and I guess you are referring to the fire-wise requirements of 30 feet. Would that be allowed? I can strip back the preserve 30 feet?

MR. LENBERGER: Well, 30 feet, I wouldn't just pick that number out. There are different widths of firebreaks, depending on fuel loads and adjoining properties. So I wouldn't just put 30 feet in your mind.

But if there is concern about protection of neighboring properties, having firebreaks is a good idea. We had the state foresters involved, Michael Weston and Victor involved in drafting these amendments. And what we wanted to do is say, we understand you have these firebreaks. They are composed of sand.

A lot of animals do use these areas, whether it's for movement, whether it's for burrowing in them, whether it be for things from insects on up to larger mammals. They are utilized, and natural areas have mosaics of cleared areas, certain different types of vegetation. We understand that.

So we tried to add the fire and fuel breaks in here as counting towards the native vegetation requirement to give them a little flexibility. We want the preserves to be safe, particularly if they are fire dominated.

And I can tell you, from personal opinion or personal experience, that, in Pine Flatwoods communities, those open areas do support a lot of animals, particularly the insect life, and also have interesting plants that grow on them. So it's not a bad thing to have bare soil areas in Pine Flatwoods.

COMMISSIONER SCHIFFER: And why is this in the illegal clearing section? I mean, why do you point that out here? In case somebody cleared a fire break, this would -- wait, never mind. It's not in there. It's a separate item. Okay. I have it.

Thank you.

MR. LENBERGER: Thank you.

CHAIRMAN STRAIN: Ms. Caron?

COMMISSIONER CARON: Under B.

MR. LENBERGER: Which number?

COMMISSIONER CARON: B.

MR. LENBERGER: B. Okay.

COMMISSIONER CARON: Why did you take out the areas of critical state concern? Why was this language struck through? Is it somewhere else?

MR. LENBERGER: Yes. We addressed it in 8, above development standards. I believe it's there in 4.02.14, shall apply to all developments, including single family that's in ACST.

We tried to break it out, make it clearer.

CHAIRMAN STRAIN: Okay. Page 148, anything else? If not, 149.

Any questions on Page 149? And that Item 2C is going to be left for discussion when Transportation gets here to try to explain it.

Is that where we're at? I think D is a similar situation.

What is -- in your mind, how does, Steven, how does D work?

MR. LENBERGER: D?

CHAIRMAN STRAIN: D.

MR. LENBERGER: Existing utility and easements for ingress/egress. Often when we look at properties in for development, they will often have 30 feet or 15 feet, or whatever the case, along the edge of the property on some areas allowed for ingress/egress for adjoining properties. And they have a legal right to clear those areas.

So, in essence, that's a legal access. We shouldn't be penalizing a property owner for retaining that portion of

the vegetation where their neighbor can come in, who needs that, come in for a clearing permit and clear it.

CHAIRMAN STRAIN: So that, when you do the total gross calculation of native vegetation area, you exclude any native vegetation area that is in an easement that would potentially be cleared, or whatever?

MR. LENBERGER: Yes.

CHAIRMAN STRAIN: Okay. Anybody else?

MR. LENBERGER: Helps clarify it here. That's why I spelled it out.

CHAIRMAN STRAIN: Right. Well, I just wanted to make sure we understood if it's what stirred the question. Anybody else, questions on Page 149?

(No response.)

CHAIRMAN STRAIN: Okay. Well, that one section, through Page 150 or -- 143, we'll come back to just when Transportation gets back and try to clarify what they are looking for.

And with that we'll move on to -- does anybody in the public have any comments on that first piece? Okay. Mr. Hancock.

MR. HANCOCK: Good morning, Mr. Chairman, members of the Planning Commission. Tim Hancock of Davidson Engineering. I worked with the LDC subcommittee on amendments, basically as an EAC/LDC subcommittee we tried to throw as many letters in there as we could.

And, with particular concern on the one you discussed about tree counts, and the Estey Avenue property is actually the poster child for that amendment, as to why it needs to occur.

There are some difficulties with that that I think we can work out. But one of the things I wanted to point out to you is, one of the difficulties we ran into as we looked at dealing with what is and isn't native vegetation and how you do declare what is counted towards a preserve and what's not, is, actually, the definition of native vegetation in itself.

And the problem I have, personally, is, it's in your Growth Management Plan. We define native vegetation in the GMP. Why? We don't define building height in the Growth Management Plan, but we define native vegetation. And we find there are problems in how it's applied. It all comes back to the same issue: Well, we can't touch that, it's in the GMP.

So what I'm going to ask you to do as you go forward is I'm going to ask you to forward a recommendation, if you see fit, that, in this upcoming cycle, that the definition of native vegetation either be reviewed in the GMP or removed from the GMP and put into the documents that we, as a county, control, without the state slapping our hand, because I'm not sure the definition itself is perfect. And the fact that it's in the GMP gives us far less ability to make any corrections or changes to it in the future.

So that's the basis for my request, is -- a lot of what you see here is because we're dealing with a definition that may not fit all circumstances but, because it's in the GMP, it greatly reduces our flexibility in how we approach it.

CHAIRMAN STRAIN: Thank you. And I certainly will be talking to staff about that suggestion.

MR. HANCOCK: Thank you.

CHAIRMAN STRAIN: Appreciate it.

Anybody else?

And I think, Ray, as a -- even a -- one item that we ought to do at some point is research why the percentage is in the -- or the definition is in the GMP, how it got there. There was, undoubtedly, a reason for putting it there. If staff could take a look at that and let us know. Before any decision is made that it shouldn't be there I think we need an understanding of why it's there in the first place. Okay?

MR. BELLOWS: Okay. I made a note of that.

CHAIRMAN STRAIN: Thank you.

We'll move on to Page 151, it's 3.05.07, preservation standards.

Do you have anything you want to start out with, Steve?

MR. LENBERGER: This is preserve, dimensional criteria. I have nothing to add for this. We went through this last year. I explained it in the front part of the amendment. We had one consultant, environmental consultant, who proposed the thin layer of picture frame -- picture frame shaped language, which is what we added.

I have nothing more to say about it.

CHAIRMAN STRAIN: Okay. Does anybody have any questions on Pages 1 -- and there is -- it's only a three-page document, 151 through 153? Any questions at all?

Ms. Caron.

COMMISSIONER CARON: Yes. On 153, the last underlined paragraph, is this just giving people an out?

MR. LENBERGER: You are talking B.4 on the bottom of Page 153?

COMMISSIONER CARON: Yes.

MR. LENBERGER: Sometimes you have areas that we're required to retain by the county that are narrower than the minimum width. In order for them to preserve that, they actually would have to create along the edge to at least get the minimum width. And the stakeholders wanted the ability to be able just to retain it as is, so that was at their request.

CHAIRMAN STRAIN: Any other questions through that document?

(No response.)

CHAIRMAN STRAIN: Susan, in the last meeting we had, it wasn't one we could vote on and we had some lingering items left over that we were going to go back and vote on before we finish with this phase or portion.

As we go through today, I would assume the best process from the perspective of staff to keep track is that we vote on things that we can finish with, actually move forward as we have done customarily. Does that still work is that the best --

MS. ISTENES: Yes, thank you. That probably would work best for our recordkeeping as well.

CHAIRMAN STRAIN: Is there any questions from the public on those three pages, 151 through 153?

(No response.)

CHAIRMAN STRAIN: If not, is there -- we can take a motion from the planning commission to recommend for approval, or denial. But it's Section 3.05.07.H.1.B, preserve dimensional criteria.

Is there such a motion, either way?

COMMISSIONER SCHIFFER: I will make that motion, Mark.

CHAIRMAN STRAIN: Approval?

COMMISSIONER SCHIFFER: Motion to approve.

COMMISSIONER VIGLIOTTI: Second.

CHAIRMAN STRAIN: Motion to approve, seconded by Mr. Vigliotti. Is there any further discussion?

MS. ISTENES: Would you make the finding, also, that it is consistent with the comprehensive plan as part of your motion?

CHAIRMAN STRAIN: Of course. Just to satisfy David Weeks, of course.

And the motion maker and the second accepted the consistency with the comprehensive plan?

COMMISSIONER SCHIFFER: Yes.

COMMISSIONER VIGLIOTTI: Yes.

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

COMMISSIONER SCHIFFER: Aye.

COMMISSIONER CARON: Aye.

COMMISSIONER VIGLIOTTI: Aye.

COMMISSIONER MURRAY: Aye.

COMMISSIONER KOLFLAT: Aye.

COMMISSIONER WOLFLEY: Aye.

COMMISSIONER HOMIAK: Aye.

CHAIRMAN STRAIN: Aye.

Anybody opposed?

(No response.)

CHAIRMAN STRAIN: Motion carries, 8 to 0.

Well, we got one down.

And I assume that, when we finish the first book, which will be later today, Susan, if it's convenient, I would like to go back and have staff restate the ones from the prior meeting so we can clean them up and just say improved or not. Is that the best timing to do that?

MS. ISTENES: Do you want to take a vote on those?

CHAIRMAN STRAIN: The ones we didn't have any issues with from the last time.

MS. ISTENES: Yes. You would just need to take a separate vote for each one.

CHAIRMAN STRAIN: Just wanted to clean up -- we have three books. I want to clean up one book as far as

we can before we go into the second.

MS. ISTENES: Okay. That works.

CHAIRMAN STRAIN: Mr. Kolflat.

COMMISSIONER KOLFLAT: Will you identify it by the page that occurred in the first packet?

CHAIRMAN STRAIN: Yes. I'll read out the section and the page it was on in the first packet and then we'll take the vote, as long as we didn't have any return items. If it was a return item, we have to go back to the reasons for its return and discuss that, so --

COMMISSIONER KOLFLAT: Thank you.

CHAIRMAN STRAIN: Page 155 is the next piece.

Steve, anything?

MR. LENBERGER: Nothing more to add. We went through the analysis that you requested last year and your recommendation. I did notice a couple of typos, after proofreading everything before I came here. One of those is on Page 157. That would be Line 31. The section should be 10.02.04, not 01.

And the last paragraph that's bolded should not be bolded. Perhaps there are a few defined terms, and I would have to check, but somehow that all got bolded, so it has to be removed. I just noticed that in proofreading.

CHAIRMAN STRAIN: Okay. Does anybody have any questions on -- and we'll just take this, because it's short enough, 155 through 157?

Steve, on Page 157, under D, the third paragraph, it says, no individual, residential or commercial lot parcel lines or other easements, including but not limited to utility or access easements that are not compatible with allowable uses in preserve areas may project into a preserve area.

Does that conflict with what we discussed in the prior ability for utilities and roads to go into preserve areas?

MR. LENBERGER: No. They would be excluded from preserve areas.

CHAIRMAN STRAIN: Okay. So what happens is, if you've got -- well, the way I read the previous document, I thought what you were trying to say is, if you had a road right-of-way and then you needed more space for the utilities on the side, you could use the preserve areas for that space. Right?

MR. LENBERGER: If the government entity had to take that land and make it part of the right-of-way, it would be removed, yes, from the preserve, but it would be removed from the preserve, it wouldn't be a part of it.

CHAIRMAN STRAIN: So by taking it through that process, you automatically eliminate it as a preserve, so you are really not, then, going into a preserve any longer?

MR. LENBERGER: That's correct.

CHAIRMAN STRAIN: And so D, where it says they cannot project into a preserve if they are not compatible with it, it wouldn't hurt because there are no longer preserves in the area that they have now taken from them?

MR. LENBERGER: Been removed.

CHAIRMAN STRAIN: Phew. Okay. Twisted way we get there but I understand now when you are saying. Anybody else have any questions on those few pages?

Okay. Same process as before.

Are there any public speakers on that issue?

Okay. Is there a motion for either approval or denial, consistent or not consistent with the GMP, for 3.05.07, preservation standards?

COMMISSIONER VIGLIOTTI: So move to approve.

CHAIRMAN STRAIN: Mr. Vigliotti approved that is consistent with the GMP.

Is there a second?

COMMISSIONER SCHIFFER: I'll second.

CHAIRMAN STRAIN: Mr. Schiffer, second.

Discussion?

All in favor signify by saying aye.

COMMISSIONER SCHIFFER: Aye.

COMMISSIONER CARON: Aye.

COMMISSIONER VIGLIOTTI: Aye.

COMMISSIONER MURRAY: Aye.

COMMISSIONER WOLFLEY: Aye.

COMMISSIONER HOMIAK: Aye.

COMMISSIONER KOLFLAT: Aye.

CHAIRMAN STRAIN: Aye.

Anybody opposed?

(No response.)

CHAIRMAN STRAIN: Motion carries, 8 to 0.

Page 159, well, you know what? We're close enough for a break before we get into that one.

Let's take a 15-minute break and come back at five after 10:00.

(A recess was taken.)

CHAIRMAN STRAIN: Okay, everybody. If you'll please take your seats, we'll try move on.

The last, we almost started on, was 3.05.07 H.1.e, created preserves, supplemental plantings and off site preserve criteria. And that's on Page 159, is where it starts. And this one is a lengthier one, so we'll probably take a couple of pages at a time and see where it goes from there.

MR. LENBERGER: Mr. Chairman, if I may?

CHAIRMAN STRAIN: Steven?

MR. LENBERGER: If I may.

CHAIRMAN STRAIN: Go ahead, sir.

MR. LENBERGER: Just looking into the pruning, trying to address Mr. Murray's concerns about the vegetation and trees which were retained, and it is included in the landscape section, basically, instead of pruning it talks about, vegetation required by the code shall be pruned to promote healthy, uniform, natural growth of the vegetation. And it goes on and on. It talks about the National Arborist Association standard practices. It references that in here as well. So it is in here. And, if you like, we can put a reference to it in that portion of the amendment, if that would make you feel better about it.

COMMISSIONER MURRAY: I am not sure, with regard to that, for a direct answer to you, but I can tell you this, that the concern I have is that, after the fact, when the insurance people come in and they make an inspection and make a recommendation that limbs be cut back, that certainly wouldn't necessarily be based on natural styling of the tree, or however you phrased it.

That was a concern I had as to what the potential can be. And I'm glad that you have some intent in here, at least, to try to deal with it. I still think, though, that this tends to -- I was thinking of the Estey property. I remember it well. And, if they start building the structures in there and they try to relate it to this, they are going to be building close to those trees in order to get any kind of logical building in there and make some money.

And that was where my question rooted from, so -- I don't know. I'm not sure. I appreciate you giving us the answer in that regard. Thank you.

CHAIRMAN STRAIN: Okay. Steve, we'll go on, listen to your -- if you have any opening comments on, starting with the policy on 159, we'll go forward from there.

MR. LENBERGER: This is a long amendment. It has several components dealing with the creation and restoration of native vegetation. I took a hard look at that. I worked with stakeholders, got a lot of really good input from environment consultants, the whole process. I'm really grateful for that. And we also took a look at the outside native vegetation retention alternative, as also required by GMP.

It's fairly lengthy. I added a lot of analysis, physical impact. I'll be glad to answer questions you have. I know it's quite long. It might be easier to go page by page like we were doing.

CHAIRMAN STRAIN: We will. I wanted to see if you had any general statements. Now that you've made them, we'll move forward. Let's take a couple of pages at a time.

Pages 159 and 160, are there any comments on those two pages?

Mr. Schiffer.

COMMISSIONER SCHIFFER: This is just to bring me up to speed on this.

In here is where we discuss, if we have a piece of land with no preserves on it, where we will create the preserve, is that right or is that wrong?

MR. LENBERGER: I didn't understand your question.

COMMISSIONER SCHIFFER: Is this in the part of the code that would require the creation of a preserve, if one didn't exist, say, on a commercial property that is required to have --

MR. LENBERGER: Well, legality of clearing on a previous amendment will determine whether you needed to create one. Also in here there is criteria listed for what you can create, obviously if you have site constraints or whatnot with regard to create a preserve. So that is all addressed in here.

COMMISSIONER SCHIFFER: Thank you.

CHAIRMAN STRAIN: As far as the legality goes, the way it would apply is, if you have a piece of property that was legally cleared, then you don't have to do any native vegetation preservation. But, if it was illegally cleared and part of what was illegally cleared had a percentage of native vegetation or a certain amount of native vegetation on it, you are then required to keep a percentage of that, and that percentage, then, is defined as to how it would be recreated by this document, right?

MR. LENBERGER: According to these standards, or go offsite, if you wish to do that.

CHAIRMAN STRAIN: I just -- I am trying to figure it all out.

So we're back on Page 159 and 160. Any other questions?

I have one, and back to the same thing again. I'll have to wait for -- F, up on the top, I just still want to understand what Transportation is getting at with that, since they are required anyway for the other agencies, what they are trying to do with that. I think that's the same question from the previous language. And that particular answer won't hold this particular amendment up. I'll get that answer on the prior one.

Pages 161 and 162. Are there any questions?

Mr. Murray.

COMMISSIONER MURRAY: Going back to 160 and 161, I truly appreciate your desire to provide money, you know, pricing in there. I wonder, though, whether that will serve, in the long term, because of the change in costs associated with products, plants, whether we are doing ourselves a service or a disservice. I'm not aware that we've done this before. That doesn't mean we haven't done it before. I'm not aware of it.

Is that something, Mr. Chairman, that you think is appropriate to keep in there, pricing?

CHAIRMAN STRAIN: Well, this is just in the physical write-up. This isn't going to be in the amendment, so I think -- to try to explain to us how the costs fall for decision making purposes.

COMMISSIONER MURRAY: Got it. Lost sight of that.

CHAIRMAN STRAIN: But Mr. Murray started touching on a point that I wanted to bring up as well.

On Page 61, at the end of your discussion for the bullet points, for by-acre price, if you take the tree, shrub and ground cover cost per acre, as estimated here, it comes to 117,220. You can reduce it by two thirds, based on the note. So that means you take the 117, divide it by 3 and that one third is the cost per acre to recreate.

Is that what we're looking at, about 30,000 an acre?

MR. LENBERGER: It was all broken out in strata. You can break it down, yes.

CHAIRMAN STRAIN: Okay. But if you take each strata, that it says in the note, the number of plantings each, for ground cover, shrubs and trees, and the estimate listed above, will roughly be reduced beside two thirds?

MR. LENBERGER: That's roughly.

CHAIRMAN STRAIN: That's all three strata. So, if you divide the total of all three strata by three, that outcome becomes the one third that is left that you have to do in estimated costs.

MR. LENBERGER: Approximately.

CHAIRMAN STRAIN: Okay. So, to recreate native vegetation, we're looking at approximately 30,000 an acre. Does that stay the same -- I think the answer is going to be yes, because what's native is native. But if the acreage is for an affordable housing project or an acreage is for a multi-million dollar subdivision, they each would be basically having to face the same amount for restoration of native vegetation at 30,000 an acre; is that correct?

MR. LENBERGER: Well, that's the requirement. They could always enhance it more if they want.

CHAIRMAN STRAIN: Let's say minimum, because that's what most people end up doing in a lot of cases.

It just seems that we have some unfair leveraging there. To those that have the high-end projects, that kind of money would be less concerning than the affordable housing projects. And I don't know if there is a solution in that, but this certainly does paint that picture.

I guess I just wanted to mention that because, if there is a solution, we ought to think about it.

Ms. Caron.

COMMISSIONER CARON: This would only affect you if you don't want to keep native vegetation on your site. You only incur these costs if you want to clear every bit of your site, and then pay to have it done somewhere else.

If you have a piece of land and you keep your native vegetation, whatever that requirement is on-site, it doesn't cost you any more at all.

CHAIRMAN STRAIN: Right. Which is -- you are actually making my argument for me because your higher density projects are usually affordable housing projects. Your lower density are the high-priced, high ticket projects.

In this scenario, the high-priced projects, which are much lower density, would have a lot less need to not be able to preserve that additional preserve on-site, whereas your affordable housing projects, because they are high density, would run into this more often, I would think, than your low density, high priced project. I think -- you kind of made my point.

COMMISSIONER CARON: Except that, in those high density situations they are more compact. I mean, you are talking about multi-story, multi-family.

CHAIRMAN STRAIN: But they are more -- they are urban areas, more compact and they are higher density and they are affordable, so they try to fit more on the property. But it doesn't mean the building footprints are less. Generally the building footprints may even be more, to fit more density on and make the price more affordable.

Has anybody put any thought into how this impacts our affordable housing abilities to proceed versus regular high-end housing?

So, if an affordable housing project comes in and can't preserve what they have to, they have to pay about 30,000 an acre to recreate the preserve somewhere else; is that what this says?

MR. LENBERGER: First, that was an estimate provided by one consultant that I contacted. They were nice enough to do that for me.

The price is going to be the same, whoever is doing the project. If you have a high density product, and obviously more site, trying to pack more on, I can see where someone might not want to retain vegetation because they can try to get more in that way.

We have included -- well, it's in the GMP policy, too, of allowing offsite for affordable housing projects. There may be, actually, a cheaper alternative, depending on where the product is, of course. But we have included that specifically in the offsite criteria, as far as affordable housing, and according to the density bonus agreement they have. So if we didn't look at affordable housing, that would be affected by the price of, specifically, through creative education. The same criteria were left there, but we did look at that as far as the offset criteria.

CHAIRMAN STRAIN: Mr. Schiffer.

COMMISSIONER SCHIFFER: Yes. And that is a question I have in the offsite. We can wait until we get there. Is this a good time?

CHAIRMAN STRAIN: Go ahead.

COMMISSIONER SCHIFFER: Go to Page 170, and it's F, sub E. What are you exactly trying to say there? I'm confused about --

MR. LENBERGER: It says, affordable housing products with a BCC-approved affordable housing density bonus agreement. The maximum percent of native vegetation retention allowed offsite -- and again, this is applicability for the offsite in this section -- shall be no more than the percent of affordable housing units allowed under the affordable housing density bonus agreement with that limitation to the site as a preserve.

So what we're saying is, if you have a hundred percent of affordable housing, you can do a hundred percent of your preserve requirement offsite. That's what that is saying. If you have a 75 percent affordable housing, you could do 75 percent of that requirement offsite, up to. You can do less, of course, if you want.

CHAIRMAN STRAIN: No. I don't mean to step on Brad, but --

COMMISSIONER SCHIFFER: No. Go ahead.

CHAIRMAN STRAIN: -- I think what this says is, no more than the percent of affordable housing units allowed under the affordable housing density bonus agreement. That's not necessarily a hundred percent of the housing on the site. The density bonus agreement only, I think, addresses the amount of additional vegetation. So I think this reads a little differently than what I think you just said.

COMMISSIONER SCHIFFER: The wording is clumsy. If it is what he just said, it would be a lot easier to write than this.

CHAIRMAN STRAIN: If you have got a density bonus and you're asking for -- say you have a base of four and you are asking for four more units under your density bonus, so you have a total of eight, the way this reads. Your retention would then be what? You are getting an additional four by the density bonus, so the maximum percent of

native vegetation retention allowed offsite will be no more than the percent of the affordable housing units allowed under the density bonus agreement, without limitation to the size of preserve.

So if you are picking up a hundred percent of density, then you can do a hundred percent offsite, but if you are picking up fifty percent density, you only can do fifty percent offsite. Is that the way this is intended?

MR. LENBERGER: Well, that's the way it's written, yes.

CHAIRMAN STRAIN: Okay. But it's not for a hundred percent of the units on-site; it's for a percentage of the density bonus agreement for on-site.

MR. LENBERGER: Affordable housing. That's correct.

CHAIRMAN STRAIN: Now --

COMMISSIONER CARON: It does say units.

CHAIRMAN STRAIN: Go ahead.

Ms. Caron.

COMMISSIONER CARON: Affordable housing units allowed.

CHAIRMAN STRAIN: It says under, allowed under, it says, allowed under the affordable housing density bonus agreement, so that limits the --

COMMISSIONER CARON: I agree.

MR. LENBERGER: How would you suggest wording it?

CHAIRMAN STRAIN: I'm not -- I'm trying to explain it first, and then I think we need to reword it.

Brad, did you have another comment?

COMMISSIONER SCHIFFER: Yes. Could we have affordable housing units that are not there because of the density bonus? I mean, essentially it's a base -- I mean, if somebody did a hundred percent, yes, density bonus, yes. Let's say he could build four affordable housing, he wanted to go in and get eight, this only lets him do 50 percent offsite, if he's building a hundred percent affordable, right?

CHAIRMAN STRAIN: Right. So that we're discouraging building any more affordable than what the density bonus provides by that paragraph, in regards to preserve preservation.

And where that differs, too, is in Immokalee. If the master plan for Immokalee goes forward, in any close manner to the way it's being presented, we have four by right, and four, in some cases, by right again. So you wouldn't need a density bonus, you would actually have it. Maybe we need to consider that as an issue, too.

Ms. Caron.

COMMISSIONER CARON: If what Stephen said is the real intent, the language needs to be rewritten so that it says that, I mean, if that's really what was intended.

And is that your testimony? Is that what you are saying?

MR. LENBERGER: I will have to look at this. I'm not an expert on this topic, by any means. If you could provide suggestions, it would be appreciated.

CHAIRMAN STRAIN: Let's wait until we get to it and we can flush it out as we get there.

We left off on Page 161. If there are no more questions there, we have 162 and 163, which wraps up the staff's introduction to this policy.

Anybody have any issues with that?

If not, we'll move into Page 164 and 165.

Any questions there?

On your Item 1.i.a. you added the words, or removal of fill where site elevations or conditions require placement of fill, is the way it used to read. Now it's, placement or removal.

There isn't a site in this county that wouldn't require one or the other. And then, who decides if it's harmful in regards to survivability of native vegetation? Is that done by the applicant's consultant or does staff come up with the criteria for that?

MR. LENBERGER: The applicant would propose to create vegetation.

CHAIRMAN STRAIN: But by adding the word, removal, you are talking about excavations, right?

MR. LENBERGER: Yes.

CHAIRMAN STRAIN: Which changes hydrology?

MR. LENBERGER: Which could affect vegetation, yes.

CHAIRMAN STRAIN: So the creative preserves would then -- this is applicability under creative preserves.

So anywhere where you have -- so any site, then, is basically -- let's see. Criteria for determining when a parcel cannot reasonably accommodate both a required on-site preserve and the proposed activity include -- okay.

So any site, basically, you can do creative preserves? Every site is going to have either placement or removal, or both?

MR. LENBERGER: Depends on the site constraints. You know, the development community, at least the products I've looked at, they don't particularly want to create vegetation. It's expensive to do that.

CHAIRMAN STRAIN: Right.

MR. LENBERGER: So they try to retain it. But there are instances where you have a lot on your site, you need to.

Did you want to the tighten that up or --

CHAIRMAN STRAIN: No. I'm just trying to understand it, because, as we understand all of the pieces, maybe it will develop more issues. I just need an understanding of what you were getting at.

Any other questions on Page 164 or 165?

Page 166 and 166, any questions?

Under your Number 6.b.i., second paragraph, third line, talking about utilizing larger plant materials to quickly recreate the loss of mature vegetation, but in your prior discussions, under your narrative, you indicated that the smaller plant materials have a higher percentage of survival rate. Is this contradicting that?

MR. LENBERGER: Different plants have different sensitivities as far as container size when you plant them out. So we did -- in this amendment, we broke out certain species which do better, smaller.

CHAIRMAN STRAIN: That's what --

MR. LENBERGER: But there is also a size you have to meet in order to be able to compete with other vegetation. You can't just put a tiny plant in, in a lot of instances, and be shaded out by other plant material. So there is a balance there. There is a gradation.

As far as larger plant material, that's -- in the GMP, to recreate native vegetation, you want to do it faster. What staff did is kind of look at the balance, okay.

You have 14-foot high trees, I mean, they may do fine in an irrigated landscaped median, but you put them a preserve, survivability or the ultimate success of that plant is going to be lower or jeopardized.

So we kind of looked at a balance, still having larger sizes, to more quickly create the vegetative community but less than what we had, trying to create a balance there where you would get more of a visual impact for the community, because they had concerns about this initially. That's how it got on the GMP. But, understanding that we want the vegetation to be successful, to do well, which is obviously what the community would want to do as well.

CHAIRMAN STRAIN: Okay. Any other questions on Page 166 or 167?

Page 168 and 169. Any questions there?

Page 170, and 171. We're back to the paragraph that Brad previously brought up. And it's, I think the intention or the suggestion is that it shouldn't be limited to just that affordable housing acquired by the density bonus agreement. It should be for all affordable housing on the site, as a percentage of the overall site. So if you have a hundred units allowed, both as a density bonus and as a base, and you use 80 of those for affordable, then you've got an 80 percent ability to move offsite. So that just -- those came from the density bonus. I think that is where we're all coming from.

F.i.a., you have the applicability for offsite vegetation retention. Now, that means you can do some mitigation offsite. Is that what that means?

MR. LENBERGER: Yes. You can call it that. That would be --

CHAIRMAN STRAIN: A different way of saying it?

MR. LENBERGER: Right.

CHAIRMAN STRAIN: So, if you were a church, under a conditional use, where would you fit in here in having the ability to go offsite for your mitigation, if you needed to? Because I looked at F.i.a, and A is -- doesn't seem to fit for churches or conditional uses. It just says, property zoned commercial or industrial.

How would you fit -- because I know you have had some issues with churches. And so how would that work for offsite vegetation, in lieu of on-site, where it was needed?

MR. LENBERGER: Well, the preserves -- well, the churches would be -- if they had a small preserve, D, preserves less than 1 acre in size, they would qualify there.

CHAIRMAN STRAIN: Okay. So even if you had it listed as one of the zoned property in A, they still qualify

from the other criteria?

MR. LENBERGER: That's correct.

CHAIRMAN STRAIN: Any other criteria provided in any type of zoning, except if you have a commercial or industrial zoning, it's got to be less than 2 acres in size, so that's why you added A in there; is that --

MR. LENBERGER: That's right.

CHAIRMAN STRAIN: So if someone has a half-acre preserve requirement on-site and they kind of aren't able to do that anymore, they can purchase that half-acre offsite as a created preserve somewhere else?

MR. LENBERGER: Correct.

CHAIRMAN STRAIN: And we cleaned up E.

MR. LENBERGER: Well, it wouldn't be to create a preserve offsite.

CHAIRMAN STRAIN: It would just be offsite. Okay.

Anybody else on Page 170?

Page 171, up on top, H, and then it goes to regular I. Now, this is offsite vegetation retention, the applicability. Portions of preserves located within platted single family lots. I thought single family lots were exempt.

MR. LENBERGER: I'm not following you. What page?

CHAIRMAN STRAIN: Page 171, top of the page, Item I.

MR. LENBERGER: Okay. I see. Little I.

CHAIRMAN STRAIN: Yes.

MR. LENBERGER: Portions of preserves located within platted single family lots. There are preserves, and there have been preserves in the past, and still existing today, with special preserve easements on property. So they were -- the county allowed preservation requirements to be retained on the individual single family lots historically. And we recognize that they are out there. And what we're doing is we're giving the option for the single family lots to take a portion within their lot offsite, understanding that it may be a hardship on the single family lot owner.

CHAIRMAN STRAIN: I understand. I just -- previously the discussion was that there is an exemption from certain preserve requirements for the preservation, and that's why this didn't seem to fit. I understand now.

MR. LENBERGER: They were done as a whole subdivision.

CHAIRMAN STRAIN: I understand.

J. Now, this is back to that public infrastructure thing, where future planned public infrastructure, approved by the BCC, requires preserves to be located elsewhere.

What does that mean now? I mean, the other one, the other explanation you gave us in regards to the road system was that, if the county or somebody wanted to put a road in and it took out some existing preserves of a PUD, then the PUD would have been required to come back and potentially create more preserves. Doesn't this do that?

MR. LENBERGER: For future planned public infrastructure, approved by the BCC, required preserves to be located elsewhere. The roads -- this is for the offsite applicability. It would be a requirement for the roads, per se, because they would be sand, so -- but it could be other infrastructure, so -- I guess, if that were to read more correctly, future planned public infrastructure, excluding roads, right-of-way.

CHAIRMAN STRAIN: But the language that I questioned on Page 143 previously, that we're going to have to hear again, or discuss shortly again, I thought included roads in public infrastructure.

MR. LENBERGER: Let me check that.

CHAIRMAN STRAIN: My question is, if it was already -- are we consistent? In fact, it says, right-of-way acquisitions by any government 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.

MR. LENBERGER: What page was that?

CHAIRMAN STRAIN: That was on Page 144. That's the previous policy that we're building some of this stuff off of.

MR. LENBERGER: Let me take a look at that.

This is in the right-of-way acquisition area, including utilities within that area. So it is for, basically, the road projects. It could be other forms of infrastructure.

CHAIRMAN STRAIN: I'm just trying to figure out how it applies so I can understand it better.

MR. LENBERGER: Probably should exclude the right-of-way acquisition area, right-of-way.

CHAIRMAN STRAIN: Okay. Then it would tie to that policy.

MR. LENBERGER: Excuse me. Just to clarify that.

CHAIRMAN STRAIN: Okay. Then it wouldn't be the same.

Any other questions on Page 171?

MR. LENBERGER: I see one typo, Line 30, NRPA, apostrophe, S; that should not be apostrophe, just small S.

CHAIRMAN STRAIN: Okay. 2B, preserve shall remain on-site if located adjacent to or within natural flow ways, natural water bodies, estuaries, government required preserves, not being the offsite preservation purpose.

Under that classification, knowing we have new FEMA maps coming out in April, isn't the entire county, then, going to required to be on-site? I mean, they must put us all in, basically -- I don't know if they call them flow ways or what they are going to call them.

COMMISSIONER MURRAY: River --

CHAIRMAN STRAIN: Does this paragraph -- has it taken into consideration the new FEMA maps, and do they apply to this? Okay. That is a better question.

MR. LENBERGER: Natural flow way is a defined term and I would have to take a look at the definition.

CHAIRMAN STRAIN: I mean, FEMA certainly is going to have to have some definition as to why they are saying the entire county floods, so they are going to call us something.

MR. LENBERGER: Flood but isn't considered a flow way. We use natural flow way as defined in the LDC. I do have the definition at the back table. I could pull it out for you, if you would like to see it.

CHAIRMAN STRAIN: Could you check that language with Robert Wiley to see if there is a conflict in terminologies between the new FEMA maps and what B would be required?

MR. LENBERGER: I will do that.

CHAIRMAN STRAIN: And that clarification is all my concern is.

Any other questions on 170, 171?

172 and 173. Anybody have any questions there?

On Page 172, up on top, A, applicant shall make monetary payment to Conservation Collier.

Conservation Collier was created by that special tax, right?

MR. LENBERGER: Correct.

CHAIRMAN STRAIN: Wouldn't we -- why are we -- it's like we're treating Conservation Collier as a separate agency, and it's not. It's not, I don't believe, is it? I mean, why are we making it to Conservation Collier? Who oversees the money going in there, how is it handled? Why wouldn't we make it to Collier County and let Collier County decide how it goes, because we're not -- I would hate to see Conservation Collier be created and all of a sudden become almost a new agency, standing by itself in perpetuity.

I don't know if the taxpayers were told that or intended that when we voted that in. I know they bought land in perpetuity, but to require monetary payments to them, they are the --

MR. LENBERGER: They are the county entity which buys preserve lands and manages those preserve lands in perpetuity. There are also mitigation products. I know, for example, that the transportation department handles mitigation.

CHAIRMAN STRAIN: Ms. Caron.

MR. LENBERGER: Go ahead.

COMMISSIONER CARON: Well, I was just going to say, I think Conservation Collier is going to be here forever because they have to manage those lands in perpetuity.

CHAIRMAN STRAIN: Well, I understand that.

COMMISSIONER CARON: They bought them that way and so --

CHAIRMAN STRAIN: But isn't --

COMMISSIONER CARON: Giving, I guess, having the county turn what, in a sense, is mitigation dollars over to them, is the right place for it to go, to help pay for the long-term care of these lands that all of us have bought and paid for.

Is that what it -- is that the goal here?

CHAIRMAN STRAIN: So offsite native vegetation retention requirements can be met by monetary payment or by land donation?

MR. LENBERGER: Right.

CHAIRMAN STRAIN: And so when a developer or landowner comes in and is required to do something, we

can exact from them a demand to make payment to Conservation Collier?

MR. LENBERGER: If they wish to not preserve native vegetation on-site and they meet the criteria in order go offsite, they have that option to give money or donate land to a receiving entity to manage that land. They also wouldn't have to manage preserves on-site. They would be pretty much saying, okay, it's done offsite. Conservation Collier is going to manage it. Here are the funds.

CHAIRMAN STRAIN: Mr. Wolfley.

COMMISSIONER WOLFLEY: It was my understanding that Conservation Collier was made up of a group of people who chose particular sites for preservation land, and, then, out of that, the BCC, upon their recommendations, chooses a particular piece that is going to be purchased for a particular amount of money. So if it was Collier County that writes a check for that land, then it should also be accepting money from a particular, let's say, a developer or a person.

And then, if they choose to forward that money or keep that money for Conservation Collier, which I think is what the chair was referring to, it is not an individual, stand-alone entity, it's an advisory committee, so to speak. Is it not?

MR. LENBERGER: Conservation Collier is a county program.

COMMISSIONER WOLFLEY: Okay.

MR. LENBERGER: I'm not an expert on the budgeting and how that works. I know Conservation Collier is the entity that purchases and managing it.

COMMISSIONER WOLFLEY: But they don't have a checkbook.

MR. LENBERGER: Right. It's the county.

COMMISSIONER WOLFLEY: Thank you.

CHAIRMAN STRAIN: Then how can you deposit the check? I mean, my complaint is not that we're trying to use this for more preservation land and useful purposes like that. I just don't know if Conservation Collier is the right entity to have a check made out to and deposited in the name of.

MR. LENBERGER: Right. We'll look at that.

CHAIRMAN STRAIN: Okay.

MR. LENBERGER: And we'll get clarification.

CHAIRMAN STRAIN: But that is riddled throughout that whole page. So wherever you see the reference to Conservation Collier, you really need to see, should it be better Collier County and Collier County breaks it down in the budget process.

Mr. Murray.

COMMISSIONER MURRAY: I think you can correct it easily enough by simply saying Collier County, parentheses, for Conservation Collier purposes, close parentheses. That means it's earmarked for Conservation Collier purposes, but it clearly shows it goes to Collier County.

No?

CHAIRMAN STRAIN: I mean, it could be. But, if Collier County receives the money and the purpose of the money has to be for purchase and management of offsite conservation lands within the county, why do we need to limit it to those owned by Conservation Collier?

COMMISSIONER MURRAY: I agree. I didn't realize the qualification of that. Thank you.

Yes, I agree.

CHAIRMAN STRAIN: Would you look into that and get back with us on that?

COMMISSIONER MURRAY: Good point.

CHAIRMAN STRAIN: Any other questions on 172 or 173?

Ms. Caron.

COMMISSIONER CARON: On the PUD zoning, on PUDs we're required, on master plans, to indicate the certain amount, a certain percentage of preserve?

MR. LENBERGER: Current code requires a minimum of 75 percent of the preserve to be identified on the PUD master plan.

CHAIRMAN STRAIN: Back on the Conservation Collier thing. I've just been reading my notes on the next page, because I had the other page full.

I went through and pulled the Conservation Collier management plan. My note -- and I don't have it with me,

unfortunately -- it says, Page 14 of Conservation Collier does not allow infrastructure or improvements on Conservation Collier property.

So you may want to be real careful of what of these you put into CC property, because, if they don't allow infrastructure improvements on those properties -- I wish I had the paragraph with me. I didn't have time to bring it. Take a look at that, though, to see if it has any negative impacts with the changes you are making to the allowance of roadways and other utility systems in preserves. These would be -- I know they would not be preserves, once they are in there. But, if Conservation Collier purchased the property, and you want to put a road next to it, in which your other application is supposed to apply, could you now do it? So that's the only cautionary thing you might want to look at when you pull this up. Okay.

Anything else on through 173? And I think that one is going to have to come back for discussion. We'll move on to Page 175.

Any comments before we go right to the pages, Steve?

MR. LENBERGER: No comments.

CHAIRMAN STRAIN: Any questions on Page 175 or 176?

Now, this is the preserve management submission and the fact of putting it on an SDP, in this second paragraph.

What is the rationale for the per sheet charge? I mean, basically, you guys are supposed to be a non-profit, or at least they -- you are supposed to bill out what it costs you to do it. And any additional fees -- I just got done experiencing this. And I went in to -- and I was helping a homeowners association in North Naples process their plans for a preserve management on an SDP, and, thankfully, it got corrected. But, because they went a couple of times and had a rejection and some minor changes, changes that would have taken somebody very little time to see the change and read it, when I went back in they wanted a thousand dollars for the re-submittal, for a one paragraph change that was only a couple sentences. I said, how could you possibly justify that?

It turns out it wasn't really applicable, the way it was thought to be at the time and it got taken care of. But how can you justify those fees on that page? I'm just astounded by them.

MR. LENBERGER: Our department -- I don't regulate fees. Like, I let Ray speak to fees and plans. They are to cover --

CHAIRMAN STRAIN: Ray is going to have an answer, I know that. He's getting as good as Nick at that.

Ray, is somebody -- I heard Nick stand before the Board of County Commissioners right after he had first gotten his position saying he was going to look over all of the fees and the bases for those fees and he was going to look at a different way of charging by the actual expenditure of time.

Would these fees be subject to that review as well?

MR. BELLOWS: I believe they could be. I think, my understanding of what Nick is explaining the concept, is that they would fall under that. Any kind of staff time involved in any kind of project review, whether it's a land use petition, we charge, or even if it's other research we do for other divisions within the county. That's staff time that is being taken. And, if we're going to operate like a private business, we are going to bill.

CHAIRMAN STRAIN: I understand Stephen's comment. It's not part of his -- it was in this document, that's why I questioned it. But at some point let's see what happens.

I know you can't answer that question. I should have thought about that before I brought this up, so I'll move on.

Anything else on 176? If not, is there anything on Page 177?

COMMISSIONER SCHIFFER: I do.

CHAIRMAN STRAIN: Mr. Schiffer.

COMMISSIONER SCHIFFER: In double I, the second paragraph down, a strange thing. What you are saying is you want a berm or a wall between the preserve so that non-preserve vegetation doesn't sneak in?

MR. LENBERGER: Well, that's one of the things, that, yes, that could happen. It's just to preserve the integrity of the retained vegetation. And what this says here is, you have the option of either putting a berm or a wall to define the boundary, or some sort of program to control the edge that occurs, such as lawn grasses creeping in, things of that nature.

COMMISSIONER SCHIFFER: So, then, in other words, you would be happy if there was a curb surrounding all of the preserves? That would suffice?

But how do you really do that? And a wall -- let's say somebody actually built a tall wall. Then you don't even

see the preserve. Why capture the --

MR. LENBERGER: It doesn't say the height of the wall. It could be a stem wall. But it's -- the idea here is just to protect the integrity of preserve. And most of the time you will see a small berm, and they will have a program where they will either edge the grass -- and, if the grass goes beyond that point, sometimes herbicide just the edge of it, just to keep it in balance so it doesn't encroach in the preserve.

That's all we're talking here. We're just giving the option, however they want to handle it.

COMMISSIONER SCHIFFER: But you don't give that edge as an option, you know, a structure, a berm or a wall. I think if the grass had a clear edge, is what -- I mean, if you had to put some material at that edge, be it a divider or something, you are going to really run up an expense. These are large --

MR. LENBERGER: It says, or special management program, and that's what that means. It says, a structural buffer, and we gave a couple of examples there, or a special management program to prevent encroachment of undesirable vegetation in the preserve.

So a program would be edging the grass. Most of the time we see a small berm. Also, too, is, a lot of times preserves abut residential, encroachment on the preserve. You kind of put the lawn furniture out there and all kinds of things. We want that boundary defined, visual aspect for maintenance, also for residents to know that you shouldn't be in there planting sod, landscape plans. We've seen that as well.

It's not just a problem in this county. It's a problem for state and federal agencies as well. I dealt with it when I worked with the state quite a while back.

COMMISSIONER SCHIFFER: You know what I think would make me comfortable? Could you add something that actually defines an edge that you would like to see? Because I wouldn't want somebody to point to this and say it has to be a berm or a wall. And you are saying a management program, you know. That's a physical edge.

MR. LENBERGER: Maybe we can put parentheses in there, something about maintaining an edge on the property or something.

COMMISSIONER SCHIFFER: I would feel better with that. It looks like -- you know, when you say berm, that's a hunk of soil, and wall. So it looks like you are requiring something to go into a third dimension to define that edge.

CHAIRMAN STRAIN: Mr. Klitzkow.

MR. KLITZKOW: Just so I understand this, we have God only knows how many existing PUDs with preserves that we have residential property that we have in this county. Is this going to suddenly create a code environment issue throughout the county or are those other places grandfathered from this?

MR. LENBERGER: The double line above that talks about exotic vegetation removal, nuisance vegetation. If they have grasses creeping in the preserve, it already is a violation.

CHAIRMAN STRAIN: Then why do you need this new language?

MR. LENBERGER: This was a clarification. It is under the preserve management plan, to try to guide people to do this, put it right in there, how you are going to maintain the edge, where you might see a problem.

CHAIRMAN STRAIN: If they have a preserve management plan that says in the plan they are required to maintain the edge, isn't that the special management program that you are asking for for encroachment? It's already there, so why are we re-asking for it again in this paragraph?

MR. LENBERGER: Where is it asked for? Maybe I missed that.

CHAIRMAN STRAIN: I thought you said that, up there in double I.

MR. LENBERGER: No. Double I talks about exotic vegetation, nuisance vegetation. Lawn grasses are not native, nuisance vegetation.

CHAIRMAN STRAIN: Right.

MR. LENBERGER: They are creeping in the preserve. They are required to be maintained out of the preserve presently.

CHAIRMAN STRAIN: Okay. So then what is this paragraph doing?

MR. LENBERGER: It's hoping to clarify, to put something in the preserve management plan, that they are going to address the edge before concerns arise. Usually where it abuts residential units is where the problem occurs.

CHAIRMAN STRAIN: You know, I had one of your people review a preserve management plan. I can't imagine they are going to miss something like that. They review every word. I'm just wondering, this may be added language that only confuses the issue, not helps it.

Mr. Murray.

COMMISSIONER MURRAY: I was thinking the same thing.

So, by, a management plan, you have an expectation that the person will come in and, in detail, depict how they are going to maintain the property, is that correct? They are going to file that with you?

MR. LENBERGER: They are going to maintain the preserve.

COMMISSIONER MURRAY: Yes. Maintain the preserve. They are going to file that with you?

MR. LENBERGER: And it's included on the site plans for the whatever, the development subdivision.

COMMISSIONER MURRAY: So that environmental code people will come out and take a look at that and see if they are complying, correct?

MR. LENBERGER: Code enforcement acts on complaints. PUDs are handled through the PUD monitoring process.

COMMISSIONER MURRAY: I don't know. It seems like you have language in there that just, while it's intended to enhance, it may actually --

MR. LENBERGER: Perhaps an easier way to do this, then, if you're concerned about the second paragraph under double I, exotic vegetation paragraph, at the end, add a sentence in there, something about, maintenance of edge, lawn grasses, encroachment of lawn grasses in preserves, something to address that. We can --

MR. KLATZKOW: You -- just a moment. You are going to create, right now, a code enforcement nightmare with this. I'm just telling you right now.

If I own residential property abutting a preserve, I can't put anything into that preserve without committing a trespass. Am I right?

Unless you are going to, on a prospective basis, limit this, you are going to be putting countless properties into violation overnight. I'm just telling you. And I don't really understand the purpose of this language.

MR. LENBERGER: I would suggest, then -- we'll delete that paragraph. But I would say that, if there are exotic vegetation, lawn grasses already creeping into the preserve, it already is a violation.

MR. KLATZKOW: Yes.

MR. LENBERGER: It already is.

MR. KLATZKOW: Yes.

CHAIRMAN STRAIN: So I would suggest --

MR. LENBERGER: -- we're not creating more. It already is a violation of current code, is what I'm saying.

Mr. Klatzkow said we're creating it. We're not creating it. It already is a violation of code, the way it's written.

MR. KLATZKOW: If I have a private residence, not in a PUD, and it borders a preserve, maybe my neighbor's preserve, who has a PUD, I am not going to have a special management program. Does that mean I have to now put up a berm or a wall?

COMMISSIONER MURRAY: That's what it suggests.

MR. KLATZKOW: That's what it says.

MR. LENBERGER: That's not the intent here. If you're uncomfortable with that, I would suggest deleting it.

CHAIRMAN STRAIN: I think, keep it simple, is the better way to go.

MR. LENBERGER: Fine.

CHAIRMAN STRAIN: Any other -- let's take that paragraph out of the picture.

Any other issues on Page 177?

Up on, towards the middle of the double I paragraph, up towards the top, you've crossed out the word, prohibited. Why? Before exotic vegetation bold.

MR. LENBERGER: Line 14, is that what you're talking about?

CHAIRMAN STRAIN: Approximately, yes.

MR. LENBERGER: Preserve would be maintained free of exotic vegetation.

CHAIRMAN STRAIN: Okay. But my --

MR. LENBERGER: Prohibited exotic vegetation are only those listed in the code under prohibited exotic vegetation, which have more implications because you have to remove those from other portions of the property as well.

CHAIRMAN STRAIN: Let me back up and ask my question again.

MR. LENBERGER: Sure.

CHAIRMAN STRAIN: Line 14, actually, it starts on Line 13. It says -- it used to say, when prohibited, exotic

vegetation is removed but the base of the vegetation remains, yada, yada, yada, the base shall be treated.

Now you are going to say, when exotic vegetation is removed but the base of the vegetation remains, the base shall be treated.

Prohibited exotic vegetation is in bold, so I'm presuming that is a defined term.

MR. LENBERGER: Correct.

CHAIRMAN STRAIN: And you are leaving exotic vegetation, so exotic vegetation is bolded.

What is the difference of intensity between the word, prohibited, being in front of exotic vegetation?

MR. LENBERGER: It includes all exotic vegetation, non-native vegetation.

CHAIRMAN STRAIN: Are you requiring, then, the removal of all exotic vegetation and not just prohibited exotic vegetation?

MR. LENBERGER: Actually, we went the other way. We kind of realized -- and I'll explain. We realized that there are all kinds of exotic vegetation. There are always weeds. And, as you know, you can't get all of the weeds out.

The code, the first sentence on that, double I, says, exotic vegetation removal, non-native vegetation and nuisance invasive plant control. It talks about exotic vegetation, removal and maintenance plan shall require that all Category 1 exotics be removed.

If you go to the bottom of that paragraph, it talks about -- find where the sentence starts. It says, it did say, non-native vegetation and nuisance or invasive plants shall be removed from all preserves.

Do you see that?

CHAIRMAN STRAIN: Yes.

MR. LENBERGER: What I did there is I took out, nuisance and invasive plants, under non-native ornamental vegetation, understanding that we're looking at the nuisance vegetation. Not every plant that is native -- we can't remove every weed. That would be an impossible compliance issue. What I'm doing there is saying we're looking at the nuisance stuff.

CHAIRMAN STRAIN: Okay. But that's not bolded, which means it's not a defined term.

MR. LENBERGER: Right.

CHAIRMAN STRAIN: So how do we determine what is nuisance or invasive and what is non-native, ornamental vegetation?

MR. LENBERGER: The environmental community and the environmental consultants we deal with, they are pretty good at identifying those. Generally speaking, most of the time it's what the district requires, as far as Water Management District requires, as far as removal of vegetation from a preserve. That's generally Category 1.

Category 2 species listed by the Florida Exotic Pest Plant Council, rarely, would I see anything other than that being required to be removed.

It is a judgmental call. Obviously the environmental consultant is going to look at that. They are basically following what the district is using. They are using the list which the Exotic Pest Plant Council uses and the Water Management District requires, in both of them.

CHAIRMAN STRAIN: If you have prohibitive -- what is Brazilian Pepper? Let's start with a common --

MR. LENBERGER: That's a prohibited exotic plant for Collier County, and that is a Category 1 plant listed on the Florida Exotic Pest Plant Council.

CHAIRMAN STRAIN: And we know that if you have Brazilian Pepper on your property, before you can get a CO, you have got to remove it all, right?

Now, what if you didn't have Brazilian Pepper and you had something that was only classified as an exotic vegetation? Give me an example of an exotic species, a common example.

MR. LENBERGER: Someone plants a shefflera or a Queen Palm in a preserve, that's an exotic species. Not a defined exotic, according to county code, but it's a non-native species.

CHAIRMAN STRAIN: Okay. Are they allowed to plant non-natives in preserves?

MR. LENBERGER: No.

CHAIRMAN STRAIN: So we're telling them to remove something they are not allowed to put there in the first place?

MR. LENBERGER: To plant things in preserves.

CHAIRMAN STRAIN: I'm trying figure out where this last sentence leads, because this whole paragraph leads up, basically, to the last sentence.

The last sentence used to read, non-native vegetation in plants shall be removed from all preserves.

MR. LENBERGER: And, if we look at all non-native vegetation, that would include every small weed in the preserve.

CHAIRMAN STRAIN: I'm not arguing with your point there. I'm saying, wouldn't we be better off saying, prohibitive exotic vegetation and plants shall be eradicated from all preserves? Why are we going into these non-defined terms that we don't know what they are? They are not even defined in our code? Nuisance, invasive, non-native ornamental vegetation, because I thought you said those couldn't be planted there in the first place in preserves. So they couldn't be planted in the first place, which means, if they are ever found, they have got to be removed because they shouldn't be there.

MS. MASON: Again, for the record, Susan Mason with the Environmental Services section. Perhaps I can try to help clarify this a little bit.

The prohibited exotic vegetation that is the bolded definition, that actually just covers the 12 kind of worst-case that have to be removed from any development in the county, Brazilian Pepper being one, Australian Pine, acacia.

Category 1 is a much broader category of exotics, and those have to be eradicated from areas designated as preserve but not the rest of your property.

So those are two different kinds of exotic definition or exotic vegetation by definition in the county.

And part of the problem, and this is based on some experience I had working environmental code compliance, is, people do often go in in their back yards encroaching the preserve, plant things and then -- or the plants show up. They don't admit that they were put in there and they argue with code enforcement staff that, well, that is just growing there and it's natural.

So this is to clarify that non-native ornamental vegetation that has shown up in a preserve, no matter how, would have to be removed. It's really to clarify for code enforcement that this stuff shouldn't be here and it needs to be removed.

CHAIRMAN STRAIN: Okay. So now we're really down -- now I guess it's this nuisance and invasive plants. How does anybody judge what those are to know if they need to be removed?

MR. LENBERGER: It is an evaluation done by the environmental consultants hired to do the project. And in most cases it is the Category 1 and Category 2 listed plants that occur in this county that the Water Management District requires the removal of.

CHAIRMAN STRAIN: So the Water Management District requires the removal of it in order for them to issue a permit?

MR. LENBERGER: It's a condition of approval.

CHAIRMAN STRAIN: Then why do we want to get into it when we don't really have a definition for it? Why do we even want to bring it up?

Susan's point about the non-native ornamental vegetation, I think that can be identified. And I think the prohibitive exotic vegetation can be identified.

If South Florida already takes care of, to the extent needed, the nuisance and invasive plants, why do we want to get into that when we don't have a definition for it and we're leaving it up to the applicant's expert to tell us, and then us starting to debate it with him, whether or not we consider as a nuisance as he thinks it is or as invasive as he thinks or she thinks it is? Why do we want to get into all of that?

MR. LENBERGER: First, the county requires preserves, that aren't district required, so the district would not be involved. That's one example.

CHAIRMAN STRAIN: I thought you just said --

MR. LENBERGER: Not all county preserves are district required preserves.

The other is, do you want non-native vegetation in our preserves? I would say that it affects the integrity of the preserve and I would say it affects the diversity of the preserve.

CHAIRMAN STRAIN: Stephen, I'm not going there. All I'm trying to figure out is, how does a person read this and know what it means?

What you are trying to do is a worthy goal. I'm not saying it isn't. I'm simply trying to figure out, every citizen in this county that wants to get involved and try to understand our code has to read and understand it. I wouldn't know what you think is a nuisance or invasive plant if I couldn't look it up in the LDC and find a definition for it, and I know one isn't there. That's what I'm getting at.

MR. LENBERGER: Well, alot of the environmental work is stuff that is cut and dry. There are plants coming in all the time that they are introducing to this state. You couldn't possibly list them all.

I mean, we can say, nuisance or invasive non-native plants, but there is still subjectivity of what is a nuisance and what is invasive. And, basically, when something goes in a preserve and all of a sudden starts spreading and displacing native material, it's usually pretty obvious to staff and the environmental consultant.

I haven't personally had any issues with this. This is existing language, talks about nuisance or invasive plants. I added the non-native ornamental, but it hasn't been an issue, at least that I see.

CHAIRMAN STRAIN: Well, then, I hate to suggest this, then why are we changing it?

Mr. Murray.

COMMISSIONER MURRAY: Let me get into the fray here. I'm going to try relate to it the way I understand it, or try to understand it.

On Line 14 you've deleted, prohibited, and you just refer to, exotic. But on Line 30, I think that's 30, you talk about, prohibited exotic, again.

You also talk, on Line 14, about the base, once there, the base has to be treated, presumably for the purpose of eradication, but you don't state that. But for nuisance plants you stipulate eradication.

So I'm trying to understand why you put great emphasis on the non-native ornamental and invasive and only infer eradication for the exotic. And why would you in one case delete, prohibited, and then leave the other one there, if a person reading that would, I think, get kind of confused?

MR. LENBERGER: Couple things. First, let's go to the prohibited exotic vegetation, where prohibited was crossed out. You are right. That's where it is removed. If you remove an exotic vegetation that isn't one of the 12 that is listed as prohibited, plus --

COMMISSIONER MURRAY: That's one question.

MR. LENBERGER: No. Just the 12 that the county has. And if you remove it, you cut it out, a schefflera or a ficus, whatever the exotic is, and you don't herbicide it, kill it, it's going to come right back.

So what it says here is, when exotic vegetation is removed, the base of the vegetation remains, the base shall be treated with appropriate herbicide.

Well, what we're saying is, if you are removing exotic vegetation, you should treat it, not just the prohibited ones but all of the rest because they are just going to come back. So that's all that is saying there.

As far as eradication, that eradication term was given to me by the consultants because otherwise it is removal. We don't want to have to them, force them to remove it. Sometimes that does detriment to the habitat.

Eradication also means killing it in place, is what I'm trying to tell you.

COMMISSIONER MURRAY: I understand what eradication means.

MR. LENBERGER: So that was from the consultants, wanted that.

COMMISSIONER MURRAY: I'm trying to understand. There is a significant difference between the use of that word in that context as opposed to the way you explained it in the exotic vegetation. I could see that you could use the word in both places. You are saying -- you are saying that you cannot.

MR. LENBERGER: Well, where it says here, where it says prohibited exotics, it says, when exotic vegetation is removed. When it's removed. It doesn't say it has to be. It says, when you remove it, the base has to be treated with the herbicide.

If you look above that it says, exotics of an interior preserve may be approved and be treated in place, if it is determined that physical removal might cause more damage to the native vegetation of the preserve.

We're not requiring removal. That says, when it's removed, you treat it. You are either going to remove it or you are going to herbicide it in place, one of the two.

COMMISSIONER MURRAY: I guess that's what my point of confusion is. Aren't you always going to require that it be removed?

MR. LENBERGER: Physically removed, no. The code -- we require within the first 75 feet, and that came about because people didn't want to look at dead Melaleuca trees or dead Brazilian Pepper on the edge of a preserve. That's how it came about. Also a safety concern, with trees falling within that distance. That's how that all came about.

But, other than that 75 feet, we allow them to treat it in place. So eradication is a term the consultants wanted, eradication.

CHAIRMAN STRAIN: Mr. Wolfley.

COMMISSIONER WOLFLEY: Well, I was going to get into some things, but I would just as soon see a tree pulled out than putting chemicals into the ground, but that's just me.

But down on Line 28, and it was to what Commissioner Murray was just referring to, should you just say, invasion, there instead of reinvasion? Because you took out the prohibited exotic vegetation. Now you are talking about the reinvasion of prohibited exotic vegetation.

MR. LENBERGER: Either way is fine with me.

COMMISSIONER WOLFLEY: It doesn't mention it anywhere else.

MR. LENBERGER: It wouldn't matter to me.

COMMISSIONER WOLFLEY: But I didn't get into my first -- I was going to start screaming about chemicals in the ground. Thank you.

CHAIRMAN STRAIN: Any other questions on Page 177?

I think where we left it, that paragraph that was added for about referencing the structural buffer will come out. And, just to let you know, you are going to come back with us anyway. Personally, I'm not comfortable with that last sentence.

MR. LENBERGER: Which one?

CHAIRMAN STRAIN: The one we've been focusing on concerning nuisance and invasive plants. I will look at that myself between now and when you come back and try to figure out a way that I can explain myself.

MR. LENBERGER: We can leave it as is, but then we have a problem with every weed in the preserve.

CHAIRMAN STRAIN: And I am not saying you can leave it as is. I just don't know if putting something in there that isn't defined is the right way to go.

MR. LENBERGER: Okay.

CHAIRMAN STRAIN: So let's go to page -- okay.

Nicole, come up. If it's relevant to the page we're on, that's great.

MS. RYAN: Yes. Nicole Ryan, Conservancy of Southwest Florida, and I hadn't actually intended to speak on this but the term, nuisance plant, really caught my attention. And I would certainly warn against using something like nuisance plant or weed when you are talking about what should or shouldn't be in a preserve because those terms are open to interpretation.

And I'll use the example of Key Marco down on Marco Island. They have a conservation easement that does allow removal of nuisance plants and weeds. And the proposal supplied to the City of Marco Island was the Weed Society of North America's list of weeds. Well, guess what? A weed or a nuisance plant is something that you don't like growing where it's growing. Their list was 58 pages long, 3600 species, including Live Oak, Laurel Oak, I think 24 oak species, maple species. If you leave it open to that interpretation, it becomes problematic.

So, exotic, I think is good. That can be easily defined. Invasive exotic, the Category 1, Category 2, those are great. But for preserves, stay away from nuisance plants and weeds. It's way too broad-based and open to interpretation.

CHAIRMAN STRAIN: I think that's part of the concern we're having.

And here I thought you were only bugs and bunnies. Now you've got plants in your whole background, too.

MR. LENBERGER: That was my suggestion, nuisance or invasive exotic plants. That's what I was talking about earlier, add the word, exotic, or, non-native. Probably non-native nuisance or invasive non-native plants.

CHAIRMAN STRAIN: Could you E-mail us -- I'm saying it for all of us, but I'm probably the one that wants it, too -- a list that you are talking about so I know what you are considering?

MR. LENBERGER: Which list?

CHAIRMAN STRAIN: I list of the nuisance and invasive, non-exotic or exotic.

MR. LENBERGER: There is no such list. It will vary in areas. There are all kinds of plants that could be potentially nuisance. The only thing I can send you is the -- well, you know, it's in the county code, as far as the listed plants, but the Florida Exotic Pest Plant Council list, if you wish, I can E-mail that to you.

CHAIRMAN STRAIN: Well, the only thing -- I'm going to be -- when this comes back, I think my position is going to be that we need to tie it to something definitive. And, if you can't do that, then I have a big problem with the language, so -- whatever you can do to help me along, I sure would appreciate it.

Page 178 and 179, are there any questions on those pages?

COMMISSIONER MURRAY: I have one.

CHAIRMAN STRAIN: Go ahead, Mr. Murray.

COMMISSIONER MURRAY: We're pretty strong on this one. I like this one. Under -- I never saw that before, little i.v. Is that supposed to be four? I guess that's four.

Where it says, the county will accept -- will accept state and federal management plans that are consistent with the requirements of the LDC. And then -- in other words, they have no supersedure rights over us in these matters. That puts us on the top of the pyramid in that phrase. And I don't have an objection to it, I'm just curious about it.

CHAIRMAN STRAIN: So --

COMMISSIONER MURRAY: So if the fed had a plan that was not consistent with our LDC, we wouldn't go along with it?

MR. LENBERGER: Not to scrutinize individual plans. But, just generally, the GMP language that was added to the CCME and the county could be more stringent than the agencies. I hate to say that the language has -- it was in the CCME. I will double check that, but it's on Page -- the first page talks about the policy. I'm trying to find the language. 175, Page -- Line 32, state and federal management plans consistent with the requirements of the LDC will be accepted. That's the GMP language.

COMMISSIONER MURRAY: Interesting. I don't have a -- I mean, I'm an Amendment 10 of the Constitution, I'm that kind of guy, but I just find it interesting that it would be good enough to accept it, as long as it comports with our LDC. I thought that they had certain rights. We accept grants.

MR. LENBERGER: We accept what.

COMMISSIONER MURRAY: We accept grants, money. We accept various things from the federal and state governments and, which, tied to those grants, usually, pretty strong requirements. And some of them may be in conflict with our LDC. That was my question. That's really the basis for my question.

So as long as you are clear that that will never happen, then --

CHAIRMAN STRAIN: Ms. Caron.

COMMISSIONER CARON: I think that that paragraph or that line simply indicates that the county always has the right to be stricter than either the federal government or the state government in any of their plans. We have that right.

COMMISSIONER MURRAY: But it should say that, then. It should say that, not the way it's said.

CHAIRMAN STRAIN: We're on Page 178 and 179.

Up on the top of 179 you refer to wildlife habitat management plans. How many of those do we have in place in the county? What are you referring to there, I should say? Maybe that's a better question.

MR. LENBERGER: Which paragraph are you referring to?

CHAIRMAN STRAIN: Page 179, top of the page, Line 11.

MR. LENBERGER: Fire management plans, is that what you are talking about?

CHAIRMAN STRAIN: That's the beginning of the sentence. Shall be --

MR. LENBERGER: Wildlife habitat management plans.

CHAIRMAN STRAIN: Right. How many of those do we have or --

MR. LENBERGER: Well, they are -- wherever listed species are present in preserves, the preserve management plan will have a wildlife habitat management plan.

CHAIRMAN STRAIN: Okay. Well, that's all capitalized but it wasn't bolded.

So you are talking about each preserve management plan that is created for the preserve management, involving one with species in them?

MR. LENBERGER: That's correct.

CHAIRMAN STRAIN: Now I understand. So wouldn't that be better said, shall be consistent with a wildlife habitat management plan approved by Collier County? Maybe it says the same thing that way. I was just trying to --

MR. LENBERGER: Shall be what, consistent with?

CHAIRMAN STRAIN: I was just reversing the order. My suggestion was, shall be consistent with a wildlife habitat management plan approved by Collier County. I think it says the same thing in the end. I made that note, so I'm not too worried about it.

MR. LENBERGER: I'll take a look.

CHAIRMAN STRAIN: The next one where it says VI, vegetation removal permits, though not required for clearing of fuel management or fire lines in accordance with normal fire and forestry practices. Why don't we add in

there, they wouldn't be required for approved fire-wise safety plans, because those plans have a certain delineation from structures. And if someone goes to the effort to have an approved fire-wise safety plan, why would we want to force them to come in for more permits?

MR. LENBERGER: Well, I think it would be one and the same, as relates to preserves. But where was that, preserve management plans?

CHAIRMAN STRAIN: I don't know where in that paragraph you would put it, but it seems like you would want to throw that -- in the paragraph you refer to, an example, clearing for fuel management and fire lines, all I'm saying is, also for approved fire-wise safety plans.

MR. LENBERGER: Okay.

CHAIRMAN STRAIN: Those are becoming more popular in the area, and we might as well help them when they are.

And the last page is 180. Any questions through that element, up to Page 180?

Okay. I think you are going to be coming back with some return on that one, Stephen, so we'll wait until you come back with that.

MR. LENBERGER: Sure.

CHAIRMAN STRAIN: Then the next one -- go ahead, Ms. Caron.

COMMISSIONER CARON: Before you go on, what was it that it you just wanted, approved fire-wise --

MR. LENBERGER: Safety plan?

CHAIRMAN STRAIN: Fire-wise safety plan.

COMMISSIONER CARON: Fire-wise.

CHAIRMAN STRAIN: A lot of the communities and homeowners associations are getting approved. That's a nice thing for their insurance and everything else

CHAIRMAN STRAIN: The next one is, we skip a few pages and we go to Page 199.

Now, we want to break for lunch at some point. I don't know how much of a discussion this one will be, so I guess I will ask the panel.

Do you want to break for lunch now and come back at, say, 12:30 or do you want to wait until we're closer to 12:00.

COMMISSIONER CARON: Always better to --

CHAIRMAN STRAIN: Do what?

COMMISSIONER VIGLIOTTI: Do it now.

CHAIRMAN STRAIN: Do lunch now or do the review now?

COMMISSIONER VIGLIOTTI: Do lunch now.

CHAIRMAN STRAIN: Lunch now. Okay.

Everybody else?

Okay. Let's take a -- we'll go for an early lunch while we can still get in line downstairs and we'll come back at 12:30 and we'll finish this one up.

(A lunch recess was taken.)

(Commissioners Vigliotti and Murray are not present.)

CHAIRMAN STRAIN: Okay, everybody, welcome back from lunch. That was the only peaceful time we'll have today or non-confusing time, I hope -- well, I shouldn't say I hope. I hope we don't have any more like that.

There is a slight change from -- before we went to lunch, we were going to come back and discuss 30 -- I mean, 5.05.02, which is on Page 199. Just after the break, I found out that that needed to be continued, and so that item won't happen until March 10th. So with that not being up, we'll move right into the other items on the agenda, which is -- starts on Page 181, and it's Section 4.02.01 D.9.

And, Ray, are you filling in for Susan?

MR. BELLOWS: Susan will be up in a few minutes. Can we go maybe to the next one?

CHAIRMAN STRAIN: Okay.

MR. BELLOWS: Homes.

CHAIRMAN STRAIN: Which one?

MR. BELLOWS: That would be 5.04.04.

CHAIRMAN STRAIN: Okay. So we'll go to Page 197. Everybody, let's go Page 197. Okay.

MS. MOSCA: Mr. Chairman, are we ready to begin?

CHAIRMAN STRAIN: Yes, ma'am. I'm sorry.

MS. MOSCA: That's okay.

CHAIRMAN STRAIN: We're getting orientated here.

MS. MOSCA: That's okay.

CHAIRMAN STRAIN: Ray has us jumping all over this book again.

MS. MOSCA: Good afternoon. For the record, Michele Mosca, comprehensive planning staff.

Generally, the purpose of this amendment is to allow for the application of the model home and model sales center requirements and standards for the estates and rural agricultural zoning districts consistent with the residential zoning districts. Now, this is not a new application of those requirements. In practice staff is already applying these standards to those zoning districts. So it's just a matter of codifying what's presently being done.

CHAIRMAN STRAIN: Are there any other -- any questions? Mr. Wolfley?

COMMISSIONER WOLFLEY: We've been through this a few times. The last one I recall specifically, I think, was along Collier, 951, when we discussed it. And they were -- they were trying to go for almost permanent model homes.

MS. MOSCA: Uh-huh.

COMMISSIONER WOLFLEY: And I had an issue with the commercial -- whether that would designate a commercial area and did not want that.

MS. MOSCA: Right.

COMMISSIONER WOLFLEY: So my -- my question is: I thought in reading this -- and I -- I -- I failed to -- the current LDC, I thought there was a time limit on sale -- or model homes, and then it could be re -- like two years, and it could be re --

MS. MOSCA: Right. I believe -- and Ray may have to correct me if I'm wrong -- with a temporary use, you're allowed a three-year period.

COMMISSIONER WOLFLEY: Three years.

MS. MOSCA: And then, with a conditional use, I think it's at the discretion of the board.

COMMISSIONER WOLFLEY: No, I thought that we changed it to something like five. It was something that I was opposed to; I know that.

MR. BELLOWS: For the record, Ray Bellows.

It's five years for PUD extensions.

COMMISSIONER WOLFLEY: For PUD extensions but not --

MR. BELLOWS: No, the PUDs are good for five years. That was extended from three years, plus you get one two-year extension for PUDs.

COMMISSIONER WOLFLEY: So a two-year extension --

MR. BELLOWS: The conditional uses are good for three years plus one --

COMMISSIONER WOLFLEY: Okay. Well, I'm just --

MR. BELLOWS: -- year extension.

COMMISSIONER WOLFLEY: These are now -- it's the estates and ag. And you -- is this referring mostly to the things in the rural lands? Is that what you're trying to bring into it? Or is it just homes out in the estates where you could go along Golden Gate Boulevard, stick up more of those empty model homes?

MS. MOSCA: It would be for the estates zoning district as well as the agricultural zoning district. So it would be for both. So the same rules would apply that apply now for the residential zoning districts. It's just a matter of consistency, but it applies across the board, that all of those requests for model homes would be consistent with the requirements and regulations of that provision of the LDC.

COMMISSIONER WOLFLEY: Okay. Well, I -- one thing is I hate -- is I don't like to see things repeated. But on the other hand, when -- when you narrow down on, you know, 5.04.04 A, for instance, that first paragraph, a temp -- "The model sales center shall be of a temporary nature." Well, then you've got to go see what is a "temporary nature"? And I just don't know why you can't just keep it in that section. That was an issue I had before. And I'm just saying it's a three -- it's a three and two or whatever.

CHAIRMAN STRAIN: Well, because we have a temporary-use section that actually -- because there's a lot of different temporary uses.

MR. BELLOWS: Yes.

CHAIRMAN STRAIN: And isn't this one defined in amongst those?

MR. BELLOWS: Yes.

CHAIRMAN STRAIN: And I think that's the reason. There's --

COMMISSIONER WOLFLEY: Well, I -- so we're -- we're going to end up then just going back to the temporary uses, trying to find a model home, and then reading that. Is that what we're looking at here? All we're doing is adding the estates ag district?

MR. BELLOWS: It's my understanding we're clarifying some language that was, I think, inconsistent with the Golden Gate Area Master Plan.

MS. MOSCA: That's correct. That's how this particular LDC originated -- LDC amendment originated from, was the growth management plan amendment to the Golden Gate Area Master Plan for conditional uses.

COMMISSIONER WOLFLEY: Okay. Well, I'm not -- we'll leave it with that. Thank you.

CHAIRMAN STRAIN: Just for the benefit, the temporary-use permits are how long? And then they're renewed; is that correct?

MR. BELLOWS: Yeah. The temporary-use permit for a model home, I believe, is three years.

CHAIRMAN STRAIN: Right. Then it's renewed based upon need?

MR. BELLOWS: Yes.

CHAIRMAN STRAIN: And they've got to show need, and staff's got to agree with it?

MR. BELLOWS: Yeah. And then it's -- I believe it's five years to apply for conditional use.

CHAIRMAN STRAIN: That's when -- okay. So after a certain amount of time, it automatically has to go into a conditional-use status?

MR. BELLOWS: Yes.

CHAIRMAN STRAIN: Okay. Anybody else have -- Mr. Schiffer?

COMMISSIONER SCHIFFER: Yeah. Ray, this -- the -- the intent of this is, if you have a model home, it has to be in the zoning district that you want to be selling homes for; is that right? I mean, the confusion is that, if you put it in any agricultural-zoned piece of property, that means essentially you're selling to agricultural-zoned districts, or -- or why do you have that in there? What is the reason for that?

MR. BELLOWS: Well, the intent is that, if you're a home builder and you're selling homes, say, in the Golden Gate Estates subdivision -- there are certain locations where these things are going to be prevalent along arterial roads. And there was some language in the Golden -- Golden Gate Area Master Plan that restricted that, and I believe that language has been removed. And so we're just clarifying that language to allow those model homes to go back on these arterial roads.

COMMISSIONER SCHIFFER: Okay. But -- but this phrase in b that it's restricted to the promotion of the products permitted within the zoning district, I mean, I'm not sure how you would -- in other words, I'm -- I get into the estates, I build a model home, my intent is to use it on vacant lots in the estates; but I can be selling it for -- to be built anywhere. I mean, what are we gaining with that?

Obviously, building a model home in a PUD makes sense, because that model home is to sell PUD -- the product in that PUD. But once we add estates and the agricultural district here, are we -- I mean, because how would you confine --

MR. BELLOWS: It's much harder, I agree, within the estates. If somebody put -- built a model and they're selling homes down in East Naples, and they're not really selling homes in the estates, it's hard -- how is staff going to determine that?

COMMISSIONER SCHIFFER: And why do you care?

MR. BELLOWS: We don't.

CHAIRMAN STRAIN: Well, but the community might.

COMMISSIONER CARON: Yeah. I was just going to say, I can think of a specific example, and that was Falling Waters. Falling Waters built a mobile home sales center in Pine Ridge --

MR. BELLOWS: Oh, that's right.

COMMISSIONER CARON: -- to sell Falling Waters down on the East Trail and Falling Waters up in almost -- north of Wiggin's Pass Road. I don't think that the community wants to support that kind of thing.

MR. BELLOWS: And I don't think that's the intent of this language --

COMMISSIONER CARON: I know, but I'm not sure that the language gets you there.

MR. BELLOWS: -- because --

COMMISSIONER CARON: I think Mr. Schiffer's right.

COMMISSIONER SCHIFFER: If you look at what the language says, I build a -- I can build it in a residential PUD, estates, or agricultural, and I sell product for -- I mean, of course, I'm going to sell residential; I'm selling residences, you know. So that -- there is supposedly control. That just opens it up. Thank you.

CHAIRMAN STRAIN: But at the same time, doesn't it say, "Shall be restricted to the promotion of a product or products permitted within the zoning district in which the model home or model sales center is located and further subject to the following"? So if it's in the estates, they have -- the model home has to be on an estates lot in the estates area, and out of that, they can't sell homes in Marco Island. Isn't that what that's saying? Or do you not agree?

COMMISSIONER SCHIFFER: Well, I mean, that one might be clear. But what -- in agricultural, what does that mean? In other words, any agricultural lot means that I can sell this house for any other agricultural lot?

CHAIRMAN STRAIN: See, actually, I saw that -- maybe I'm -- a lot of times when you go into a development, it's zoned ag to begin with. They might get their ability to put a model home in prior to their finalization of their PUD or whatever else they applied for. I'm not sure if that's where this applies or not.

Ray, do you have an example of where the agricultural reference in here will apply or how it would apply?

MR. BELLOWS: Yeah, let me see here.

COMMISSIONER SCHIFFER: While he's thinking, Mark, let me -- like, how would you control somebody -- I -- in an agricultural -- I build a model home. I mean, I could sell that to people who build in the estates. I mean, it's -- these are private lots. It's not -- it's easy to control within a PUD, because the product can be built in that PUD, but only that PUD has that potential.

CHAIRMAN STRAIN: Yeah, the PUDs have it. And I thought -- the way I thought this was always intended is, if you're a builder in the estates, you've got to -- you get an estates lot, and you can build a model home.

COMMISSIONER SCHIFFER: And I walk in there, and I say, "I have this ag. lot up Immokalee. Can you build it there?" And he will say --

CHAIRMAN STRAIN: Sure.

COMMISSIONER SCHIFFER: -- "Of course."

CHAIRMAN STRAIN: Yeah. But I don't think he's promoting that site as an off-site model site for another location in the community. And I think -- and I think if he was that blatant, this would give a way for code enforcement to stop it if someone saw harm by it. I think periodically it may be happening in reality. But until someone sees the harm in it, I don't think they're going to say anything.

COMMISSIONER SCHIFFER: And I guess the concern is you don't want a strip of model homes for product being sold all over the county.

CHAIRMAN STRAIN: Absolutely not. I think that's -- that certainly is a concern.

Okay. Is there any other -- is there any other issues with 199 and -- 197 and 198? Then at this point, where the language stays as it is, and we seek a recommendation for approval or denial and finding a consistency or inconsistency with the growth management plan. Is there such a motion for either way? Brad.

COMMISSIONER SCHIFFER: Well, I mean, I'm usually the one that -- but I think that the wording of that -- I don't -- I'm not sure it gives you what you want. I'm not comfortable with that.

CHAIRMAN STRAIN: Well, then --

COMMISSIONER SCHIFFER: It kind of says that, but -- but the enforcement of what it kind of says, I think, is impossible.

MS. MOSCA: Now, is the concern having model home sales from agriculturally zoned properties? Is that the concern that you have?

COMMISSIONER SCHIFFER: I think the concern is to have a strip of model homes or a bunch of builders. The intent is that, if you want to put a model home, it's because you're selling something in that vicinity.

MS. MOSCA: But eventually -- because it is temporary in nature, eventually it will go away. It will be a single-family residence.

COMMISSIONER SCHIFFER: Right. I mean, it's just a control thing. I mean, Mark, it's really the estates that could have the problem. So if you're comfortable with it, I'll buy it.

CHAIRMAN STRAIN: Well, I don't -- and, Brad, I'm trying not to miss anything. So I don't understand your

concern, which I would like to understand, because if you have one, then there may be -- somebody else may have it, and that would be a problem. So can you explain to me why that bothers you?

COMMISSIONER SCHIFFER: Okay. What it says is "restricted to the promotion of a product or products permitted within the zoning district in which the model homes or model sales center is located." (As read.)

So the four choices for zoning districts are residential, which is all the residential; a PUD, that one's easy, that one's clean; the estates zoning is estates zoning, quite a bit of that; or agricultural. So essentially if I put it on any ag. lot, it's -- it's not saying that it's really to promote the sale of housing in that vicinity. It's --

CHAIRMAN STRAIN: Well, okay. Now, that's probably -- then I understand what you're saying. Where I read this is, when it said "or model sales center is located," I saw that as meaning if it's located in an estates lot in the estates, then it's the estates that they're selling out of there. If it's located in an estates lot in East Naples, it's the estates areas in East Naples.

COMMISSIONER SCHIFFER: It doesn't say -- it says the "zoning district" in which it's located.

CHAIRMAN STRAIN: Right. It's located in estates zoning, in the estate -- in Golden Gate Estates.

COMMISSIONER SCHIFFER: But if -- I mean, if I --

CHAIRMAN STRAIN: How do you -- give us some -- some correction then if you feel it should be corrected. That's fine. I'm not objecting to it.

COMMISSIONER SCHIFFER: Yeah.

CHAIRMAN STRAIN: I'm trying to get us there.

COMMISSIONER SCHIFFER: I mean, essentially the intent is that it's -- it's for selling homes in that vicinity. But -- but do you think you've described that vicinity -- when you say it's located -- you know, you're really located in a zoning district, which can be all over town. For example, a residential zoning district, there's tons of it all over the place. And you're not corralling it into that neighborhood.

CHAIRMAN STRAIN: How about if you take the word "res" -- where you have the word "residential" crossed out, put the word "vicinity" in, "vicinity of the zoning district in which the model home or model sales center is located." Does that get you --

COMMISSIONER SCHIFFER: Well, actually, if you're happy, like I said, I really will back off, because it doesn't bother me in any way. I mean, this -- I can't imagine anything that -- you know, I know we have model homes in District 2, and I know that they're not selling homes for exactly that vicinity. They're selling for whoever has a vacant lot in the county -- or Lee and Collier probably.

MS. ISTENES: The other instance you might get is somebody with a model in a development that also happens to have a development elsewhere may -- they -- multiple, you know, developments, and they happen to offer the same product, just in a different development. I don't know that we've really had problems or complaints about that.

MR. BELLOWS: No.

MS. ISTENES: So it's up to -- to you-all, but --

COMMISSIONER SCHIFFER: Because you don't know about that.

MR. BELLOWS: Well, I mean --

MS. ISTENES: You usually know about complaints, yes.

COMMISSIONER SCHIFFER: No, but it -- the enforcement of this is what I'm saying. You wouldn't know, you know, where the contracts are being drawn up.

CHAIRMAN STRAIN: Mr. Wolfley.

COMMISSIONER WOLFLEY: Well, it would be like a DiVosta project.

MS. ISTENES: Sure, exactly.

COMMISSIONER WOLFLEY: You know, a DiVosta's a DiVosta's a DiVosta. That's okay. There's five of them, so --

MS. ISTENES: Yeah.

MR. BELLOWS: I don't know how you prevent somebody, even in the estates, selling homes in the estates, from also selling a home elsewhere in the county or in the ag district.

COMMISSIONER SCHIFFER: But that's not what you're writing.

CHAIRMAN STRAIN: If they started doing that and someone objected, you always could just not reissue the temporary permit.

MS. ISTENES: Correct.

CHAIRMAN STRAIN: I don't have a problem with it.

COMMISSIONER SCHIFFER: Then I'll move to forward this to a recommendation of approval.

CHAIRMAN STRAIN: And finding it consistent --

COMMISSIONER SCHIFFER: And it is -- it is consistent with the growth management plan.

CHAIRMAN STRAIN: Is there a second?

COMMISSIONER WOLFLEY: I'll second.

CHAIRMAN STRAIN: Mr. Wolfley's second. Discussion? All in favor signify by saying "aye."

COMMISSIONER KOLFLAT: Aye.

COMMISSIONER SCHIFFER: Aye.

COMMISSIONER WOLFLEY: Aye.

COMMISSIONER CARON: Aye.

COMMISSIONER HOMIAK: Aye.

CHAIRMAN STRAIN: Aye. Anybody opposed? Motion carries. And we're down to --

COMMISSIONER CARON: Seven.

CHAIRMAN STRAIN: -- seven -- yeah, 6 to 0.

Okay. Let's go back and -- since Susan's here, we'll go back to Page 181, and that is Item 4.02.01 D.9. Susan, do you have anything -- do you want to start?

MS. ISTENES: Well, yes, I -- Susan Istenes for the record. I just wanted to bring you up to date. This actually has been in a previous LDC cycle, and the board of county commissioners directed us to go back and employ the assistance of the Development Services Advisory Committee in determining some of the impacts.

And if you look under "Fiscal and Operational Impacts" on Page 181, the bulleted list there is essentially the information we got back from DSAC. This amendment is simply to codify an existing practice by staff that allows encroachments of pool equipment and well pumps if unenclosed into required yards. And 182 just basically shows that. The word "pad" was scratched out, and "ground" was put in, only because in the past there had been some confusion about pads being elevated and whether or not -- what the intent of the regulation was, whether it be a pad on the ground or an elevated pad. So the intent, as staff had been applying it, was for ground, and that's why you see "ground" there, to clarify that.

CHAIRMAN STRAIN: Okay. Anybody? Brad?

COMMISSIONER SCHIFFER: I do. I mean, I would somewhat argue, because that could be confused as just you have to mount it to the ground. So could maybe we put a "slab on grade" or something instead? They have to be mounted on a concrete -- piece of concrete, whether you call it a pad or a slab but --

MS. ISTENES: It doesn't matter to me. It's -- that's acceptable.

COMMISSIONER SCHIFFER: Your intent is that it's not raised, although in flood zones it is raised. So what happens there?

COMMISSIONER WOLFLEY: And we do have new maps coming out, and we do have some -- a whole lot of raisings going on.

MS. ISTENES: Yeah. I believe there's a different section of the code that may address that, and I'd have to pull it out to answer that question. I'm happy to do that if you want while y'all are collaborating.

COMMISSIONER SCHIFFER: Okay. And then the only other thing: Do we want to put any provision to landscape the view of it from the street?

MS. ISTENES: I'm sorry?

COMMISSIONER SCHIFFER: Do we want to put any provision to landscape the view of it from the street?

MS. ISTENES: That's up to you.

COMMISSIONER SCHIFFER: A lot of communities have it where you have to have landscaping on the street side of that so that it's not sticking out here (indicating). I mean, it ends up being a small hedge to --

CHAIRMAN STRAIN: Well -- but if it's elevated because of FEMA, it's going to be a small hedge with high trees. And I understand gated communities doing that, because that's what they get to do.

COMMISSIONER SCHIFFER: Okay.

CHAIRMAN STRAIN: They get to control people's lives. But we ought to have some places in the county where things aren't so controlled. I know that's hard to believe.

Go ahead, Mr. Wolfley.

COMMISSIONER WOLFLEY: I -- four or five years ago I had to have a new well drilled. Well, they did not drill the well where the old well was back by the equipment. They drilled it almost right on the street. I mean, they might just as well have -- but, anyway, it was on my property that I had. And it -- you're right, it is unsightly. It's a white -- well, you know, it sat about three feet. I had to plant some trees around it, because I thought it was ugly.

So, I mean, I -- I kind of agree with Brad there. I don't know if we could make it a condition, but I did mine.

CHAIRMAN STRAIN: I think we ought to prohibit people from letting people drill wells in their front yard.

COMMISSIONER WOLFLEY: I know. I couldn't believe it. You know, I rolled out there in my wheelchair, and I went, "What in the hell is that?" you know, so it was an issue.

CHAIRMAN STRAIN: Did you pay them for it?

COMMISSIONER WOLFLEY: Yes, I --

CHAIRMAN STRAIN: I'm just curious. Why would you pay somebody to drill a well where you didn't want it?

COMMISSIONER WOLFLEY: That's a long story.

CHAIRMAN STRAIN: Okay.

COMMISSIONER WOLFLEY: I was weak at the time.

CHAIRMAN STRAIN: I don't think your example's going to go and happen to a lot of people, though. I mean, I'm not sure we need a code to cover that.

COMMISSIONER WOLFLEY: I guess it depends on the well driller.

MR. BELLOWS: For the record, Ray Bellows. There's certain requirements for health safety depending on where other well sites and septic tanks are located. To meet those health safety standards, it may be forced to put a well site in the front yard.

COMMISSIONER WOLFLEY: That was not -- well, that's true, but --

MR. BELLOWS: It may not in your case.

COMMISSIONER WOLFLEY: -- not in my case.

MR. BELLOWS: But in other cases I've known those situations to exist.

COMMISSIONER WOLFLEY: To make it easier for them.

CHAIRMAN STRAIN: Let's try to get through these two pages --

COMMISSIONER WOLFLEY: Yeah.

CHAIRMAN STRAIN: -- 181 and 182.

MS. ISTENES: To answer your question --

CHAIRMAN STRAIN: Yes.

MS. ISTENES: -- Ray reminded me that, once you're over 30 inches, then you just don't -- you can't encroach. You just have to meet the setbacks. So that would be the difference.

COMMISSIONER SCHIFFER: Okay.

MS. ISTENES: But we talked about that.

CHAIRMAN STRAIN: Okay. So Brad had made a suggestion that the word "ground" be substituted with "slab on grade." Is that still --

COMMISSIONER SCHIFFER: It actually may be better -- why don't we put parentheses "slab on grade," so the -- it's ground -- the intent of it, it's on the ground, and it's essentially a slab on grade, is what -- to use that.

CHAIRMAN STRAIN: Okay. Are there any more comments or questions on Pages 181 and 182? because I have one -- one or two, actually. The reference to the last bullet under "Fiscal Operational Impacts" on 181, "This will create nonconformance for over 100,000 existing residents," now that isn't what you're proposing in this language on Page 182, right?

MS. ISTENES: Correct.

CHAIRMAN STRAIN: So we never saw the original language.

MS. ISTENES: I don't think that it differed much from this. I mean, the language is simply just to allow the pool equipment and well pumps to encroach, because it's not specifically stated in the LDC; but that's been the practice of staff when they've been approving permits. And so just in an attempt to make it more clear, we wanted to add that language in so there was no question.

CHAIRMAN STRAIN: Can you tell me what the reference to the nonconforming -- was it -- was referring to then? I mean, for someone to make a statement that there's -- could be over 100,000 existing residences deemed

nonconforming -- because of what?

MS. ISTENES: I believe -- I think when -- and Catherine presented this to DSAC. But I think one of the concerns was the fact that the board didn't approve it and that, in not approving it, nonconformities would exist because permits had been issued allowing the encroachments by these types of accessories.

CHAIRMAN STRAIN: So you're saying if the board did not approve the encroachments in the side yards, we would have over 100,000 in nonconformity. Is that a simple way of saying it?

MS. ISTENES: Yeah. I don't know if that number's accurate, but that was what DSAC said.

CHAIRMAN STRAIN: Gotcha.

MS. ISTENES: You got it.

CHAIRMAN STRAIN: Okay. Now I'm focusing on where the issue is. If you get to the -- and on Page 182, the second line, Line 16 refers to unenclosed pool equipment and well pumps. What is considered unenclosed? Is it a defined term?

MS. ISTENES: Generally speaking, it's without a roof, you know.

CHAIRMAN STRAIN: So then your air conditioners have to have four sides on them?

MS. ISTENES: Well, you don't have to have anything around your air conditioning.

CHAIRMAN STRAIN: I mean pool equipment. I'm sorry. Pool equipment and well pumps, you've got to have four sides around them?

MS. ISTENES: No, you don't have to have anything. What it's saying is, if you enclose them, you can't encroach, because then it becomes a structure.

CHAIRMAN STRAIN: Okay. So you could -- you can put four sides up, but no roof. That's what I mean.

MS. ISTENES: Correct.

CHAIRMAN STRAIN: That's what I should have said.

MS. ISTENES: Correct. Do you disagree, Ray?

MR. BELLOWS: No, I don't disagree.

MS. ISTENES: Okay. Ray agrees.

CHAIRMAN STRAIN: Well, that makes it fine.

MS. ISTENES: We're ready for a vote.

CHAIRMAN STRAIN: No more questions.

COMMISSIONER CARON: How frightening.

CHAIRMAN STRAIN: Oh. Okay. I understand what you're saying. Anybody else? Okay. Now let's ask the same question again. Is there a motion for a approval, recommendation, denial, whatever? Brad.

COMMISSIONER SCHIFFER: I'll move that we forward with a recommendation of approval based on the amendment of putting parentheses "slabs on grade" after "ground." And that recommendation of approval is saying it would meet the growth management plan.

COMMISSIONER CARON: Second.

CHAIRMAN STRAIN: Motion made and seconded. Discussion?

COMMISSIONER KOLFLAT: What's the page number on that?

CHAIRMAN STRAIN: 181.

COMMISSIONER KOLFLAT: 181. Thank you.

CHAIRMAN STRAIN: Motion's been made and seconded. All those in favor signify by saying "aye."

COMMISSIONER KOLFLAT: Aye.

COMMISSIONER WOLFLEY: Aye.

COMMISSIONER CARON: Aye.

COMMISSIONER SCHIFFER: Aye.

COMMISSIONER HOMIAK: Aye.

CHAIRMAN STRAIN: Aye. Anybody opposed? Motion carries 6 to 0.

We're moving on to Page 185. 185 is the Gateway Triangle. Susan, do you want to explain to us?

MS. ISTENES: I can attempt to. I don't have a lot of the background on this. It's --

CHAIRMAN STRAIN: Okay.

MS. ISTENES: Essentially they're eliminating the reference to a front yard build-to line. And I believe there was a graphic that had that reference on there. So they wish to remove that.

CHAIRMAN STRAIN: And that's on Page 186 where they had it?

MS. ISTENES: Correct. If you see a -- let's see.

CHAIRMAN STRAIN: The top one has it; the bottom one does not --

MS. ISTENES: Correct.

CHAIRMAN STRAIN: -- if I'm not mistaken. And they reference a build-to line on Page 188 -- excuse me -- and on 189 they do not.

MS. ISTENES: That is correct.

CHAIRMAN STRAIN: And on Page 187, they mention a build-to line; and 189, they do not. So what I'm assuming is all the ones that do not reference the build-to line are the new ones; is that right?

MS. ISTENES: That's my understanding, yes.

CHAIRMAN STRAIN: Okay. And the last one is on Page 191, talking about parking locations. The old one is on top, and the new one, I believe, is on the bottom; is that correct? Yeah -- yes, because the build-to line is gone from the bottom one.

MS. ISTENES: Yes.

CHAIRMAN STRAIN: Okay. That I understand. What we have in front of us, does anybody have any questions? Why do they change the trees? Never mind. I'm just kind of.

MS. ISTENES: I really don't know.

CHAIRMAN STRAIN: They went from a royal palm to a sable palm. I'm just wondering, is that a sign of the times?

MR. BELLOWS: I liked the other one better.

MS. ISTENES: I did too.

CHAIRMAN STRAIN: Brad?

COMMISSIONER SCHIFFER: I'll make a motion if you want.

CHAIRMAN STRAIN: Please.

COMMISSIONER SCHIFFER: And you must have been good at where is Waldo? I move that we forward it with a recommendation of approval and with a finding that it's compliant with the GMP.

CHAIRMAN STRAIN: Is there a second?

COMMISSIONER WOLFLEY: Second.

CHAIRMAN STRAIN: Mr. Wolfley. Discussion? All in favor, signify by saying "aye."

COMMISSIONER KOLFLAT: Aye.

COMMISSIONER CARON: Aye.

COMMISSIONER SCHIFFER: Aye.

COMMISSIONER WOLFLEY: Aye.

COMMISSIONER HOMIAK: Aye.

CHAIRMAN STRAIN: Aye. Anybody opposed? Motion carries 6 to 0.

We're on to Page 193.

MS. ISTENES: That was withdrawn. You see it hashed out there.

CHAIRMAN STRAIN: Oh, you're right. Okay. We're on to Page 203.

This is the one that removes the planning commission from the code of laws to the -- to a code of -- I mean, from the code of -- from the LDC to the code of laws, right?

MS. ISTENES: Yes, that was already done. This is essentially just cleaning up by removing it from the LDC. And that's on Page -- starts on Page 203, 204.

CHAIRMAN STRAIN: Any questions or comments? I have one, and I don't know who wants to answer it. But if we take the planning commission standards out of the LDC and we put it in the code of laws, if it stays in the LDC, the planning commission gets to weigh in on the changes that are occurring. If it's in the code of laws, it's done in silence, like everything else that sometimes doesn't work for us.

Why would this be a benefit to this planning commission? And the example I can think of is in '0 -- in 2001 when the hearing officer ordinance came through. It was the same similar thing. They were going to basically trash the planning commission and replace them with a hearing officer who wouldn't have been nearly as accessible to the public as this planning commission.

MR. KLATZKOW: I will give you the reason since it was my idea.

CHAIRMAN STRAIN: Oh, okay.

MR. KLATZKOW: And it has nothing to do with the planning commission. It had to do with all of the LDC advisory committees. We have a mishmash -- well, we had a mishmash of areas in the -- in the code where you could find the advisory boards if you were looking for their ordinance. Some were in the LDCs; some were in the code of laws and ordinances; some were buried within the other ordinances.

One of the problems with it being in the LDC is that, when you want to make a minor change to it, you've got to go through this process, okay? So, you know, matters that were -- and we made a couple of minor amendments to the planning commission ordinance last year, you know, dealing with, among other things, how the board of county commissioners would select which ones from which district and what have you.

CHAIRMAN STRAIN: Oh, I remember that.

MR. KLATZKOW: We would have to go through the entire pro -- LDC process; whereas, if it's a regular ordinance, the board could just hear it, make the change, and do it. That is why it's in there.

So, yes, you are not going to be seeing, in this particular arena, any changes to the CCPC ordinance, just like the rest of the committees who used to be there, the EAC and the historical board and everybody else. You won't see those changes either. But they will -- any changes will get advertised and noticed by the BCC --

CHAIRMAN STRAIN: Okay. That's --

MR. KLATZKOW: -- and -- no, and you are, you know, welcome to comment there.

CHAIRMAN STRAIN: First of all, we couldn't make that argument in the three minutes before we're pulled off the show. Second of all, some of the minor things that you -- that the reasoning is to move this there, could just as well be major things that could be changed. And we would be in -- unknowledgeable of it. Third of all, this board has a lot different standing than the EAC, the historic board, and the others in the sense we're quasi-judicial.

We're the official LPA for Collier County, and as long as we have that kind of standing, I think it would be a grave mistake to put this into a process where we don't know when and how it could be changed except for reading all those ridiculous legal ads in the paper that nobody can sit there and read, except maybe an attorney who's trying to make a living -- not you, Jeff, but the outside private sector.

But I just -- this is -- I think this is wrong for this board. I don't -- you know, the rest of the boards have a different standing than we do. And I certainly am against it.

MR. KLATZKOW: And that's fair. I hear the reason why we did it. It was to make it easier to change the ordinance.

CHAIRMAN STRAIN: I'd rather see it harder, to be honest with you.

MR. KLATZKOW: No, that's fair; that's fair. And you can make that recommendation to the board.

CHAIRMAN STRAIN: Okay. Ms. Caron?

COMMISSIONER CARON: Yeah, and I'll support you in that recommendation to the board. I don't think that the planning commission should be removed from the LDC. It's not a good -- it's not a good thing for the planning commission; it's not a good thing for the board of county commissioners.

CHAIRMAN STRAIN: In fact, I think we ought to take it a step further. Can we bring the board of county commissioners' ordinance into the LDC so we can -- just kidding. So what I -- I would suggest in the -- in the parts of this that are being considered for the planning commission application, that the recommendation would be to deny and leave the planning commission here, but for the rest of them, leave it as it is -- as proposed.

MR. KLATZKOW: That's your prerogative.

CHAIRMAN STRAIN: What's the rest of you think?

COMMISSIONER WOLFLEY: I think we ought to cross it and vote.

CHAIRMAN STRAIN: Okay. Is there a motion for anything on that?

COMMISSIONER SCHIFFER: Why don't you make that motion.

CHAIRMAN STRAIN: Fine. I'll make a motion that LDC Section 8-1 through 20 -- well, that's on -- on Page 203 and two hundred -- as articulated on 203 and 204 be forwarded to the board of county commissioners with a recommendation of a denial for those sections applicable to the planning commission, but a recommendation of approval for the remaining, and finding both those recommendations consistent with the growth management plan.

COMMISSIONER SCHIFFER: Second.

CHAIRMAN STRAIN: Motion made and seconded by Commissioner Schiffer. Discussion? All in favor, signify by saying "aye."

COMMISSIONER KOLFLAT: Aye.

COMMISSIONER CARON: Aye.

COMMISSIONER SCHIFFER: Aye.

COMMISSIONER WOLFLEY: Aye.

COMMISSIONER HOMIAK: Aye.

CHAIRMAN STRAIN: Aye. Anybody opposed? Motion carries 6 to 0.

COMMISSIONER SCHIFFER: Jeff, one question. I remember watching the commission meeting. Didn't -- in the planning commission Item D, the reappointment, wasn't that removed or changed or --

MR. KLATZKOW: Yeah, I had a -- there were a couple of minor adminis -- what I would term administerial changes made to the planning commission ordinance and a couple of others as well. We were making changes to the EAC ordinance. And this is a rather lengthy and expensive process, going through changing the LDC. So the thought was just pushing everything into the code of laws and ordinances, like many other places do. But you guys are special; I've always told you that. That's why I sit here.

COMMISSIONER WOLFLEY: The special what?

COMMISSIONER SCHIFFER: But yet the change isn't in here yet. So when we're looking at this wording, it's the old wording?

MR. KLATZKOW: It's the old wording.

COMMISSIONER SCHIFFER: And you were going to catch it on the other side?

MR. KLATZKOW: Oh, it's already -- it's already been codified. You have a sample of that ordinance now --

COMMISSIONER SCHIFFER: All right.

MR. KLATZKOW: -- which you'll find in the code of laws and ordinances.

COMMISSIONER SCHIFFER: Thank you.

CHAIRMAN STRAIN: Okay. Susan?

MS. ISTENES: They're in the book too.

CHAIRMAN STRAIN: Well, I wanted to talk to you about that.

MS. ISTENES: Okay.

(Commissioner Murray entered the room.)

CHAIRMAN STRAIN: Is it a better time now to go back and sign off on those that we did go through on Book 1 in our private -- previous meeting where we could not vote and get that done with and/or go into Book 2 in order now?

MS. ISTENES: Well, two thoughts on that. We don't have everything you -- obviously, there was things that had to come back that are not coming back until March, and those are in Book 3.

CHAIRMAN STRAIN: Okay.

MS. ISTENES: I also have some staff that wanted to be here, and I told them they were in Book 3.

CHAIRMAN STRAIN: Oh, okay.

MS. ISTENES: And so that's --

CHAIRMAN STRAIN: That's enough.

MS. ISTENES: Okay.

CHAIRMAN STRAIN: I was just trying to make sure we were most efficient. And we'll just hold off and go through those workshop -- it wasn't a workshop, but whatever we called it -- at the March 10th meeting.

MS. ISTENES: I have the agenda from that meeting. And if, at the end of the meeting, you want to go through it and -- just for a mental checklist, or if you're satisfied with just waiting to come back to the third meeting, we can do that too if you wish.

CHAIRMAN STRAIN: Okay. Well, we'll see what happens as the day goes on then.

MS. ISTENES: Okay.

CHAIRMAN STRAIN: Let's move into Page 1 of Book 2. That one's the one that's been continued. That's the Immokalee master plan.

MS. ISTENES: Yes.

CHAIRMAN STRAIN: I mean, the Immokalee deviation process. So let's now move into Page 11 of Book 2.

MS. ISTENES: And I -- Maryann Devanas prepared this. And the reason she had was the county attorney's office has opined that the responsibility for annual monitoring reports is held by the owners, all of them, of undeveloped or developing lands or, in the case of a fully developed PUD, by the owners, meaning governing associations of the

common lands. And that is essentially the basis upon which this amendment was drafted, to be consistent with their opinion.

COMMISSIONER KOLFLAT: This is Page 11, Mark?

CHAIRMAN STRAIN: Pardon me?

COMMISSIONER KOLFLAT: Page 11?

CHAIRMAN STRAIN: Page 11, yes, sir.

MS. ISTENES: Of Book 2.

CHAIRMAN STRAIN: Anybody have any questions on Pages -- there's only two pages; it's 11 and 12.

On the -- Page 11, Susan, the reason -- the last sentence, it says: "Following this opinion from the CAO the language struck through below in 10.02.13 F.1.4 is not correct."

MS. ISTENES: I think the intent there was to say, based on the opinion, the language that's presently in there is not correct. I'll -- I'm going to clean that up, because it almost reads like what I'm propose -- what she's proposing is not correct.

CHAIRMAN STRAIN: Right. I figured you just had a different opinion than the county attorney.

MS. ISTENES: That never happens.

CHAIRMAN STRAIN: So the language then on Page 12 were the two changes on 8.a and 4 -- those are changes that are correctly proposed.

MS. ISTENES: That is my understanding. Do you agree, Jeff?

MR. KLATZKOW: I hate talking about this since Maryann's not here to ask why she's doing it. I'll have to get back to you, Mr. Chairman. I just --

CHAIRMAN STRAIN: Okay.

MS. ISTENES: It does appear to be consistent with the reason.

CHAIRMAN STRAIN: Who was -- was this -- is that something we should wait 'til the 10th then, Jeff?

MR. KLATZKOW: Yeah, just why don't you wait on that. Let me double check on this. I mean, that might have been me who gave that opinion. I don't even remember. It's been a while.

CHAIRMAN STRAIN: I know the feeling.

Okay. Let's move to Page 13, Section 10.03.05. That's just a two-page issue concerning the notifications for conditional use.

MS. ISTENES: Yes. This is actually -- we believe it was an oversight. But if you recall -- I know you don't do that many of them. Actually, I don't think the planning commission even sees those. These just go straight to the board. Isn't that right, Ray, the conditional-use extensions?

MR. BELLOWS: Yes.

MS. ISTENES: So anyway, there's the ability for somebody to get an extension to their approved conditional use if they haven't developed it in accordance with the code. And -- well -- and let me clarify that. If it hasn't commenced, they can extend it, because it typ -- it only has a life of three years unless the use has commenced.

So sometimes there's a need, a legitimate need, for -- for a extension. And this will require -- and we've -- actually, I believe we've already been requiring it -- the notice to -- public notice to be published when this extension goes to hearing in front of the board so the public can be aware.

CHAIRMAN STRAIN: Okay. Does anybody have any questions?

COMMISSIONER WOLFLEY: I just have a comment. We're probably going to see a lot of these coming up, extensions.

CHAIRMAN STRAIN: Well, they go up to the board. They don't come to us.

COMMISSIONER WOLFLEY: I know. But, I mean, they are going to be seeing a lot of them.

CHAIRMAN STRAIN: And they can do it on summary?

MS. ISTENES: Yes.

CHAIRMAN STRAIN: Yeah. Comments? Questions? Anybody? If not, is there a format for a motion?

COMMISSIONER MURRAY: I'll move.

CHAIRMAN STRAIN: Well, we've got to go through the process. Motion to approve 10.03.05. Is that --

COMMISSIONER CARON: Okay.

CHAIRMAN STRAIN: Okay. Consistent with the --

COMMISSIONER SCHIFFER: I'll second.

CHAIRMAN STRAIN: Mr. Murray made the motion; Mr. Schiffer seconded it. Discussion? All in favor signify by saying "aye."

COMMISSIONER KOLFLAT: Aye.

COMMISSIONER CARON: Aye.

COMMISSIONER SCHIFFER: Aye.

COMMISSIONER MURRAY: Aye.

COMMISSIONER WOLFLEY: Aye.

COMMISSIONER HOMIAK: Aye.

CHAIRMAN STRAIN: Aye. Anybody opposed? Motion carries 7 to 0.

Now we're on Page 15.

MS. ISTENES: May I just interrupt, because a thought just occurred to me, that these ones that are being continued really have to be continued to -- if you don't have -- in other words -- well, never mind; never mind; scratch that. Go ahead. Sorry.

CHAIRMAN STRAIN: Whoa.

MS. ISTENES: No, I was just getting concerned that -- I don't -- we've got to be careful if we're continuing things that have to be changed. They really are coming back on your fourth meeting, not your third, which is March 10th.

CHAIRMAN STRAIN: Okay.

MS. ISTENES: So I was just recalling what maybe we had said -- well, we'll talk about them on March 10th instead. But if they have to have corrections, you have your book already for March 10th. So, obviously, anything that needs a correction will not be coming back until the fourth hearing, not the third. That just popped in my head.

CHAIRMAN STRAIN: That's fine. I think when we meant continued, it wasn't going to be today. It wasn't like a regular advertised hearing where it's going to have an applicant worrying about coming back with witnesses. So let's just -- we understand. Another day it will come to us.

MR. KLATZKOW: Mr. Chairman?

CHAIRMAN STRAIN: Yes, sir.

MR. KLATZKOW: If you want to talk about the Devanas one, I -- I've refreshed my recollection on the reasoning on that.

CHAIRMAN STRAIN: Okay. We're back to Page 11.

MR. KLATZKOW: What was happening was this: Over the course of time, PUDs were getting transferred; sometimes parcels were being sold outright to other developers; sometimes you'd get changes in corporate structure. And what was happening, when staff was asking for a monitoring report, we were, in essence, getting -- getting one of these (indicating). Everybody was pointing fingers at everybody else.

And what I said was, you know, this has to stop. The guy who originally got the PUD, he's responsible for it. And if he wants to have other people do it among themselves, they can figure out from the expense standpoint, time standpoint who can do it.

But we had to have somebody held accountable for it so that the original developer is responsible for the PUD irrespective of the corporate machinations or transfers he might have within his development. And that was the reason for the change.

CHAIRMAN STRAIN: Yeah, but aren't you taking that -- that out?

MR. KLATZKOW: No, the changed portion says it "shall not absolve the original owner."

CHAIRMAN STRAIN: Okay. But a change in the entire PUD and moving it to a HOA for the PUD would absolve the original owner.

MR. KLATZKOW: Portions of --

COMMISSIONER CARON: I don't think it's --

MR. KLATZKOW: Well, there shouldn't be a change in this then, huh?

CHAIRMAN STRAIN: Yeah.

MR. KLATZKOW: Because that was -- that was -- that was the discussion we had.

CHAIRMAN STRAIN: Why don't we -- rather than -- why don't we -- since the person who authored it is not here, it needs to be reviewed, why don't we just wait and bring that back on the 24th so we can --

MR. KLATZKOW: She's never going to be here.

CHAIRMAN STRAIN: Huh?

MS. ISTENES: The author will not be here.

CHAIRMAN STRAIN: I know that. So what I'm saying is, why not wait until the 24th and let somebody else digest it better so that we're assured we're not doing something that's going to be detrimental. It's two pages. We can hear it quickly on the 24th and be done with it. Is that okay?

MR. KLATZKOW: Okay.

CHAIRMAN STRAIN: Good. Let's wait 'til the 24th then.

We're on school board concurrency. And Tom Eastman knew we were going to discuss this, and he wanted to leave before we did; so he's gone. And he said, "Oh, I'm going leave this to Amy Taylor; she can handle it." So Amy's here. I don't know who wants to make the presentation or discussion, if there is any, but go right ahead.

MS. MOSCA: For the record, Michele Mosca again with the comprehensive planning staff. The proposed school concurrency land development code regulations before you today were developed and/or intended to implement the countywide school concurrency program, which was adopted by the board of county commissioners in October of 2008.

Generally, these amendments codify portions of the school concurrency interlocal agreement and the public school facilities element of the growth management plan and provide a process to review and approve residential developments that are subject to school concurrency.

And I don't have any further presentation; however, I do have some minor editorial changes that I'd like to put on the record when directed to do so.

CHAIRMAN STRAIN: Okay. What we'll do is we'll go through page by page --

MS. MOSCA: Okay.

CHAIRMAN STRAIN: -- and when we get to the page you need to do an editorial change, we're there.

Okay. Are there questions on Pages 16 and 17 from the planning commission? On 16, the ancillary facility, is that considered an essential service at any -- at any point in time?

MS. ISTENES: I don't think so; I don't think so.

CHAIRMAN STRAIN: Okay.

MS. ISTENES: I can do a quick search. We can look.

CHAIRMAN STRAIN: Mr. Murray?

COMMISSIONER MURRAY: Yeah. Some of those are designated as shelters.

MS. MOSCA: Not the -- not the ancillary facilities, no.

COMMISSIONER MURRAY: Okay. All right.

CHAIRMAN STRAIN: And while Susan's looking up that, I'll see if there's anything else on 16 and 17, and we'll move to 18 and 19.

MS. MOSCA: Mr. Chairman, I'm sorry.

CHAIRMAN STRAIN: Yes.

MS. MOSCA: I do have a correction -- or just to make you -- or alert you to, Page 17 rather, where there is a blank next to the official record book on Line 7, we're waiting for that interlocal to be recorded. So you'll see an X and a page and a --

MS. TAYLOR: It has been re -- it has been recorded.

MS. MOSCA: Okay. Do you want to --

MS. TAYLOR: It has --

CHAIRMAN STRAIN: Amy Taylor for the record, right?

MS. TAYLOR: Amy Taylor for the record, long-range planner with the school district. It has been recorded. And we will get those numbers to --

CHAIRMAN STRAIN: Staff?

MS. TAYLOR: -- the staff.

CHAIRMAN STRAIN: That's fine. Thank you. Okay. Anything else from 16, 17? If not, 18, 19? Questions? How about 20, 21?

MS. MOSCA: Mr. Chairman?

CHAIRMAN STRAIN: Yes, ma'am.

MS. MOSCA: On Page 19, Line 7, if we could just remove the bolding from the acronym -- acronym, excuse

me, LOS.

And, again, on Page 19, Line 9, if we could also remove the bolding from the term "Florida Inventory of Schoolhouses" and, paren, "FISH capacity" and again on Line 10, for "FISH capacity," please.

CHAIRMAN STRAIN: Okay. Now we're on Page 20 and 21.

COMMISSIONER WOLFLEY: Chair?

CHAIRMAN STRAIN: Yes, sir.

COMMISSIONER WOLFLEY: I have something here.

CHAIRMAN STRAIN: Mr. Wolfley.

COMMISSIONER WOLFLEY: I've been thinking about this, and it went back to ancillary facilities. Do we consider the sheriff's mobile home, whatever you call it, an ancillary facility? And is that part of the school district? I don't know what made me think about it, but I -- they're at every school.

MS. ISTENES: We as the county, actually, look at it as kind of a --

COMMISSIONER WOLFLEY: A separate --

MS. ISTENES: -- accessory use essentially to the school.

MS. TAYLOR: Yes.

MS. ISTENES: They have a -- they have trail -- on some -- some cases they have trailers or --

COMMISSIONER WOLFLEY: Yeah.

MS. ISTENES: -- portables.

COMMISSIONER WOLFLEY: Right.

MS. ISTENES: And we've just looked at it that way --

COMMISSIONER WOLFLEY: Okay. So --

MS. ISTENES: -- as an accessory to the school.

MS. TAYLOR: And it's not considered an ancillary as defined by the state. There's a definition for ancillary.

COMMISSIONER WOLFLEY: Okay, but --

MS. TAYLOR: And it's consistent with the definition, yes.

COMMISSIONER WOLFLEY: That got it. Thank you.

CHAIRMAN STRAIN: Okay. We're on Pages 20 and 21. Anybody have any questions? Michele, when I turn to the next page, are you going to tell me to go back to 21?

MS. MOSCA: No, I won't. Sorry.

CHAIRMAN STRAIN: Okay. How about 22 and 23? Questions on 22 and 23? 24 and 25? 26 and 27? 28 and 29?

Michele, on the top of Page 29: "Adjacent Concurrency Service Areas: Concurrency service areas which are contiguous and touch along one side of their outside geographic boundary," I remember when this came through we talked about how these can be fitted together. Where it says "along one side," do we mean any portion of one side, or does it have to be the entire side of side one?

MS. MOSCA: I believe it's any one portion.

CHAIRMAN STRAIN: Amy, you may want to clarify that.

MS. TAYLOR: That's fine.

CHAIRMAN STRAIN: Okay.

MS. MOSCA: Yes.

CHAIRMAN STRAIN: Okay. So if you've got a quarter of a side against the side of another facility, you just -- a piece that -- an overhang, then you still get the benefit of that quarter side as being considered adjacent.

MS. TAYLOR: I'm not sure I under -- I'm sorry.

CHAIRMAN STRAIN: Well, your adjacent concurrency --

MS. TAYLOR: Yes.

CHAIRMAN STRAIN: And I didn't go back and reread all those volumes of data on the school issue. If you have a shortage of concurrency and you're --

MS. TAYLOR: Yes.

CHAIRMAN STRAIN: I was going to say you're square, if you have another square next to you that has an excess, you can somehow blend it so you --

MS. TAYLOR: Absolutely, yes.

CHAIRMAN STRAIN: -- get the benefit of that.

MS. TAYLOR: That's the whole -- that's the reason for the adjacency description.

CHAIRMAN STRAIN: Right. What I'm saying is that you wouldn't need to be adjacent for the full length of whatever common line you have. It could be just a portion of that common line, and you could still benefit from that blending.

MS. TAYLOR: Yes, you could.

CHAIRMAN STRAIN: Okay. So the only reason I'm suggesting is you may want to say "along any portion of one side of their outside geographic boundary," so that's clear.

MS. TAYLOR: Okay.

CHAIRMAN STRAIN: That's all I was getting at.

MS. TAYLOR: Yes, uh-huh.

CHAIRMAN STRAIN: Pages 30 and 31, questions? Pages 32 and 33?

MS. MOSCA: And, Mr. Chairman, I have --

CHAIRMAN STRAIN: Yes.

MS. MOSCA: -- a couple of changes on 32.

CHAIRMAN STRAIN: Okay.

MS. MOSCA: Okay. Page 32, Lines 20, 22, 23, and 38, delete the phrase "or its functional equivalent." And that should have come out previously. When we worked with municipalities, we weren't certain -- we weren't sure if they had some other functional equivalent to a building permit, et cetera. So that needs to come out.

Also on Page 32 --

CHAIRMAN STRAIN: Uh-huh.

MS. MOSCA: -- Line 22, delete the word "approval" and the comma, and insert the word "or" before the word "site."

CHAIRMAN STRAIN: Okay. Anything else?

MS. MOSCA: Excuse me. And then finally, on Line 38, delete the comma after the word "plat," and insert the word "or" before the word "residential."

CHAIRMAN STRAIN: Okay. Is that it?

MS. MOSCA: And that's it. Thank you.

CHAIRMAN STRAIN: Anything else on 32 or 33?

D-1, Line 8: "The County shall not issue a COA for a residential development until receiving confirmation of available school capacity." There are some exempt residential developments, right?

MS. MOSCA: That's correct.

CHAIRMAN STRAIN: Okay. So not every residential development will require a COA. Are those expandable, any of those non -- those exempt residential developments?

MS. TAYLOR: The -- and I'm sorry I don't have the state statute with me. But the state statute provides for the exemptions, so it's -- it's -- for example, all Golden -- Golden Gate Estates previously platted lots are exempt. Those that are designated as adult communities are exempt. So -- and they are as specifically outlined in the state statute. Any -- any other development, site development plan or plat in the future is subject to concurrency.

CHAIRMAN STRAIN: Okay. Mr. Murray?

COMMISSIONER MURRAY: You -- you might consider modifying that line to say, "The county shall not issue a COA for a non-exempted residential development." Does that help some?

CHAIRMAN STRAIN: Well, that's -- yeah, that's the note that I had on that line. And it also should occur on Line 12 for the "non-exempted residential development" there, and it should occur on Line 13 for "extension or modification of a COA for non-exempted residential development."

COMMISSIONER MURRAY: Right.

CHAIRMAN STRAIN: Is that -- is that useful to add in there or not?

MS. MOSCA: I think it's -- actually, Mr. Chairman, I think it's already covered within the previous pages of the same LDC amendment, because --

CHAIRMAN STRAIN: Okay.

MS. MOSCA: -- it addresses all of the exemptions.

COMMISSIONER CARON: Page 20; is that right?

MS. MOSCA: I believe it's located in two areas under -- on Page 30, there's a list of exemptions under Item 3, which is Line 17.

CHAIRMAN STRAIN: Okay.

COMMISSIONER CARON: It also does it on Page 20 --

CHAIRMAN STRAIN: Yeah, that's fine.

MS. MOSCA: And that's correct.

COMMISSIONER CARON: -- under "Submittal Requirements for Certificate of Public Facility Adequacy." And B is "Exemptions," so --

MS. MOSCA: That's correct.

CHAIRMAN STRAIN: Okay. That works.

And that takes us to the end of the one for the school concurrency, and that's a whole pile of different sections of the code. Is there a motion -- or is there any discussion, any further discussion, by the planning commission? Okay. Is there a motion on that one?

COMMISSIONER MURRAY: I'll make the motion.

CHAIRMAN STRAIN: Okay. The motion needs to be -- and I'll just make -- for simplification, it needs to be either for approval or -- for recommendation for approval or denial for the following sections: 1.08.01, 1.08.02, 4.08.07, 6.02.09, 10.02.04, 10.02.07, 10.04.09, 10.02.12, 10.02.13, and 10.04.00.

COMMISSIONER MURRAY: I did that rather well, didn't I?

CHAIRMAN STRAIN: Well, I was just trying to help you get there.

COMMISSIONER MURRAY: No, I appreciate that.

CHAIRMAN STRAIN: Okay. Is that a motion?

COMMISSIONER MURRAY: That's my motion, and it comports with the growth management plan.

CHAIRMAN STRAIN: Motion for approval, right?

MS. MOSCA: Mr. -- excuse me.

COMMISSIONER MURRAY: It is that, yes.

MS. MOSCA: Mr. Chairman, Amy indicated that we missed -- 1.08.02?

MS. TAYLOR: 10.02.03, in your list, when you were listing them, yeah.

CHAIRMAN STRAIN: Oh, it's not in the list. That's what we're here to review, so --

COMMISSIONER MURRAY: 10.02.03.

CHAIRMAN STRAIN: -- 10.02.03 should be added to that. Mr. Murray, do you accept that into your motion?

COMMISSIONER MURRAY: I do.

CHAIRMAN STRAIN: Is there a second to Mr. Murray's motion?

COMMISSIONER SCHIFFER: I will.

CHAIRMAN STRAIN: Brad, okay. A motion was made stipulating all those sections, and it was seconded, that it's consistent with the growth management plan. All those in favor, signify by saying "aye."

COMMISSIONER KOLFLAT: Aye.

COMMISSIONER SCHIFFER: Aye.

COMMISSIONER MURRAY: Aye.

COMMISSIONER WOLFLEY: Aye.

COMMISSIONER HOMIAK: Aye.

COMMISSIONER CARON: Aye.

CHAIRMAN STRAIN: Aye. Anybody opposed? The motion carries 6 to 0 -- or 7 -- 7 to 0. I'm sorry. People are coming and going.

Okay. Let's move on to Page, it looks like, 34.

MS. ISTENES: This one's very straightforward. It's just amending the square footage of the travel -- the size of the vehicles that are going from 480 square feet to 500 square feet in gross floor area. This was brought before the board on a public petition, and the board -- kind of keeping up with the times, I guess.

CHAIRMAN STRAIN: Yeah, but the -- you said it's straightforward. That means we need to spend some time on it.

MS. ISTENES: Okay. It's really difficult.

CHAIRMAN STRAIN: Okay. Well, that's -- is there any questions on Pages 34 or 35?

COMMISSIONER MURRAY: I would make a motion for approval, and it comports with the growth management plan, for LDC Section 2.03.03 F, "Travel Trailer-Recreational Vehicle Campground District (TTRVC)."

CHAIRMAN STRAIN: Is there a second?

COMMISSIONER SCHIFFER: I'm good with it. Second.

CHAIRMAN STRAIN: Okay. Motion made and seconded for approval consistent with the growth management plan. Discussion? All in favor signify by saying "aye."

COMMISSIONER KOLFLAT: Aye.

COMMISSIONER WOLFLEY: Aye.

COMMISSIONER MURRAY: Aye.

COMMISSIONER SCHIFFER: Aye.

COMMISSIONER HOMIAK: Aye.

COMMISSIONER CARON: Aye.

CHAIRMAN STRAIN: Aye. Anybody opposed? Okay. Motion carries 7 to 0.

Okay. We're on to Page 42.

MS. ISTENES: Okay. This is to increase the maximum number of seats allowed within the permitted-use classification of Performing Arts Theater. And this is in the Bayshore mixed-use overlay district, LDC Sections 2.03.07 I.

CHAIRMAN STRAIN: Okay.

MS. ISTENES: And the change is to increase the performance seating, limited -- it was 200, and this proposes to raise it to 500 seats.

CHAIRMAN STRAIN: Any questions on Pages 42, 43, 44? Do you know why they limited themselves to 500 seats?

MS. ISTENES: I don't.

CHAIRMAN STRAIN: Okay.

MS. ISTENES: I can find out if you want.

CHAIRMAN STRAIN: Well, how big is the Philharmonic, for example? Do you know how many seats that is?

MS. ISTENES: No, I don't. I don't have --

COMMISSIONER MURRAY: I think it's something like three hundred --

CHAIRMAN STRAIN: Yeah. I'm just wondering --

COMMISSIONER MURRAY: -- forty.

CHAIRMAN STRAIN: They may not need more than 500, but why do they want to limit themselves? Is there any reason in the code or the GMP that staff or anybody has an objection just to giving them -- I mean, any -- if we could put another facility in East Naples, that would be fabulous. So I wouldn't know why we'd want -- wouldn't want to encourage it, not put any limitations.

COMMISSIONER MURRAY: Well, then you get into the section -- the issue of size overall, number of parking spots.

CHAIRMAN STRAIN: Right.

COMMISSIONER MURRAY: Is there any property in there that could do that? I don't really have a problem with your avocation, but I'm assuming that 500 is a pretty good number.

MS. ISTENES: If you want, I could e-mail David Jackson and Gene and see if they can give me a response and even hold off on this one. That's just an option.

CHAIRMAN STRAIN: Well, I'd rather not hold off on it if it's --

MS. ISTENES: Well, I mean --

CHAIRMAN STRAIN: I mean, no one's -- no one's here to object to it, and barring anything else, it's too simple. I don't want to -- I was just trying to -- you know, for Naples -- for East Naples to have the benefit of a facility like this would be great. And if it's bigger than smaller, that's even better.

MR. KLATZKOW: You could recommend that, when the issue goes to the board, if they want more at that time, you're okay with that.

CHAIRMAN STRAIN: Okay.

COMMISSIONER MURRAY: Yeah, that's good.

CHAIRMAN STRAIN: So we should recommend approval as requested with the caveat that we might suggest they consider even more at -- potentially, if that's ever wanted. So okay. Is everybody satisfied with the discussion? If there is, is there a motion?

COMMISSIONER MURRAY: I'd make that motion.

CHAIRMAN STRAIN: Mr. Murray.

COMMISSIONER MURRAY: I would recommend approval for LDC 2:86.64.

CHAIRMAN STRAIN: That's the -

COMMISSIONER MURRAY: Section 2.03.07 I, or -- yeah, with -- it comports with the growth management plan, and a recommendation that the board consider an additional number over 500.

CHAIRMAN STRAIN: Okay. Is there a second?

COMMISSIONER HOMIAK: Second.

COMMISSIONER SCHIFFER: Second.

CHAIRMAN STRAIN: Mr. Schiffer -- who said it?

COMMISSIONER SCHIFFER: Karen.

CHAIRMAN STRAIN: Okay. Karen seconded. Karen's from East Naples. We'll let that be a good one for her to second. Any discussion? All in favor signify by saying "aye."

COMMISSIONER KOLFLAT: Aye.

COMMISSIONER SCHIFFER: Aye.

COMMISSIONER HOMIAK: Aye.

COMMISSIONER MURRAY: Aye.

COMMISSIONER WOLFLEY: Aye.

COMMISSIONER CARON: Aye.

CHAIRMAN STRAIN: Aye. Anybody opposed? Motion carries 7 to 0. Boy, we are just moving along.

COMMISSIONER MURRAY: I love it. We're on a roll.

CHAIRMAN STRAIN: Maybe it's because of the court reporter we have. Boy, Cherie's going to hate that.

COMMISSIONER CARON: You're -- you're dead. You are dead meat.

CHAIRMAN STRAIN: Don't tell Cherie I said that. Okay. Page 46, Goodland overlay zoning district.

MS. ISTENES: This is probably the toughest one of the day. There's an error there. Bayshore Drive is supposed to be Bayshore Way.

CHAIRMAN STRAIN: Okay. Ms. Caron?

MS. ISTENES: And it's correcting it.

COMMISSIONER CARON: On Page 47, where Way is underlined, is it not supposed to be capitalized because it is the name of the street?

MS. ISTENES: Yes, I will capitalize that.

COMMISSIONER CARON: Okay. There you go.

CHAIRMAN STRAIN: I don't know. Let's discuss this.

COMMISSIONER SCHIFFER: Nobody gets out of here easy.

CHAIRMAN STRAIN: Okay. Is there any further discussion? If not, is there a motion for that particular section, 2.03.07 J.4.b?

COMMISSIONER SCHIFFER: Karen?

COMMISSIONER HOMIAK: Motion to approve.

CHAIRMAN STRAIN: Consistent with the GMP?

COMMISSIONER HOMIAK: Consistent with the GMP.

CHAIRMAN STRAIN: Is there a second, Bob?

COMMISSIONER MURRAY: Yes.

CHAIRMAN STRAIN: Okay. Discussion? All those in favor, signify by saying "aye."

COMMISSIONER KOLFLAT: Aye.

COMMISSIONER MURRAY: Aye.

COMMISSIONER HOMIAK: Aye.

COMMISSIONER SCHIFFER: Aye.

COMMISSIONER CARON: Aye.

COMMISSIONER WOLFLEY: Aye.

CHAIRMAN STRAIN: Aye. Anybody opposed? Motion carries 7 to 0. Susan, your stuff is too easy.

Page 48.

MS. ISTENES: Okay. This is essentially a cleanup. When Ordinance 08-11 was adopted -- remember when we converted back from the list of permitted and conditional uses in the zoning district, we had the table, and we took them back to the list?

CHAIRMAN STRAIN: Yes.

MS. ISTENES: I guess there were some things that were not stricken out that were supposed to be struck out, and this is just cleaning that up. And I probably didn't do a good explanation of -- of that, but essentially that is what it is.

CHAIRMAN STRAIN: Okay. Do one of you have Municode pulled up in front of you?

MS. ISTENES: I can real quick if you want.

CHAIRMAN STRAIN: Okay. Because I did have when I reviewed this, and I gave up after a while, because the references for the sections that were being referenced did not seem to match up to the Municode references. And I couldn't follow it, so I kind of need to see if you found out what I found out.

MS. ISTENES: Well, Ray's going to open it, because I just accidentally turned my computer off when I picked it up.

CHAIRMAN STRAIN: Are you opening it up?

MR. BELLOWS: Yeah.

CHAIRMAN STRAIN: Okay. Let's start with Page 49.

MR. BELLOWS: Page 49.

CHAIRMAN STRAIN: Under 2 -- I'm going to say Line 28 and 29. The "Rules for Interpretation of Uses" was 2.04.01. It's being crossed out because the one above it says now Subsection 2.03.01 A. If you go to 2.03.01 A on Municode, I believe it's the agricultural zoning district definition or something like that. I'm trying to pull it up, but my screen's slow.

MR. BELLOWS: Yes.

CHAIRMAN STRAIN: Okay. So how does -- how does 2.04.01 get transferred from a rules for interpretation of uses to the ag zoning district description? Don't we need a different reference? And, by the way, that --

MS. ISTENES: I guess I'm not quite understanding the question.

CHAIRMAN STRAIN: Okay.

MS. ISTENES: Can we try that again?

CHAIRMAN STRAIN: It may be because I haven't read this correctly. Go to Page 49 and Line 29.

MS. ISTENES: Uh-huh.

CHAIRMAN STRAIN: Do you see a crossed-out section, 2.04.01, "Rules for Interpretation of Uses," and then you see the entire paragraph crossed out.

MS. ISTENES: Correct.

CHAIRMAN STRAIN: The presumption is it's crossed out because it's been replaced elsewhere in the code; is that correct?

MS. ISTENES: Right.

CHAIRMAN STRAIN: The reference on Line 28 seems to say now subsection 2.03.01 A. So if you go to Section 2.03.01 A, looking for that old paragraph, I don't find it there. And I found that in quite a few of these, not all of them, but quite a few of them. So I'm -- I'm just wondering if I'm reading the references correct or not.

MR. KLATZKOW: Mr. Chairman, let -- let my staff double check this. We'll bring it back so we're sure this -- it's correct.

CHAIRMAN STRAIN: Good. Does that work for you guys, Ray and --

MS. ISTENES: Sure.

MR. BELLOWS: Yeah.

CHAIRMAN STRAIN: Okay. And I -- and, Jeff, I went through a bunch of them. You'll find quite a few that are inconsistent. And if you look at some of the cross-outs, they --

MR. KLATZKOW: When we --

CHAIRMAN STRAIN: -- they weren't transferred.

MR. KLATZKOW: When we re-codified way back when, there were tons of stuff just like this. And I understand --

CHAIRMAN STRAIN: Okay.

MR. KLATZKOW: I understand -- fully understand the issue.

CHAIRMAN STRAIN: Okay. Then let's move on to Page 64.

MS. ISTENES: This, I believe, was simply replacing an exhibit that was difficult to read. Let me just get there, though, to make sure.

COMMISSIONER SCHIFFER: Probably with one that's more difficult to read.

MS. ISTENES: Yeah. There was a -- it's a replacement of a current graphic or exhibit with one containing greater detail. And it has to do with the -- if you look on Page 66, that is the one that is going to be removed and replaced with Page 67.

CHAIRMAN STRAIN: Who wants to be Waldo?

COMMISSIONER SCHIFFER: I've got a bunch. Have you got some, Mark?

CHAIRMAN STRAIN: Okay. Well, go ahead. Let's -- you've probably got the ones that I've got, so --

COMMISSIONER SCHIFFER: Yeah. First of all, Susan, there's the phrase -- and I guess I'm trying to figure out how to describe it to you. But it says 10-feet, 15-feet, 20-feet landscape buffers --

MS. ISTENES: Yes.

COMMISSIONER SCHIFFER: When you read that, why does it have that second parentheses?

MS. ISTENES: "Two-foot setback behind curb does not apply." It looks -- there's a -- let's see. There is a requirement to set the curb back, I believe, two feet, but -- from a buffer. But I'm not sure why it's specifically res -- referencing a 10-, 15-, or 20-foot buffer, because I thought it applied to all of them. But I could be wrong.

COMMISSIONER SCHIFFER: Right. I mean, the thing is, it's telling you that these are for the 10, 15, and 20; and then the thing below says it's not for the 10, 15, or 20. Which --

MS. ISTENES: Well, the setback is -- I believe is referring to the curb -- wheel stop.

COMMISSIONER SCHIFFER: Right. I understand what the two feet means.

MS. ISTENES: Okay.

COMMISSIONER SCHIFFER: That's not my question. My question is: Did you -- in the illustration, it shows you that it's for that buffer, and then, at the thing in parentheses, it tells you it's not for that buffer. So just --

MS. ISTENES: Okay.

COMMISSIONER SCHIFFER: -- see what that means --

MS. ISTENES: Okay.

COMMISSIONER SCHIFFER: -- because one says it is, and then the --

MS. ISTENES: Got it.

COMMISSIONER SCHIFFER: -- parenthesis says it isn't.

And the -- another question I have is that -- the ramp cut you're doing there is not the -- actually, it's not the preferred ramp cut for the handicapped. The concern I have, since you show it, is you might be forcing people to do that. In other words, what's kind of lately been -- been done, because of the steepness of that short little triangle piece, is that you would slope down for five feet or, let's say, six feet if it's six-inch curb, and then you go flat for the handicapped ramp, and then you slope back up with the sidewalk rather than going around like you do.

MS. ISTENES: Okay.

COMMISSIONER SCHIFFER: I think I prefer you showing that, because this could be interpreted that you have to go around like you do.

MS. ISTENES: Okay.

COMMISSIONER SCHIFFER: Or show nothing and say -- or put a note that says "or as allowed by" and reference the proper accessibility thing.

MS. ISTENES: Well, I'm -- I'm not disagreeing with you. I think the important things are the dimensional requirements here, so perhaps a reference to any design that meets the dimension -- minimum dimensional standards and is ADA compliant or something to that effect.

COMMISSIONER SCHIFFER: Right. But somebody could force somebody to say, "Look, it shows you" -- and, you know, we have conversations with planning reviewers that are like this -- but, "Look, it shows you a four-foot thing there; you have to do the four-foot thing."

MS. ISTENES: Understand.

COMMISSIONER SCHIFFER: You know -- and that's what I have, Mark.

MS. ISTENES: Okay.

CHAIRMAN STRAIN: Okay. If you look at the old plan and you look at the -- about the center of the page where it says "blue," "white," "blue," "white," I have a real smudged-out version, but I see four inches there. On the new plan, if you look at the same reference on the right-hand side of the page, they've all been increased to six inches, which, in essence, you know, increases 50 percent the amount of material and other efforts used there.

Does anybody -- was that known -- done with knowledge? because that's more than -- I'm not -- I'm just wondering if that's more than clarity. It seems like a standard change.

MS. ISTENES: I would agree with that. And I'm not sure if the standard did change. I apologize for Stan not being here, but I -- since we're coming -- it sounds like we're coming back anyway --

CHAIRMAN STRAIN: Oh, yeah.

MS. ISTENES: -- I can -- we'll be happy to clarify that for you.

CHAIRMAN STRAIN: Okay. And there's a reference in the middle of the new page that says: "Single 6-inch wide white stripe" between the two parking spaces. That one again, on the old plan, was 4 inches, at least as of -- the smudged way I'm reading it.

I notice there's a lot more detail in here, which was part of the reason it was done. But is all the detail requirements, or are they things that can be done in lieu of something else? And in particular, on the top of the new page where it says a -- "For 2-foot buffer only," where did we get that from? I don't recall a two-foot buffer. There certainly may be one.

COMMISSIONER MURRAY: And, Mark, it also talks typical, typical, typical, so --

MS. ISTENES: Yeah, I mean, it -- this is -- this should frequent the current standards of either the LDC originated or any of the ADA requirements. But I -- Ray, if -- I think I'm going to have to talk to Stan.

MR. KLATZKOW: Do you find it's better clarity than the old one?

COMMISSIONER MURRAY: No.

MR. KLATZKOW: Because that's the only reason we're doing this. And --

CHAIRMAN STRAIN: Well, no. I mean, I think the -- the inconsistency is what concerns me. If we need to put more -- if we need to -- if we had some code changes, I think we should have advertised it then as to what it is. It doesn't seem to be giving us that.

Filling it up with a bunch of supplemental diagrams that may change in other parts of the code I'm not sure is the best idea either. So maybe someone needs to take a look at it --

MS. ISTENES: Yeah --

CHAIRMAN STRAIN: -- and get back to us with it.

MS. ISTENES: Let me -- let me find out. I mean, it could be this drawing was just really old and it never was updated. But let me get more information on that. It's -- I -- I agree. I read the changes as some -- simply replacing it, and I didn't question it. So I will -- I will question it based on your input.

CHAIRMAN STRAIN: Okay.

COMMISSIONER SCHIFFER: Mark, let me say --

CHAIRMAN STRAIN: Go ahead, sir.

COMMISSIONER SCHIFFER: Susan, I think what's wrong with that right-hand drawing is -- what they're showing there is -- if you look above, they've added that detail where they have a curb, and then they have two inches, and then they have grass.

MS. ISTENES: Uh-huh.

COMMISSIONER SCHIFFER: I think that's what they intended to show on that lower one, but they didn't, because they actually showed curb stop, curb, and then grass. So I think the intent of that drawing would be something to match the one on the left, only using curb stops instead of a curb.

MS. ISTENES: Okay.

COMMISSIONER SCHIFFER: And I think that's what they're trying to draw there. So it's a totally messed up drawing.

MS. ISTENES: Messed up. Okay.

CHAIRMAN STRAIN: Maybe if they keep it simpler, it might be better. And let some of the code that

describes those other elements stay in the code where they are and not try to illustrate them; just a suggestion.

Okay. Let's move on to Page 69, 4.05.04, "Parking Space Requirements."

MS. ISTENES: This is actually just replacing language that didn't get carried over. Essentially what it does -- it says when you have a change in use -- hang on a second. Let me reread it. "Required off-street parking according to the requirements of this code shall not be reduced in area or changed to any other use unless the permitted or permissible use that it serves is discontinued or modified, or equivalent required off-street parking is provided meeting the requirements of the code."

COMMISSIONER SCHIFFER: Mark?

CHAIRMAN STRAIN: Yes, go ahead. I'm sorry, Brad.

COMMISSIONER SCHIFFER: Susan, doesn't that go without saying?

MS. ISTENES: Yeah. That's why I'm trying to explain to you, and I'm kind of thinking, "Uh, this is sort of, you know, common sense here."

CHAIRMAN STRAIN: That will be the only thing in the code that's common sense, though.

MS. ISTENES: Okay. I said sort of. Yeah, I mean -- but, again, it -- I imagine what happened is somebody ran into an issue and realized this part of the code was missing and wasn't carried over and had a question about it and realized -- and that's when they realized, so that's why it's being brought back.

CHAIRMAN STRAIN: David?

COMMISSIONER WOLFLEY: That's exactly what I was going to bring up, that it was omitted during the re-codification.

MS. ISTENES: Yes.

MR. KLATZKOW: Was it?

COMMISSIONER SCHIFFER: Yeah, was it, or was it removed --

COMMISSIONER WOLFLEY: I don't know.

COMMISSIONER SCHIFFER: -- because maybe it wasn't necessary?

COMMISSIONER CARON: We didn't remove anything.

COMMISSIONER WOLFLEY: Some of this was added.

COMMISSIONER SCHIFFER: We didn't change anything. We removed a lot.

CHAIRMAN STRAIN: Well, what's the --

MR. KLATZKOW: I mean --

CHAIRMAN STRAIN: What's the scoop? Yeah, what do we --

MR. KLATZKOW: See, this -- this is the problem with this, because this goes back to -- how many years, Susan?

MS. ISTENES: '04.

MR. KLATZKOW: '04.

MS. ISTENES: For 41.

CHAIRMAN STRAIN: '04 for 41, yeah, that's right.

MR. KLATZKOW: I don't know what was removed anymore intentionally or unintentionally.

CHAIRMAN STRAIN: But it's still the law.

MR. KLATZKOW: Well, maybe not, not if you can't find it, it isn't. But -- but what I'm getting at -- if this is not substantive, let's just withdraw it.

CHAIRMAN STRAIN: Well, we ought to find out why it was put there first. Could staff do some research and see if you can come back with a reason why it was being added specifically?

MR. BELLOWS: Yeah, we can do that. I think what the concern is -- you have a lot of staff who are trained to make sure that things that didn't get cod -- re-codified -- that it still applied. I think we just need to be clear on how to treat these things.

MR. KLATZKOW: I've been assured from staff that, "We caught everything."

MS. ISTENES: No.

MR. KLATZKOW: I'm telling you, I've been through this now -- how many times?

MS. ISTENES: No.

MR. KLATZKOW: I don't know anymore what was intended to be deleted, what wasn't intended to be deleted. I've had staff previously tell me that, "We've caught everything. We've gone through it with a fine-toothed comb." And

we continue to get these old things. And without going through 10 different LDC changes, you know, every time you have one of these, you don't know. You just don't know.

Fifteen years from now, are we still going to be doing this, "We think we might have lost this doing a re-codification?" It gets to a point in time where we've -- we're -- we're done with this. If this is not substantive --

MS. ISTENES: Jeff --

MR. KLATZKOW: -- I don't know why we're bothering.

MS. ISTENES: Wouldn't it be possible to draft an ordinance or a resolution that says that? I mean, I guess -- you know, you're right. It's open ended. And when we do stop?

MR. KLATZKOW: Yeah, we'll -- what --

MS. ISTENES: I guess -- is that feasible?

MR. KLATZKOW: Yeah. We'll go to the board of county commissioners and say, you know --

MS. ISTENES: We're done.

MR. KLATZKOW: -- we're done, I think.

CHAIRMAN STRAIN: Go ahead, Brad.

COMMISSIONER SCHIFFER: Susan, one concern I have with you, if you put this in, if I recall, there is a situation where you can -- with recycling in the commercial districts, they allowed you to use one of the parking places for that recycling bin. This would actually make you unable to do that, because you're changing the use of the parking space.

COMMISSIONER MURRAY: I remember that.

COMMISSIONER WOLFLEY: Oh, yeah.

COMMISSIONER SCHIFFER: So -- and there was -- maybe -- that wouldn't be nice.

CHAIRMAN STRAIN: Well, why don't you guys take a look at it --

MS. ISTENES: Okay.

CHAIRMAN STRAIN: -- and let us know if we should even bother with it when we come back.

MS. ISTENES: Okay. Will do.

MR. KLATZKOW: Or let me just ask if you want to add it to the code.

CHAIRMAN STRAIN: Well, we don't want to add anything that isn't needed, because the code's already too big and --

MR. KLATZKOW: If you don't want to add it to the code, it shouldn't be in the code. How's that? If it doesn't belong --

CHAIRMAN STRAIN: Well --

MR. KLATZKOW: If you don't think it belongs in the code, why are we even putting it back?

CHAIRMAN STRAIN: I'd like to find out if there was a reason why someone started the process that got us here today first.

MR. KLATZKOW: Okay.

CHAIRMAN STRAIN: Then we'll go from there.

Okay. Page 73.

MS. ISTENES: There were inconsistencies in the code regarding the safe-sight triangles and -- both in, I believe, the pictures and the dimensions. And this is essentially making them consistent.

CHAIRMAN STRAIN: And does this apply to county work on county facilities on county -- within county right-of-ways? Does this apply to everybody or just the public?

MS. ISTENES: I think it should apply to everybody. I don't know why it wouldn't.

CHAIRMAN STRAIN: Well, the reason is, I keep driving out of Sweetbay and making a right onto Collier Boulevard on Mission Hills Drive, and there's this giant wall right up against the edge of the back of the sidewalk. You cannot see any oncoming traffic.

So I tried to figure out why was that there after I read this. I started checking it out. It's because it's a utility site, and apparently some utility doesn't want to move the house that this wall's behind -- not -- it's not a house. It's one of those little squares.

MS. ISTENES: Unless there was some self -- self -- safety, health, and welfare issue that necessitated that wall -- and that could be it.

CHAIRMAN STRAIN: Well, we ought to put it -- see, if that wall has got to be there, then put the exception in

here, because I don't -- I didn't see any exception language.

MS. ISTENES: Well, I guess we could do that. My assumption would be that engineers got together and decided that the safety of putting the wall was more important than the safety of sight or that you could see reasonably well. I'm just making an assumption, Commissioner. But if you want to add that in there as a clarification, we can certainly do that.

CHAIRMAN STRAIN: You know the one I'm talking about?

MS. ISTENES: Yes. Oh, yeah.

CHAIRMAN STRAIN: Okay. So I'm not the only one that wonders, "Oh, my God, you're going to get killed in this intersection." And I thought -- then I never gave it -- I figured, "Well, somehow it got done that way," until I read this, and I thought it shouldn't have been done that way. So there are no exceptions to this rule.

COMMISSIONER SCHIFFER: On poles and stuff. But, you know, one of the exception questions I had is we do have boxes for signals and stuff that are probably in these sight triangles too. So even though it allows poles, lampposts -- you know, it does give you some things -- you might want to check and make --

MS. ISTENES: Okay.

COMMISSIONER SCHIFFER: See if something else is bigger. And then the other question I have is the -- on the drawing for Section A-A -- it's the center one on 75 -- you're showing a three-foot -- you know, the triangle actually goes to the edge of the pavement, but the -- you are showing some three-foot sod thing. What is that? Is that a requirement, or why doesn't the sight triangle cover that? Obviously, if it's sod, it doesn't, but --

MS. ISTENES: No, I think this was just for illustrative -- to look at a typical layout. And usually on county roads, for example, at least the newer ones, you've got that sod strip and then --

COMMISSIONER SCHIFFER: But I think if you're --

MS. ISTENES: But it's not a regulatory -- in -- in my opinion.

COMMISSIONER SCHIFFER: Then I would worry because your -- your triangles of required visibility are the hatched areas, and they should theoretically go over that sodded area to match the description in the -- it's 10 feet from the edge of pavement. And that sod's three feet from -- you know what I mean? So --

MS. ISTENES: Uh-huh.

COMMISSIONER SCHIFFER: -- show the triangle over that area too, I think.

MS. ISTENES: Okay. Let me check on that, since I've got to check on any exceptions. I really would probably feel more comfortable asking transportation anyway if there are some exceptions that they regularly put in there. And then we'll put some language in there as you suggest for potential exceptions.

CHAIRMAN STRAIN: Okay. And if there are exceptions, I think somebody from a risk management viewpoint will want to weigh that exception.

Anyway, we'll move on to Page 79.

MS. ISTENES: May we take a break, 10 minutes? I -- I'm getting behind and --

CHAIRMAN STRAIN: No. Okay. Let's -- let's come back at five minutes after 2.

MS. ISTENES: Thank you.

(Recess held.)

CHAIRMAN STRAIN: Okay. Welcome back from a much deserved break. Let's start off on Page 79.

MS. ISTENES: The reason -- this says, again, a scrivener's error made during the re-codification. I -- quite frankly, even if it wasn't a scrivener's error, I think that this reads better. So there's no change here. It's more applicable relative to intersections than street visibility, so to speak. So that's the only change.

CHAIRMAN STRAIN: Miss -- Ms. Caron?

COMMISSIONER CARON: Okay. You think it reads better the way it is now --

MS. ISTENES: Yes.

COMMISSIONER CARON: -- than before? So when you say visibility at intersections, we're talking about places like Immokalee and Goodlette-Frank or 41 and Immokalee or --

MS. ISTENES: Yes, the intersection of two streets.

COMMISSIONER CARON: Okay. So -- but what about when you're coming out -- I mean, if you talk about the intersection of 41 and Immokalee -- but what about if you're coming out of Riverchase, the -- where Publix is? Shouldn't that -- that entrance to the street, shouldn't that be visible as well?

MS. ISTENES: Commissioner, I would read that to apply here.

COMMISSIONER CARON: Okay.

MS. ISTENES: I mean, I don't think this is intended to be, you know --

COMMISSIONER CARON: So "intersection" doesn't limit -- it's all -- it's all street --

MS. ISTENES: That would be my position on it, yes.

COMMISSIONER CARON: Okay.

MR. BELLOWS: I agree. Yeah, when I read it, my take was it was -- excuse me. My take was it reads better because, when you put "street" in front of it, then that kind of narrows the scope of what intersections. And this takes into -- your scenario.

COMMISSIONER CARON: Okay. All right. I just wanted to be clear.

CHAIRMAN STRAIN: Mr. Schiffer.

COMMISSIONER SCHIFFER: And, Ray, my thing is the word "intersection." And I looked it up. It says to "meet and cross," because to me an intersection would be where two streets cross each other. So, for example, a T section wouldn't -- may not be an intersection. So is that the right word?

MS. ISTENES: I -- I read it as a T. I mean, they inter -- "intersect" meaning --

MR. BELLOWS: Those are intersecting --

MS. ISTENES: They cross -- their planes cross.

MR. BELLOWS: Yeah, this -- that's the way I'm reading it too. I -- it's basically an intersection, whether it's a T or a cross-through intersection.

COMMISSIONER MURRAY: If you remember --

CHAIRMAN STRAIN: Mr. Murray.

COMMISSIONER MURRAY: -- your old geometry classes, they showed you the intersect points. They didn't have to cross completely.

COMMISSIONER SCHIFFER: With the lines in it. Okay.

CHAIRMAN STRAIN: What about driveways and -- coming out to streets, private driveways to -- things like that? Is there any requirement for those to be -- have a visibility -- set a line requirement?

MR. BELLOWS: Yes. I believe that's the same issue.

CHAIRMAN STRAIN: Okay. Does this cover --

MR. BELLOWS: We have a lot of those issues in -- I almost got run over in one of those situations on a driveway with a hedge right up to the intersection with a roadway. In the City of Naples, they have many of those things, and it's very difficult for someone to see where a sidewalk and a hedge come right up to each other. And I think this is the same situation.

COMMISSIONER MURRAY: Are you --

CHAIRMAN STRAIN: Mr. Murray.

COMMISSIONER MURRAY: Do you have any gum?

CHAIRMAN STRAIN: What if, you know, I'm a -- what if we were to clarify it "except where visibility at interconnections with roadways are required and where pedestrian access is provided"? I just think "intersections," in most people's minds could be argued to be roadways or more substantial improvements over and above a driveway. I mean, if you have an old dirt road or a driveway leading out -- especially like in the estates, you've got a dirt driveway going out to one of the roads, if this isn't made -- is supposed to apply to that, I'm not sure it's going to be clear, because it says "intersection."

Do you need to have that potential argument down the future, or is there a better way to word it so that you don't have that?

COMMISSIONER MURRAY: Well, Mark --

CHAIRMAN STRAIN: Yes, sir, Mr. Murray.

COMMISSIONER MURRAY: -- you could say "except where visibility at public and/or private intersections" -- I mean, if you want it --

COMMISSIONER SCHIFFER: I mean, we could say --

COMMISSIONER MURRAY: -- elucidated.

COMMISSIONER SCHIFFER: -- "where drive, roads, and" -- where a bunch of things meet or intersect. I still say the word "intersect" means where it passes through, so I think "where it meets the roadway or intersects the roadway."

CHAIRMAN STRAIN: Why don't you guys take a look at it and come back to us with a couple of suggestions. Mr. Wolfley.

COMMISSIONER WOLFLEY: I had a question in reviewing this as -- where does it come -- how do you get the height requirements, you know, where -- at these intersections of the shrubs, where the -- where's the height standard come from? I mean -- because I have been -- you know, I've got a 250 pickup truck, and, you know, you're up there, and there's not many obstructions.

Well, I had an occasion when I was riding a bike, and it was a place where there's no bike lanes, so I was up on the sidewalk so I wouldn't get killed. And out from someone's driveway comes a Corvette. Well, needless to say, I went right over the hood and -- because you can't -- you couldn't see. And he pulled right -- because he couldn't see, so he had to go over the, you know, side -- sidewalk. So what kind vehicle do they use to determine the height of these shrubs?

MS. ISTENES: Well --

COMMISSIONER WOLFLEY: I was wondering that as I was going over the hood.

CHAIRMAN STRAIN: How much did it cost you to fix the hood?

COMMISSIONER WOLFLEY: I had a bump on my head, and my front tire was destroyed, and I was peeved.

MS. ISTENES: I -- well -- and I think the issue here is the placement of them, regardless of their height.

COMMISSIONER WOLFLEY: Well --

MS. ISTENES: I suppose that -- and the -- the heights are minimums normally in our codes, so --

COMMISSIONER WOLFLEY: That's the problem.

MS. ISTENES: Yeah, yeah. So when you're talking about visibility, depending on what type of vehicle you're driving or whether you're a pedestrian or on a bike or in a car or, you know, crawling on the ground, I guess -- you know, there isn't -- there isn't a regulation that I'm aware of as far as height of the shrubs. The regulation would be contained within the safety hazard and the setback of the --

COMMISSIONER WOLFLEY: Well, I can't tell you --

MS. ISTENES: -- vegetation.

COMMISSIONER WOLFLEY: -- how many times I've had to creep out into a road, and I'm in the road and realize I'm about to get killed.

MR. BELLOWS: And I believe some of those are in violation of the sight triangles -- the sight book (indicating) -- at intersections. And some of those don't meet -- clearly don't meet that, and many of those are code issues too.

COMMISSIONER WOLFLEY: Maybe they do if they only talk about minimums. I mean, this is -- that was my problem. We should be talking maximums.

MR. BELLOWS: Well, there should always be the sight triangle as specified in the LDC to be kept completely open. You know, I'm sure I've been in the -- some of those are right up -- right -- well, the corners of the intersections --

COMMISSIONER WOLFLEY: Yeah. Regardless, could we somehow take a look at this minimum/maximum thing for these hedges that are located at intersections?

CHAIRMAN STRAIN: But not in this LDC cycle, though.

COMMISSIONER WOLFLEY: Not -- not in this one.

CHAIRMAN STRAIN: You guys need to come back; just address the issue at hand.

MS. ISTENES: Okay.

CHAIRMAN STRAIN: And if you have a better way of stating it, fine. If not, just tell us that, and we'll finish with it next time around -- or the 24th, whatever date that is.

Let's move on to Page 81.

MS. ISTENES: Okay. Page 81 is the fences and walls section of the land development code. And the changes -- I tried to outline the changes very succinctly on Page 81 and 82. There's seven, essentially, summations of the change. What I did was I took advantage of trying to reorganize this to make it easier to read and follow and group like categories together.

Normally -- and this section is a section that normally your everyday person is going to read a lot. And usually when it comes to fences the first question we get is, "How high of a fence can I have?" And the structure of the old code was such that you literally had to read down the entire section of fence height just to figure out where you were and what your height was supposed to be -- or your maximum allowable height was. So things like that were kind of the

impetus behind the organizational structure of that.

We had a lot of regulations dealing with different issues, such as architectural and fence-height measurement that were commingled in different sections. So I tried to segregate all those sections out so that -- and put headings over them so that, as a reader, you could go and look at a heading and then know what the underlying information was talking about. So hopefully that -- that part of it helps the reader.

The other change was per the BCC removing the ability to get an administrative height variance for residential fences.

I'll just go down the list here on Page 81. The other change I -- I made -- and this was not BZA directed, but in looking over the ordinance I realized this is sort of onerous, to have to go to the BZA to decide if barbed wire in conjunction with a chain-link fence was permissible in a residential district. I thought that we could do that administratively given the conditions of the request and evaluate that administratively with our professional expertise and make that decision, rather than making somebody go before the BZA. So that was a change.

I had a question about wire-mesh fencing, because the code is so specific. It talks about chain-link fencing. I had somebody challenging me saying, "This is not chain link," you know, per the industry standard. It was a wire fence --

COMMISSIONER MURRAY: Wire.

MS. ISTENES: -- that looked exactly like chain link. And I know that sounds a little ridiculous, but when you spend hours arguing with somebody about it, it just -- you just start to say, "Look, you know, the fencing is changing in the community, and maybe I'd better reference wire fencing. It's the same intent." So we added a reference to wire-mesh fencing.

COMMISSIONER WOLFLEY: Because there is no chain in fence.

CHAIRMAN STRAIN: Mr. Wolfley.

COMMISSIONER WOLFLEY: I'm sorry. I said there's no chain in fence.

CHAIRMAN STRAIN: I just wanted to keep it straight for the court reporter.

COMMISSIONER WOLFLEY: I'm sorry.

MS. ISTENES: There was some word replacements there. We -- when we get to them, I can highlight those.

The other issue we were running up against was the requirement to have a wall between non-resident -- residential and residential developments. If you applied the code as it was -- as it is currently written, you would have to do that between a golf course and a preserve. And that seemed sort of silly aesthe -- I mean, understanding that a golf -- you know, if you're talking about fairways or you're talking about the open-space portion of a golf course or -- and -- and preserves are generally open and not developed. It seemed sort of silly to put a wall up there, especially -- you know, you're blocking a view or you're blocking transmission of wildlife or people or whatever from -- from these facilities. So we clarified that that would not be required.

We changed a reference for the sight-triangle requirement at all street intersections for all districts, because it was currently listed as applicable only -- only under residential. And those affect all intersections regardless of the zoning. We already talked about that a lot today.

And the big one was that we added a reference in regulations pertaining to sound walls, which are currently not recognized in the LDC.

I struck everything and rewrote it rather than trying to do strike-outs, underlines, because things were relocated. But I did -- I can summarize for you where things were and where they went and answer any questions if you want.

CHAIRMAN STRAIN: Yeah. Let's just start with the pages, Susan, and go through our questions --

MS. ISTENES: Okay.

CHAIRMAN STRAIN: -- like we normally do. I think it starts -- let's go to the first two pages, 81 and 82. Are there any questions on those two pages?

Susan, under your "Fiscal & Operational Impacts," the first words say: "Need to fill this out." I'm not sure what that means.

MS. ISTENES: I saw -- I saw that the other day. I'm sorry about that.

CHAIRMAN STRAIN: That's okay. Then it says: "Operational impact lessen workload on BZA," and the parenthetical, "How many cases per year?" Well, if this is removing the ability to get an administrative height variance for residential fences per the BCC direction, if -- so how do you get the height variance then? You've got to go to the BCC, right?

MS. ISTENES: Actually, that reference -- the operational impact lessening the workload on the BZA would really be for that barb -- barbed-wire section, which appeared to be kind of antiquated for me -- to me. In other words, in order to have barbed wire where it's not permitted, you'd have to go to the BZA for approval. Now, we -- I can tell you, I may have seen one of those in my 13 and a half years here go to the BZA.

CHAIRMAN STRAIN: Okay. But the entire change you have, aren't you -- in your first bullet on Page 81, didn't you say, "Removed the ability to get an administrative height variance for residential fences per BCC direction"?

MS. ISTENES: Right.

CHAIRMAN STRAIN: Okay. So now how do you get an amend -- how do you get a height variance now for a fence?

MS. ISTENES: A regular dimensional variance through the public hearing process.

CHAIRMAN STRAIN: So you have to go to the BCC.

MS. ISTENES: Correct.

CHAIRMAN STRAIN: So --

MS. ISTENES: BZA, essentially.

CHAIRMAN STRAIN: What --

MS. ISTENES: That -- that statement would not be applicable, I guess, Commissioner --

CHAIRMAN STRAIN: Well, that's what I'm saying. It's misleading, because you wouldn't know by the statement that you're talking about just the barbed-wire part of it. You'd think you're talking about the whole section that's being presented. And, therefore, it is not lessening the workload; it's actually increasing the workload, because they can't go administratively now. They'd have to go --

MS. ISTENES: Well, it probably equals out, to be honest with you.

CHAIRMAN STRAIN: Okay. Well, I still -- so --

MS. ISTENES: And I say that because the -- remember, this change is only for residential. And I've got -- in my research of the last 10 years, we've had two requests for residential. Both were denied by staff, and both went to the board on some form of appeal. The rest -- in other words, you can still get a height variance for commercial and industrial. There's no height issues in ag and estates, so --

CHAIRMAN STRAIN: Okay.

MS. ISTENES: That's the impact.

CHAIRMAN STRAIN: Well, let's move on to Page 83 and 84. Any -- well, those are all cross-outs. 85's a cross-out. 86 -- let's go back to -- the first substantive area is 86 and 87. Any questions through 87?

COMMISSIONER SCHIFFER: I have a --

CHAIRMAN STRAIN: Mr. Schiffer.

COMMISSIONER SCHIFFER: What you're doing on 86, bottom, A, is you're calling -- fences are permitted to be a principal use. So is the intent there that you can fence a site without any structures or anything or --

MS. ISTENES: Yes.

COMMISSIONER SCHIFFER: Okay.

MS. ISTENES: And that -- that is current -- in the current code, so it's not a change.

COMMISSIONER SCHIFFER: It's just a relocation.

MS. ISTENES: It's just a relocation. It was previously 5.03.02 B.4.

COMMISSIONER SCHIFFER: Okay. So it is a principal use. And then this other stuff is saying, "But it's not allowed to have accessory uses."

MS. ISTENES: Correct.

COMMISSIONER SCHIFFER: Okay. Good. On -- go to 87, Mark, or --

CHAIRMAN STRAIN: Yes, sir, through 87.

COMMISSIONER SCHIFFER: Eighty-seven, B, you're discussing -- and I'm not sure of the wording to that. I want to make sure that you point out that the foundation can't go across the property line, which is a big problem in fences, especially with the wind loads in Florida.

So the way you're phrasing that is, "A fence shall not protrude in full or a part." Could maybe we add a -- reword that to state, I mean, "No part of a fence shall protrude," or -- I mean, are you having trouble with people designing footings that are going across the property line? because sometimes we go to work on sites and the footing is across the property line. And to do -- you know, a fence in Florida with wind load is essentially a large cantilever, and

you do have to have a pretty excessive overturning on that footing to build it per code. So --

MS. ISTENES: Then I guess you better make sure it's on your property. Put your fence -- move your fence back a little bit.

COMMISSIONER SCHIFFER: Well, yeah. You can do it, and you can design eccentric footings. But the point is, should -- I mean, the way you worded it sounds nice, "full or part." Could we maybe at least put in parentheses after "part," "including foundation" or something?

MS. ISTENES: Okay.

COMMISSIONER SCHIFFER: Just to remind people of that.

MS. ISTENES: All right.

COMMISSIONER SCHIFFER: Down on a., you and I had this conversation about the difference between front yards -- or yard and setback, okay?

MS. ISTENES: Yes.

COMMISSIONER SCHIFFER: And we're getting close to maybe agreeing. But the definition in the code is that the yard is a space between the building and the property line. So I'm not sure it's a good idea to limit the height of a building in the front yard based on the word "yard." For example, I could have a site with a 50-foot front setback. I put my house 75 feet, and you're telling me that the height of that wall's going to depend on where I put the house, not the setback.

So could we talk about maybe changing these -- the setbacks and make it required setbacks such that -- or is it your intent that, if I do pull my house further away from the setback, that you don't want me to have a taller fence in that area?

MS. ISTENES: Is it too late in the afternoon to have a philosophical discussion with you?

CHAIRMAN STRAIN: It is. And I already realized he was going there again.

MS. ISTENES: No, and -- and I understand. Brad and I spoke, and -- and I sent you an e-mail late yesterday. I don't know if you got it. But I'm -- I'm glad we spoke, because -- and I knew this was going to come up.

And there is something missing in the code, per se, and it has to do with the definition of a "yard." And what is missing is -- if you read the code as it's currently structured, it talks about regulating the fence within the required yard. And the "required yard" is formed when you -- and I even drew pretty pictures -- when you apply the setback and the relationship of the -- the distance of the setback to the street, which forms the buildable area.

So if you see on this drawing (indicating), at the bottom, you'll see that is the front of this lot. And the setback in this case happens to be 25 feet. And if you're measuring that from the property line, or the back of the right-of-way line, whatever -- whatever's the most restrictive point in this case, you'll see that it forms the -- an outline of a buildable area when you apply all the setbacks that way.

The "required yard" is that which is created when you apply the re -- the setback. The -- the regulation as it currently stands regulates only fences in the re -- the height of fences in required yards.

Now, per the definition of the code, there are other yards in your -- on your lot. And if you look at this illustration (indicating), per the definition, you'll see where it's crosshatched in multiple colors. That is your required yard. And then where you've got a crosshatching in a single color, that single green, that is just a yard per the -- per the definition.

So right now the way the code is structured, it says "required yard" and gives the height limit. So if you do want to place a fence elsewhere in your "yard," per the definition, there is no height limit.

So the question becomes do you want a height limit or not. My recommendation would -- would say you do, but I wanted to -- I think that's where you're going. Is it? Am I correct?

COMMISSIONER SCHIFFER: Not yet. I mean, you do point out something, and -- and I'm not sure you pointed out a problem, because there are buildings -- within the setbacks, you have height limitations. You -- essentially the same as a building. A fence is a structure.

MS. ISTENES: Not per our code.

COMMISSIONER SCHIFFER: It excludes fences --

MS. ISTENES: Yes.

COMMISSIONER SCHIFFER: -- as the --

MS. ISTENES: Fences, yes. And I understand that walls require footings and they -- they --

COMMISSIONER SCHIFFER: Right.

MS. ISTENES: -- may take on the -- but for purposes of regulating them --

COMMISSIONER SCHIFFER: We have a definition of "structure" that does not have fences in it?

MS. ISTENES: It specifically excludes them --

COMMISSIONER SCHIFFER: Okay.

MS. ISTENES: -- yes.

COMMISSIONER SCHIFFER: But -- but my point really is -- is -- and I agree. I think if you change it to "required front yard" -- but doing -- I mean, we're using in the code "yard" and "setback," interchangeable.

MS. ISTENES: Correct.

COMMISSIONER SCHIFFER: And, hence, that's the problem.

MS. ISTENES: Exactly.

COMMISSIONER SCHIFFER: So I do believe they're two different things. And if you design buildings, especially if you use building codes, especially if you use some of the fire-code aspects of it, the yard is an important creature, and it is different than setbacks. But, you know, is your intent here, though -- is to -- in that area within the setbacks -- I mean, again, the definition of "yard" in our code goes from the face of a building to the property line.

So if you change it to "required," I'm happier, because that way it's essentially the same as saying the "setback."

The question does become -- and your drawings never showed it -- is that yards kind of overlap. In other words, a side yard -- or does it? Where the side yard comes down towards the street and the front yard goes over, isn't there an overlap of those two yards? And, obviously, the most restrictive --

MS. ISTENES: Yeah, and if I -- well, to answer your question, yes, yards can overlap. So for -- and I didn't draw it on my drawing. But if you look back on my drawing, if you were to put a shed in your back yard, for example, the setbacks are different for accessory structures. So your shed could theoretically go in the required yard of the principal structure but still be a lawful structure. And that's where the yards would overlap.

COMMISSIONER SCHIFFER: Right. Anyway, I think if you do "required" in front of all of these setbacks, I'll be happier than not having the word there.

I guess -- and I'm just looking down the rest of the -- down at the bottom of 87, D.1., we really have an allowance where you could have an eight-foot-high fence in front of an office building.

MS. ISTENES: I'm sorry. What are you on?

COMMISSIONER SCHIFFER: D.1.

MS. ISTENES: D.1, yes.

COMMISSIONER SCHIFFER: Okay. I mean, I don't think anybody would want that. But essentially what you're saying is -- or an industrial -- that I could have, on the property line, an eight-foot-high fence.

MS. ISTENES: Correct. Look at Evans Oil. They actually had a --

COMMISSIONER SCHIFFER: Right.

MS. ISTENES: -- administrative height variance for that fence. I think it's 10 feet. That wall is 10 feet, I believe, 10 or 12 even.

COMMISSIONER SCHIFFER: All right. I guess that makes sense on an industrial more than a commercial. I mean, you wouldn't -- an office building wouldn't want that. I think -- wouldn't that vi -- would that violate the architectural standards, if they -- if I buy an office building and I just want to fence it in totally?

MS. ISTENES: Not to -- you may -- you may be restricted on the location and type, but I think you could --

COMMISSIONER SCHIFFER: Okay.

MS. ISTENES: -- put a fence around it, yeah.

COMMISSIONER SCHIFFER: Okay. And then the only other thing's a small, tiny thing. In No. 2., I would just spell out the word "one" instead of the number "1" before "health," welfare (sic) --

MS. ISTENES: Okay.

COMMISSIONER SCHIFFER: That's it for those pages.

CHAIRMAN STRAIN: Okay. Anybody else through Page 87?

Susan, Item B on the top of Page 87: "A fence may be located on a lot line, but no fence shall protrude in full or part on adjacent property or right-of-way." Is that a fence and a wall or just a fence? So you can't have a fence on a right-of-way, but you can have a wall?

MS. ISTENES: Could you tell me that section again? I --

CHAIRMAN STRAIN: Page 87.

MS. ISTENES: Yes.

CHAIRMAN STRAIN: B.

MS. ISTENES: B?

CHAIRMAN STRAIN: B.

MS. ISTENES: Oh, I'm sorry, at the top. I'm looking at little b. "A fence may be located on a lot line, but no fence shall protrude in full or part on adjacent property or right-of-way." And your question is ...

CHAIRMAN STRAIN: Well, say someone had a wall on their property line. But can a -- can the wall be right on the right-of-way, since it's not a fence, or does this mean fence and wall?

MS. ISTENES: This should be -- mean both.

CHAIRMAN STRAIN: Okay. So are you going to change that to "fence and wall"?

MS. ISTENES: Yes.

CHAIRMAN STRAIN: Okay. Now, if you change it to "fence and wall," then you need an exclusion for the wall that's in the right-of-way on Mission Hills Drive and Collier Boulevard.

MS. ISTENES: Well, that's the one I'm going to be checking on.

CHAIRMAN STRAIN: Right. But your -- your results of that check needs to be --

MS. ISTENES: Would be reflected in this, yes.

CHAIRMAN STRAIN: -- considered in here.

MS. ISTENES: Yes.

CHAIRMAN STRAIN: Right. Page --

COMMISSIONER WOLFLEY: Susan --

CHAIRMAN STRAIN: Oh, Mr. Wolfley.

COMMISSIONER WOLFLEY: Has that changed that -- the property-line issue in the right-of-way? Or has that always been that way -- I mean, because I've noticed in later -- past years -- and I apologize for taking up time. But I've seen two concrete walls and two -- two adjoin -- adjacent properties, and they are six inches apart. I have no idea how they built those con -- concrete-block walls. But, I mean, why would they -- why would that be?

And I've seen that a number of times, concrete-block walls, and there's a -- space enough for a mouse to get in between. I mean, why would they do that? I mean, that's what I was wondering.

MS. ISTENES: I honestly don't know.

COMMISSIONER WOLFLEY: Somebody's --

MS. ISTENES: I haven't seen that.

COMMISSIONER WOLFLEY: That's -- that's what --

COMMISSIONER MURRAY: Maybe it's a runway for a mouse.

COMMISSIONER WOLFLEY: It's a mouse runway. Okay. Thank you.

MS. ISTENES: Unless there's some water-management reason. But, I mean, that's just a wild guess. I don't know.

COMMISSIONER WOLFLEY: Could be.

CHAIRMAN STRAIN: We're on 88 and 89. Any questions?

COMMISSIONER MURRAY: I have a --

CHAIRMAN STRAIN: Mr. Wolfley -- or Mr. Murray.

COMMISSIONER MURRAY: At the bottom, on Line 41 --

CHAIRMAN STRAIN: What page?

COMMISSIONER MURRAY: -- you speak to concrete block, brick, wood, or decorative iron and steel, wire, chain link. What about cementitious fences? I think they've become popular.

MS. ISTENES: What kind?

COMMISSIONER MURRAY: Made out of cement, cementitious, a material that's not entirely cement necessarily, but it is -- sometimes it's a combination of materials.

MS. ISTENES: That would be acceptable the way I read this.

COMMISSIONER MURRAY: Well, since you stipulated concrete block, I wondered if somebody might look at that. I know we have these type fences now. In fact, we have a preference for them. I remember the commissioners --

MS. ISTENES: Yeah, they're just poured. They're just poured slabs in a sense, functioning --

COMMISSIONER MURRAY: They're poured --

MS. ISTENES: -- as a fence?

COMMISSIONER MURRAY: They're formed, yeah.

MS. ISTENES: Formed, yeah.

COMMISSIONER SCHIFFER: "Or similar material."

MS. ISTENES: "Or similar material," I think, covers that.

COMMISSIONER MURRAY: I didn't see "similar material" in that particular phase; that's why --

MS. ISTENES: I mean, honestly, to the -- to the uninformed eye, I don't know that you would be able to recognize the differences between a concrete-block fence and a poured fence once they're finished.

COMMISSIONER MURRAY: Yeah, we --

MS. ISTENES: I mean, if you're not that familiar with them, they kind of look the same.

COMMISSIONER MURRAY: I wasn't concerned with the person looking at it as much as the individual who's passing on somebody's request.

MS. ISTENES: No, I was just stating that they're a similar material, and that was my example for saying they're -- they look and function the same way and are made out of similar materials. So I don't think we've had an issue with that.

MR. BELLOWS: No, I don't think so.

COMMISSIONER MURRAY: It says "but not limited to."

MS. ISTENES: I mean, I guess if they were making them out of car tires, you know, I think that would be a problem. But that's not conventional material.

COMMISSIONER MURRAY: All right. I -- and I don't -- I'm not going to argue that issue with you. I do know -- I do know that there's one commissioner who has a preference -- and maybe more -- who has a preference to avoid chain link. And I remember that there was a meeting of the commission where it was established by -- by their policy that they would have a great deal of preference for a cementitious type of fence. And in the absence of it being here as that form, I thought, "That's not a good idea."

MS. ISTENES: I mean, I can add "cement" if you want.

COMMISSIONER MURRAY: As long as -- as long as you folks are going to not prevent that from going up, that's fine for me.

MS. ISTENES: Do you want me to add "cement"?

CHAIRMAN STRAIN: It says "but not limited to," so wouldn't that mean everything that -- anything and -- anything you make a fence out of? So I think it's covered.

MS. ISTENES: That's conventional. I mean, the car-tire thing I don't think is conventional.

COMMISSIONER MURRAY: Okay.

CHAIRMAN STRAIN: Well, I don't think any -- I think if it's the car tire, we'd certainly want to have a say in that.

Anybody else have -- Brad.

COMMISSIONER SCHIFFER: And my thoughts on that, Susan, would -- just add "concrete," and then -- and then after that have "concrete masonry" instead of "concrete block."

MS. ISTENES: Okay.

COMMISSIONER SCHIFFER: The things we see are concrete -- concrete masonry units.

MS. ISTENES: Okay.

COMMISSIONER SCHIFFER: "Concrete block" is slang.

COMMISSIONER MURRAY: That does the job.

COMMISSIONER SCHIFFER: Yeah, and that's --

MS. ISTENES: Okay.

COMMISSIONER SCHIFFER: Up at E., at the top, I kind of like the word -- get rid of the word "requirements," because -- I know what you're saying is, you know, you want to exempt them from the height and what they're made out of. But there may be code requirements on the construction that we don't even govern. So if you'd just -- I think "height and type of construction" gets your point across.

MS. ISTENES: Okay.

COMMISSIONER SCHIFFER: In b -- well, let that one go, b. I'd like to think about maybe adding a ii, and

make that ground elevation of the adjoining lots. These are considerations when you're determining what is the ground level. I think the adjoining lot should be brought into that conversation.

MS. ISTENES: I think that's implied under C, but we could certainly beef that up if you think it's not clear enough.

COMMISSIONER SCHIFFER: Yeah, well, let's see.

MS. ISTENES: I mean, if you're -- and, again, this is assuming your fence is placed on a property line.

COMMISSIONER SCHIFFER: Right. So maybe that wouldn't be -- and are we on 88 and 89, Mark, or just 88?

CHAIRMAN STRAIN: Yes, sir, 88 and 89.

COMMISSIONER SCHIFFER: Hold on a second. Okay. Number 5, fences and walls should be construction to present -- I would kind of -- I'd like to add -- make that "a" finished side instead of "the" finished side, because -- let's not give the impression you can only have one finished side.

MS. ISTENES: Okay.

COMMISSIONER SCHIFFER: So if we give the -- present "a" finished side on the fence or wall of the adjoining lot.

MS. ISTENES: Is that the -- the only issue I see with that -- because I've only debated this with -- is somebody's definition of "finished" may not be -- I mean, you know what I'm saying? There's -- if -- generally on wood sen -- fences there's a finished and an unfinished side.

COMMISSIONER SCHIFFER: Right.

MS. ISTENES: And they're different. I mean, could somebody potentially argue with me that the -- the one we consider usually the unfinished side is finished? I don't know. I'm just --

COMMISSIONER SCHIFFER: My concern here is they're going to have at least one finished side. So if the requirement is that "a" finished side, then that would be -- that's -- the one finished side has to be on the outside.

MS. ISTENES: That's fine. I don't have a -- -- I don't --

COMMISSIONER SCHIFFER: But I don't want to make them think that there's a finished and unfinished side to everything. And there's not.

MS. ISTENES: True.

COMMISSIONER SCHIFFER: And then I had a note here, and I'm not sure why I had it. But No. 5.1, if a -- after "this provision may be," I have "temporarily administratively waived," and I'm not sure why, so never mind. Go ahead.

CHAIRMAN STRAIN: Anybody else on 88 and 89? Mr. Wolfley.

COMMISSIONER WOLFLEY: Nothing. I just said, "Brad, would you finish your sentences?"

CHAIRMAN STRAIN: Yeah. Okay. Susan, on to Page 88.

COMMISSIONER MURRAY: You're getting testy.

CHAIRMAN STRAIN: F starts out "Fence and wall design standards." One goes "Measurement of fence or wall height." And if you go in to b, third line, it talks about "ground level at the fence location"; Line 25, "Measuring the fence height"; Line 33, "Average elevation over the length of the fence"; Line 36, "Ground elevation on both sides of the fence."

And I just think you might want to --

MS. ISTENES: Do the wall --

CHAIRMAN STRAIN: -- add a wall in there so there's no argument in the future that you meant both.

MS. ISTENES: Yeah. It's -- it is -- "wall" is in the -- the heading, but -- and then under F and 1, but, yeah, it certainly doesn't hurt. That way there's no question.

CHAIRMAN STRAIN: Well -- or just --

MS. ISTENES: Especially when you're kind of jumping in the middle of it and not reading the heading. So --

CHAIRMAN STRAIN: I mean, just -- and drop the reference to "either" and write it as though it applies always to fence and wall. I mean, that's all I'm suggesting.

MS. ISTENES: Got it.

CHAIRMAN STRAIN: On Page 89, at the top, same thing. "Fences shall be" means "fences and walls shall be."

Number 6 -- why did you omit 6?

MS. ISTENES: I was just looking in my notes for that because --

CHAIRMAN STRAIN: Because you knew I was going to ask it, huh?

MS. ISTENES: Well, no, I had the same question because -- and I had on here, "Eliminated 5.03.02 B.5." And I re -- my recollection was, when we went to DSAC, they thought that was redundant with something else. And -- actually, hang on. Let me -- I'm just looking at my notes here.

CHAIRMAN STRAIN: I just saw it as a good catchall. In case those -- the sight-distance triangle didn't address all of the conditions, including different heights between elevated arterials and local streets intersecting, this would be a good way to enforce a safety haz -- problem.

MS. ISTENES: This is what we did on -- we combined it and put it under No. 3, because we felt it was somewhat redundant.

CHAIRMAN STRAIN: Okay.

MS. ISTENES: If you look on No. 3, "Fences" -- "Fences" -- and we're going to add in "walls" -- "shall be constructed and maintained in a manner as to not create a safety hazard or a public nuisance."

CHAIRMAN STRAIN: Okay.

MS. ISTENES: And that was -- we essentially felt that captured what was already in 6, so we eliminated 6.

CHAIRMAN STRAIN: Okay. That works.

Any other through 89? If not, 90 and 91. Questions? Brad.

COMMISSIONER SCHIFFER: The chain-link fence on 1.a, you're citing a situation there where the fences face a public or private street. What do you really mean by that, because aren't they not allowed on the primary facade -- or on the front setbacks?

MS. ISTENES: They're prohibited -- "Chain link (including wire mesh) and wood" -- and these are only for structures that must comply with the architectural and site design guidelines. Those are prohibited forward of the primary facade. So the setback really doesn't come into play here. It's wherever the building is located on the property forms -- and along the primary facade, you can't have a fence in front of it made of those materials.

COMMISSIONER SCHIFFER: Okay. Now, this thing here, if it faces a public -- what I'm trying to get at -- is that a fence that's behind the primary facade yet visible from the street; in other words, in the side yard --

MS. ISTENES: Yes.

COMMISSIONER SCHIFFER: -- crossing the side yard?

MS. ISTENES: Yes.

COMMISSIONER SCHIFFER: Okay. So it -- it's a --

MS. ISTENES: Hundred-foot distance.

COMMISSIONER SCHIFFER: Okay.

MS. ISTENES: Yes.

COMMISSIONER SCHIFFER: Okay. That's good. Down on 2, you go with the exception of the single-family dwellings. And yet 2.c exempts this whole section from single-family dwellings, so --

MS. ISTENES: Yeah, I -- I caught that yesterday. And I think I meant to strike it. So if you feel it's redundant -- I do -- I'll --

COMMISSIONER SCHIFFER: I think you can take out the first part of A, don't you? And then --

MS. ISTENES: Sure.

COMMISSIONER SCHIFFER: And then the -- c will -- unless you want to put c first and make that a, and then that way you don't read on if you're in residential.

MS. ISTENES: I would rather do it that way, yeah.

COMMISSIONER SCHIFFER: On the next page, 91, H -- H, it says, "masonry wall or pre-fabricated concrete wall." Couldn't we have "masonry wall, concrete, or prefabricated con" -- I mean, you're really limiting the use of concrete only to prefabricated walls.

MS. ISTENES: Sure.

COMMISSIONER SCHIFFER: And I guess the thing Mark pointed out is -- you use the word "wall" and "fence." Make sure that when you mean "wall" you mean "wall" and -- because, actually, your prefabricated concrete thing, the ones I've seen would actually be fences, not walls.

MS. ISTENES: Yeah. I noticed they're referred that way -- to that way in the industry. Now, we kind of look at them as walls.

COMMISSIONER SCHIFFER: The same -- I mean, you could --

MS. ISTENES: They're treated the same, yeah, as walls.

COMMISSIONER SCHIFFER: Right. See, it's too bad you don't come up with a word that means both and use that throughout -- or use both throughout, like -- but -- but you probably wouldn't have a prefabricated -- you could. I could think of prefabricated concrete walls, but fences would be more --

MS. ISTENES: The only thing with fences is it's somewhat misleading, because they're -- you can see through them. Nor -- on a lot of fences, you can see through them; whereas, the intent here is not to have -- not to be able to see through them. And that's why it's -- you're kind of looking at walls, concrete --

COMMISSIONER SCHIFFER: Yeah.

MS. ISTENES: -- versus -- I mean, a fence is wire. A fence could be wood. A fence could be, you know --

MR. BELLOWS: Pickets.

MS. ISTENES: -- pickets.

COMMISSIONER SCHIFFER: It could be anything. I think the definition -- maybe if we need a definition we should do that. But I don't think a fence is -- fences tend to have air movement through it where a wall wouldn't, stuff like that. But it's not see-through.

H.1.b -- I'm not exactly sure what b and c are describing. I mean -- and when you say "opposite" a residence, you mean adjacent? In other words, we have that word that would mean across the street and stuff, but -- and c is really difficult for me to picture.

MS. ISTENES: You want us to explain where -- when these apply, in what situation?

COMMISSIONER SCHIFFER: Yeah, graphically. I'm having trouble -- you know, I'm sitting here sketching trying to follow the -- the wording. And I'm not sure, along a street, which is opposite the primary --

MS. ISTENES: If you -- I'm trying to think of a good example. We -- and I can't remember the project name. But, again, these are non-resi -- between residential and non-residential.

COMMISSIONER SCHIFFER: Right.

MS. ISTENES: If you're across the street from residential -- on a local street, don't forget, or -- or an alley separates you -- so if a local street separates you or an alley separates you and on the other side is residential -- residentially zoned, then the wall's required.

COMMISSIONER SCHIFFER: Okay. So what you're defining is that -- you know, across from that -- I mean, are we -- okay. So if --

MS. ISTENES: It doesn't happen a lot, honestly. The alley situation happens more, and you'll see that in Golden Gate --

COMMISSIONER SCHIFFER: Okay.

MS. ISTENES: -- City.

COMMISSIONER SCHIFFER: Okay. I'm done. Thanks.

CHAIRMAN STRAIN: Anybody else through Page 91?

Susan, let's go back to Page 90.

MS. ISTENES: Okay.

CHAIRMAN STRAIN: 2.b: "The fence shall be screened by a mechanically irrigated" -- I don't think you need the word "mechanically" -- "living plant hedge." So that means you can't have a dead plant hedge?

MS. ISTENES: You're right.

CHAIRMAN STRAIN: So --

MS. ISTENES: You would be amazed.

CHAIRMAN STRAIN: Well, let's just assume that they're in violation of their standards if they're dead.

COMMISSIONER MURRAY: They look dead.

CHAIRMAN STRAIN: So wouldn't it be, "A fence shall be screened by an irrigated plant hedge at least 30 inches in height"?

MS. ISTENES: I don't mind taking out "mechanically." I honestly would prefer to have "living" in there. I -- like I said, you would be amazed at what people think meets the intent of the code. And they're not willing to replace their buffers that have died and are just sitting there. And this is kind of one more avenue for code enforcement to use to make sure that they have the adequate buffers and that the buffers are functioning as they're intended.

CHAIRMAN STRAIN: Well, then every reference in the code to "plant hedge," we need to put the word

"living" in front of it if the intention is always to have a living plant hedge. I can't imagine our code allows a plant hedge to die. I thought we had enough --

MS. ISTENES: No, and I don't -- it -- it probably references some -- it somewhere else, Commissioner.

CHAIRMAN STRAIN: Well --

MS. ISTENES: It -- what I -- it doesn't matter to me. I'm sure it's somewhere else in the code, honestly.

CHAIRMAN STRAIN: It's -- could you check? And if you've got another way to enforce it, to make sure a hedge stays alive, that's required --

MS. ISTENES: Okay.

CHAIRMAN STRAIN: -- which I mentioned -- I thought code enforcement made sure those things happened. But if they don't, then, yes, the word's needed, but --

MS. ISTENES: I know it's in there. I just can't cite it for you off the top of my head, but it's -- I'm sure it's in the landscaping section, the buffering section, so ...

CHAIRMAN STRAIN: Okay. Then the last two pages, 92 and 93, anybody have a -- anything on those two pages?

Four, "Deviation from Wall Requirement," was that existing language, Susan?

MS. ISTENES: Yes.

CHAIRMAN STRAIN: Okay. Anybody have any questions through Page 93?

COMMISSIONER SCHIFFER: I have one, Commissioner.

CHAIRMAN STRAIN: Go ahead.

COMMISSIONER SCHIFFER: It's on sound walls, and it's on 93, a. And essentially it's giving them carte blanche on whatever they want to do with these side walls -- or sound walls.

MS. ISTENES: Right.

COMMISSIONER SCHIFFER: And is that something we have to do, or is that us being nice? because the ugliest walls in a community are these sound walls.

MS. ISTENES: Right.

COMMISSIONER SCHIFFER: And the -- and they're almost always erected to compensate for a planning mistake. So why do we just let them be whatever they want to be? Why don't we -- why don't we make it difficult so that people will avoid using them?

MS. ISTENES: I -- well, Nick's here, so he might want to talk about it too. But my understanding is the --

CHAIRMAN STRAIN: I think Nick would have a great input on this one.

MS. ISTENES: He knows how I feel about them.

COMMISSIONER SCHIFFER: Susan, how do you feel about them?

MS. ISTENES: I think they're the ugliest walls we have in the county.

COMMISSIONER SCHIFFER: Good.

MS. ISTENES: And wait 'til -- wait 'til they start getting older, and the cost to maintain them -- and they get moldy, and the paint starts peeling, and you have no landscaping in front of them to hide them. It's becoming a walled city. That's my planner -- professional planner's opinion. Thanks for letting me share.

COMMISSIONER WOLFLEY: Don't you -- don't you agree --

CHAIRMAN STRAIN: Just a minute, Mr. Wolfley. As soon as Mr. Schiffer's finished.

COMMISSIONER SCHIFFER: Don't you agree that they really are essentially patching a mistake in planning? In other words, we shouldn't have let units get that close to a right-of-way. We shouldn't have --

MS. ISTENES: Not necessarily. I do know they're being used as somewhat of a tradeoff to acquire right-of-way, which saves the taxpayers money, and certainly nothing wrong with that.

But, again, like I said, Nick has a little more insight into that. But I think -- I wouldn't agree they're necessarily a planning mistake, per se, as far as the setback goes. But you have a little bit --

COMMISSIONER SCHIFFER: I mean, I think if we zoned all our right-of-ways way away -- and I don't want to get Mark started on this one again. But if we --

COMMISSIONER MURRAY: Go ahead.

COMMISSIONER SCHIFFER: -- had all zoned right-of-ways prior to trying to get these things, we wouldn't have to do this, because people would be planning for the future road.

MS. ISTENES: Potentially, but maybe not. And Nick -- Nick may have more.

COMMISSIONER SCHIFFER: I'm done. Thank you, Mark.

CHAIRMAN STRAIN: Well, Mr. Wolfley had a question. And then I'm sure that we'll --

COMMISSIONER WOLFLEY: Well, she mostly mentioned -- Susan mostly mentioned it when -- regarding the tradeoff thing. But I was thinking of 75, where the taxpayers did pay for miles of fences because it came so close to the community. So it's --

MS. ISTENES: Uh-huh.

COMMISSIONER WOLFLEY: That's all I was going to say.

COMMISSIONER MURRAY: Did I have --

CHAIRMAN STRAIN: Mr. -- Mr. Murray.

COMMISSIONER MURRAY: I just wanted to -- it's in the same context. I'm looking at Page 92, No. 4, where -- on the third line, No. 28, where it says "local street lies contiguous." I think that was part of the last discussion. I'm not sure.

But wouldn't it be more appropriate to say "right-of-way" as opposed to a street? because the vision that I see when I read this is a street, an actual street directly next to a commercial building or -- I mean, actually right there at the building, which you might find in Brooklyn, New York.

MS. ISTENES: I'm --

COMMISSIONER MURRAY: Because they use the word "contiguous," and that's the reason why I'm relating to it.

MS. ISTENES: I guess I would just prefer to stay with "street." It's -- it's somewhat of a generic term that people just apply in all situations. And I think it's possibly even defined that way in our code, but --

COMMISSIONER MURRAY: Well, I appreciate your desire. And I'm -- I'm trying to support the chair's many previous statements about contiguity and adjacency. And where we talk about a street I -- I envision blacktop right against a wall, or so to speak. I don't see -- in my mind when I read this, I don't see a space of green or any other form. I just see a structure, and I see a street, because you use the word "contiguous." I would see "right-of-way," because generally a street lies within the right-of-way. I'm not trying to pick --

MS. ISTENES: What I'm --

COMMISSIONER MURRAY: -- at you --

MS. ISTENES: Whatever the rest of the board feels, I'm -- I think it could go either way. I'm just stating my preference, but --

CHAIRMAN STRAIN: Mr. Wolfley.

COMMISSIONER WOLFLEY: Let me just add something to that. When I -- what I got the vision of when I read this was behind a shopping center that is contiguous to residential, putting a wall up.

MS. ISTENES: Uh-huh.

COMMISSIONER WOLFLEY: You're calling that a road. It's not really a road. It's just an access to get the products to the stores, to the commercial location.

MS. ISTENES: Well, yeah. There again --

COMMISSIONER WOLFLEY: What would you call that?

MS. ISTENES: There's some -- a number of different situations explained here as to when the wall is required. And the -- the street relationship to residential across from commercial and industrial is one instance. Another is exactly as you describe, where you've got a commercial -- commercially designated and developed property abutting residential. The two property lines -- or zoning lines touch. And you would definitely require a wall there too.

COMMISSIONER WOLFLEY: There's a roadway of sorts. Trucks drive on it, but it's not a street. So, I mean, is there another way we can --

COMMISSIONER MURRAY: Stevie Tomato's is a perfect example.

COMMISSIONER WOLFLEY: There, you had to go.

COMMISSIONER MURRAY: Think about the video, right?

COMMISSIONER WOLFLEY: Yeah. Yeah, that would be it.

MS. ISTENES: That's a -- that's a driveway.

COMMISSIONER WOLFLEY: Well, that's right --

COMMISSIONER MURRAY: Well --

COMMISSIONER WOLFLEY: -- but let's not think about that one for a minute.

MR. BELLOWS: There's other developments. Like in Berkshire, there's commercial -- there's a -- a true road behind there.

COMMISSIONER WOLFLEY: Okay. So my point is --

MR. BELLOWS: Commercially, it is.

COMMISSIONER WOLFLEY: It doesn't look like a road. Can we call it something? Is there something that we can call it other than just a "street"? because that is an issue.

MS. ISTENES: Access? Vehicular access or access way?

COMMISSIONER MURRAY: I don't -- I don't have a problem if you want to take out the word "contiguous." I -- I think -- if you want to put "street" in there and -- and you understand it and the people that come after you understand it to mean that it really -- it's the entire right-of-way that carries the street, that's fine. But we like to be as precise as we can, and that's what I was working toward.

COMMISSIONER WOLFLEY: A "local street" or "roadway"?

COMMISSIONER MURRAY: "Right-of-way"?

COMMISSIONER WOLFLEY: "Right-of-way"? "Roadway"?

CHAIRMAN STRAIN: Why don't staff just take a look at it and try to --

COMMISSIONER WOLFLEY: Let's get on with it.

CHAIRMAN STRAIN: -- come back with something if it has to be.

Any other questions on 92 and 93?

MS. ISTENES: Did you want --

CHAIRMAN STRAIN: Well, as far as the sound walls go, I think we -- did we -- did we have any recommendation on that? Or did you guys -- everybody just hates them, but they are a necessity. And Nick wanted to talk about them and tell us --

MS. ISTENES: I was going to say it, are your questions answered, because he -- if you don't want him to talk, I'm sure he's --

MR. CASALANGUIDA: Just for the record, Nick Casalanguida. I -- I agree with Susan. They're not -- they're not the most attractive things in the world. The issue is they meet sound requirements, attenuation requirements.

And one of the issues that's come up is the county's total communities. We don't want to be punished twice. You make the warrant for a sound wall. Then we have to buy more land to put the sound wall on. It's kind of a Catch-22.

So we've said, "If you're willing to donate that property to the county or put it on your own property, we'll maintain it." So then you get in conflict with the land development code.

So if we didn't apply that -- a factor for that, now you're condemning more property to put the sound wall on to meet the setback requirements. It's a strange situation. But, again, I agree, these walls are an issue.

COMMISSIONER SCHIFFER: Mark.

CHAIRMAN STRAIN: Okay. Brad.

COMMISSIONER SCHIFFER: And here's the way this thing's worded, Susan. We had a hearing one time -- it was up in the north as 75 is leading the -- leaving the county. These guys wanted to develop the area. We wanted to push the preserve up against 75, but they really wanted to build sound walls. I mean, in their proposal for their PUD was sound walls, which to me was, you know, lunatic. But -- but it -- and it actually passed.

But, anyway, the -- the important thing is would this ever be construed that any government entity -- are we the ones telling them to do that when we do a development order or -- I mean, I would never want that paragraph -- first of all, I'd like to get rid of the paragraph. But I would never want it to be that that development order, because it was part of the PUD, made them put the sound walls up in case somebody came to their senses down the road. But it says --

MS. ISTENES: It depends how their development order is worded, but --

COMMISSIONER SCHIFFER: But "at the direction of any government entity" would not be considered the fact that it was in a PUD?

MS. ISTENES: Well -- and this "at the direction of" is mostly, I think, to capture the -- maybe some agreements that transportation has worked out with property owners for ownership and maintenance and/or construction. You know, when they're acquiring right-of-way, they negotiate a lot of different things. And this may be just an avenue of negotiation if the county directs them to erect one out of some sort of agreement.

COMMISSIONER SCHIFFER: Okay.

MS. ISTENES: That's -- this language was actually crafted and monkeyed around with quite a bit by DSAC. And then they came up -- came up with this. So this is kind of how it evolved that way.

COMMISSIONER SCHIFFER: I'm done.

CHAIRMAN STRAIN: Okay. Anybody else through Page 93? And it looks like, Susan, you're going to come back with some suggestions --

MS. ISTENES: Yes.

CHAIRMAN STRAIN: -- at some point in the future.

Page 94, temporary-use permits.

MS. ISTENES: Okay. This is actually a holdover from the sign regulations. This is when we amended the sign code pursuant to that lawsuit. We needed to go ahead and make this change. And, actually, it was already presented before the board as a change that was coming, and so this is it. So it's all -- I -- truthfully, it -- if my recollection is correct, it's been vetted already. And this area of the temporary-use permits is going to house some of the signage provisions for sales and special events, and that is really about it.

CHAIRMAN STRAIN: Okay. Well, let's plow our way through it. 94 and 95, any questions from anybody? 96 and 97?

COMMISSIONER SCHIFFER: I do have a question.

CHAIRMAN STRAIN: Mr. Schiffer.

COMMISSIONER SCHIFFER: Susan, on f on 97, which is Line 24, the -- the thing I have -- isn't there situations where we could have an undeveloped property that somebody might want to put -- a fair or a circus might want to set up or something like that? Is -- would that stop it? And I guess -- what does "undeveloped" mean is --

MS. ISTENES: I don't mean to put John Kelly on the spot, but I'll ask him just to be thinking of situations where that may occur. But my recollection is that the special-event permits usually almost always go on some sort of developed property or in association with a developed property. So, for example, if a church has a vacant lot next to it that they own, they could use that. But are you -- can you think of any other situations, Ray or --

MR. BELLOWS: I think that's --

MS. ISTENES: -- or John? I don't know that this is really a change. I don't think this is changing anything in the code. It's just --

COMMISSIONER SCHIFFER: Well, you show it as new. I just --

MS. ISTENES: Okay.

COMMISSIONER SCHIFFER: I'm just -- you know, there might be situations where there is a piece of land, undeveloped, that could hold something and the parking and everything for it, and this might stop it, unless I don't know what "undeveloped" means. I mean, it's -- if it's an agricultural piece of land that wasn't -- somehow wasn't used, it's got sod on it, so it's not a mud pond.

MS. ISTENES: Yeah, I mean, generally "unimproved" -- and I would call un -- "undeveloped" and "unimproved" the same, synonymous -- that, you know, you're not going to have the infrastructure and the facilities for -- for parking, for access, for handicapped, for things like that. I mean -- so I think what the code intent is is to try to eliminate or preclude that from happening, where those don't exist.

Now, I know that's -- that doesn't always happen, especially if you're using open property on -- that's in conjunction with an improved property, but I think that's the intent.

COMMISSIONER SCHIFFER: But I think we can all think of going to events that were out in the middle of nowhere where all that was brought in temporarily, again, a fair or carnival.

MS. ISTENES: Uh-huh.

COMMISSIONER SCHIFFER: Woodstock would be a bad example, but --

COMMISSIONER MURRAY: Let's leave that out.

COMMISSIONER SCHIFFER: But the point is that there -- I can think of circumstances where you would want to do it on a piece of property.

MS. ISTENES: Do you want me to look at that a little bit further and explore that if we don't have an answer right now? because that's --

COMMISSIONER SCHIFFER: Okay.

MS. ISTENES: -- not one that jumps out at me.

MR. BELLOWS: The only thing I can add is, historically, we have never issued temporary permits on

undeveloped properties. And this is just to allow for recent trends where they want to have groundbreaking ceremonies prior to having the permitted use on site. That's the only reason. Normally we just don't allow temporary-use permits on vacant properties --

CHAIRMAN STRAIN: Mr. Murray.

MR. BELLOWS: -- because there is a safety issue with access and all that.

COMMISSIONER MURRAY: Well, I can't give you a -- a really good example. But you might remember that -- or know that Antaramian's property as you come into the city -- and I know that is the city -- they use that in the boat show. They use that for various activities, and they have tents and so forth, and they're there for several days.

I can imagine, in our economic conditions, where there may come a time where some undeveloped property, particularly out in the Immokalee area -- that might -- they might want to do something of that nature. So I think it does bear some additional consideration.

CHAIRMAN STRAIN: Okay. Ray, would f apply to something like a sunrise service on an empty lot or an empty place?

MR. BELLOWS: F on --

CHAIRMAN STRAIN: The one we're talking about.

MR. BELLOWS: All right. Right there, yeah.

MS. ISTENES: Usually what we're trying to do is associate them with some sort of use, because the other complaint we get is people coming into town, setting up shop in a vacant lot, and taking business away from other people. Now, I don't know if that would happen so much in the -- in a special event, per se, but you'll get that in special sales and things like that.

So the intent is to keep them very temporary in nature and to have them on improved properties where the use is already occurring, for special sales, for example.

CHAIRMAN STRAIN: Okay.

MS. ISTENES: So it's kind of the same theory here, but a little bit different.

CHAIRMAN STRAIN: Would a sunrise service require a temporary-use permit?

MS. ISTENES: Yes, if it was -- you know, if they were going to hold some big, special event kind of outdoor of the regular building. But if you're just having your regular sunrise church service in your church building, absolutely not.

CHAIRMAN STRAIN: No.

MS. ISTENES: It -- but, no, if you're going to do some special --

CHAIRMAN STRAIN: Let me give you a specific example.

MS. ISTENES: Sure.

CHAIRMAN STRAIN: On the Isle of Capri, in the center of the commercial area, the company I work for owns a bunch of commercial property. It's undeveloped. Every year the local church comes and wants to do an Easter sunrise service. And they put up a tent, and they serve some beverages there. Is that a special event, first of all?

MS. ISTENES: Yes.

CHAIRMAN STRAIN: Okay. Would it be allowed under f since the property is not developed and has no improvements on it?

MS. ISTENES: Probably not, unless there was some association we could make with a nearby developed property where there was a relationship there.

CHAIRMAN STRAIN: There wouldn't be. So, now, I don't want to see them prevented. That's a typical arrangement that may happen other places. So I think that's why f needs to be kind of reconsidered, for --

MS. ISTENES: Okay.

CHAIRMAN STRAIN: -- events like that. So -- because they currently do that, so they're currently receiving a temporary-use permit to do it every year. So somehow they need to still fit into that category.

MS. ISTENES: Okay.

COMMISSIONER KOLFLAT: Mark.

CHAIRMAN STRAIN: Yes, sir.

COMMISSIONER KOLFLAT: Up at Mercado this past weekend there was an Asian concert or event out there opposite where the theater is located. Would that qualify as that type of event, and would they require a permit?

MS. ISTENES: It depends on how the Mercado PUD is structured. They may have something in there for

those type of events. I don't know. It could possibly.

COMMISSIONER KOLFLAT: Because the crowd was large, and it completely changed the complexion of the area where it was going on.

MS. ISTENES: Uh-huh, uh-huh. Yeah, I couldn't answer that without looking --

MR. BELLOWS: I'll have to do some research on that.

MS. ISTENES: But, yeah, we'd have to research it.

COMMISSIONER KOLFLAT: Thank you.

CHAIRMAN STRAIN: Okay. 98 and 99, any questions? 100, 101?

COMMISSIONER SCHIFFER: I do.

CHAIRMAN STRAIN: Brad.

COMMISSIONER SCHIFFER: And, actually, Mercado would be a good example of this. For these temporary signs, do you think we could be wise to exempt them from inside mixed uses? And then we're back to that concept of not being visible from the property lines.

In other words, you go into a development -- well, maybe Waterside's a better example too. "I'm in the center of Waterside. Why are you controlling my temporary signs?" Or are you or --

COMMISSIONER MURRAY: I think we established she was not --

CHAIRMAN STRAIN: Mr. Murray.

MS. ISTENES: Well, yeah, I mean, when we're talking temporary signs -- I mean, generally you're talking about signs aligned with a temporary use.

MR. BELLOWS: Exactly.

MS. ISTENES: So it's -- you know what I'm saying? I'm not sure those would be considered temporary signs the way you're describing them.

COMMISSIONER SCHIFFER: Okay.

CHAIRMAN STRAIN: Bob, did you have something you wanted to say?

COMMISSIONER MURRAY: Well, I just -- I just remember, Susan, the last time that came up, my recollection, you were very clear that you weren't interested in controlling internal signs.

MR. BELLOWS: That's right.

COMMISSIONER MURRAY: And so that went away, as I thought.

MS. ISTENES: Yeah, I thought we had kind of addressed that already at the sign ordinance. This is a -- this is a little different animal, though. This is an association with a temporary event, and it -- it truly is just short term, temporary, in association with an event.

COMMISSIONER MURRAY: But if it's interior too was, I thought, the basis for the question. And that's okay. I was only adding that I heard your testimony and remembered it.

MS. ISTENES: Thank you.

COMMISSIONER MURRAY: You're welcome.

CHAIRMAN STRAIN: 102, 103?

COMMISSIONER CARON: I have --

CHAIRMAN STRAIN: Ms. Caron.

COMMISSIONER CARON: If you could just go back for a minute to 98.

CHAIRMAN STRAIN: Whoa, going way back.

COMMISSIONER CARON: Well, just because we had this big discussion about f. And then, if you go to a, it says "sports, religious, and community events," and underlined here it says, "on lands not specifically developed and approved for such." So I don't know if that conflicts with f on the previous page as well or -- both look to me like they need to be cleaned up.

MS. ISTENES: Okay. F is applying to sales and promotional events. So maybe we didn't realize that when we were talking about it, although I do believe I gave that as an ex -- as an explanation. But do you agree with that? because it looks like --

COMMISSIONER CARON: Well, I'm just trying to get to -- Commissioner Strain's concerned about the sunrise service.

MS. ISTENES: But he would -- but that wouldn't be a temporary sales; that would be a temporary religious event.

COMMISSIONER CARON: Right. So it looks to me like that can happen on lands not specifically developed

MS. ISTENES: Correct.

COMMISSIONER CARON: -- for such activities on a regular basis.

MS. ISTENES: You're right. So I answered correctly.

COMMISSIONER CARON: All right.

MS. ISTENES: Yes. Thank you for calling that to my attention. I apologize. I didn't realize we were talking about temporary sales.

COMMISSIONER CARON: I just want to make --

MS. ISTENES: It's getting late.

COMMISSIONER CARON: Well, it is. And we probably shouldn't, you know, do some of these changes -- you know, bring up the issues, and then let's look at them in the light of the morning.

MS. ISTENES: So would I still need to look at f, or are we --

CHAIRMAN STRAIN: Not from my perspective. I think you may from Brad's, but not from mine.

MS. ISTENES: Okay.

COMMISSIONER CARON: I'm sorry. What page are we supposed to be on?

CHAIRMAN STRAIN: I have no idea.

COMMISSIONER MURRAY: 102.

CHAIRMAN STRAIN: Let's start on 102, 102 and 103 together. Does anybody have any questions?

COMMISSIONER SCHIFFER: I mean --

CHAIRMAN STRAIN: Brad.

COMMISSIONER SCHIFFER: -- Susan, you may have clarified. You know, when I asked you a question about inside these mixed-use things, you said, "No, that's only when it's associated with a temporary use." In other words, this is a temporary sign for a temporary use?

MS. ISTENES: Yes.

COMMISSIONER SCHIFFER: But I don't see where that's -- I mean, where would I come to that conclusion?

MS. ISTENES: Well, again, it's going to kind of depend on what kind of temporary use. When you say "temporary use," we've got temporary -- like special events, temporary sales. And we've got things like holiday sales, like pumpkins and trees and all that. They all have their own various set of regulations.

CHAIRMAN STRAIN: Right.

COMMISSIONER SCHIFFER: Well, what if I had a fixed store and I just want a temporary sign? I mean, I'm a permanent use, and I want a temporary sign. I mean, I'm not sure --

MS. ISTENES: You can have one if you're doing, like, for example, a promotional event --

COMMISSIONER SCHIFFER: Right.

MS. ISTENES: -- like, let's say you're going out of business, or let's say you're having a grand opening or a grand reopening, or, gosh, you're having your, you know, yearly super sale.

COMMISSIONER SCHIFFER: Right. So -- but that was -- my point is that -- why are we regulating these? And your point was, "Wait a minute, that's not what these are. These are only when they're associated with temporary uses."

But that's -- that's not the case, I don't think, in reading 5.04.06, because that's a temporary sign. And I may have a permanent use, and I may want a temporary sign at the Waterside Shops. And, obviously, I have to deal with the -- the governance of the Waterside Shops. But, I mean, why does the county get involved in that? And that was what I was looking for, is an exemption --

MS. ISTENES: Oh, okay. I understand.

COMMISSIONER SCHIFFER: -- an exemption from that.

MS. ISTENES: I understand what you're saying. I mean, essentially, you're looking to treat people fairly within the -- the context of the rules. So, in other words, when you're giving additional signage, you're giving it for a reason and for a set period of time.

And so just because somebody happens to be in a mall, per se, you know, I mean, it -- it doesn't mean that -- that the signage is -- isn't important. I'm not explaining it very well. But you're talking about -- I would call it -- I want to say "litter" almost.

In other words, you start -- people start hanging banners. Then they forget -- we don't have a time limit, so they stay up for six months, and the sale was, you know, four months ago, and it was only for a week. They start to become obnoxious and look like trash.

They start to mess with our architectural standards. They -- people start feeling like they're being treated unfairly, because, "This guy has three banner signs that have been up for nine months, and I can only have one for a week. And I abide by the code, and he doesn't." Or -- you see what I'm saying?

So it starts to get very, very prescriptive when it comes to signs, how long they can be up, how big they can be, and when you can have them as far as temporary signs go.

COMMISSIONER SCHIFFER: But the point I'm making is, only within developments that aren't visible to the community, private developments, why are we going into the -- why can't we exempt them from it? I mean, one thing you're missing is they have their own governance. They have their own set of standards. They have their own architectural standards. They might even exceed our standards. But why can't we exempt, you know, inside these malls? I mean, we've --

MS. ISTENES: I mean, is that your recommendation? because I'll -- you know, I'll forward it on to the board, and we can discuss it with them. I'm not, you know --

COMMISSIONER SCHIFFER: Right. Just for the approval process, I think that would be a good idea. There are situations where we don't see into it. We've had the discussion before. If you put a roof on it -- like Coastland, you don't go indoors there. Take the roof off; you're indoors there.

MS. ISTENES: I understand. Yeah, I understand. And, I mean, I'll certainly -- I would like to actually get your vote on this so we could move it on, and it's -- and it sounds like I've addressed f already when it talks about undeveloped properties, because we're talking about sales there.

COMMISSIONER SCHIFFER: Right.

MS. ISTENES: And I think we didn't realize that.

COMMISSIONER SCHIFFER: Right.

MS. ISTENES: And I would submit to you, you probably don't want to allow people just to set up shop --

COMMISSIONER SCHIFFER: Right.

MS. ISTENES: -- in vacant lots everywhere for safety reasons --

COMMISSIONER SCHIFFER: Yeah.

MS. ISTENES: -- for fair -- for fairness reasons too, you know, that sort of thing, but --

COMMISSIONER SCHIFFER: Right.

MS. ISTENES: But -- so I hope that issue's dead. I mean, I'll certainly look at the temporary signs internal to malls. And if -- if it's consistent with what we did before, we could just add it.

COMMISSIONER MURRAY: Can I make a point?

CHAIRMAN STRAIN: Well, no, Ms. Caron was next, then Mr. Murray.

COMMISSIONER MURRAY: That's right. Your turn.

MS. ISTENES: If that's what y'all want.

COMMISSIONER CARON: Yeah. I'm thinking I don't want to take a vote on that today --

MS. ISTENES: Okay.

COMMISSIONER CARON: -- on that issue, because I'd like to think about it more --

MS. ISTENES: Okay.

COMMISSIONER CARON: -- personally, because I'm not sure it's a great idea. So I'd just like -- since it was just brought up, I'd like to have time, since it's coming back anyway.

MS. ISTENES: Okay. That'll give me time to dive into some of the history behind it too, so ...

CHAIRMAN STRAIN: Mr. Murray.

COMMISSIONER MURRAY: Susan, one of your concerns -- and perhaps one of a number, but perhaps only one -- was some folks getting a temporary sign permit and then selling various articles, retailing and so forth. But they couldn't actually get a permit, could they, if the property were zoned ag or if it was zoned out of what it is they would intend to sell? Am I correct in that?

MS. ISTENES: You're supposed to have a -- for example, for temporary sales, you're supposed to be selling similar goods or goods that would be allowed to be sold on the property pursuant to the underlying zoning district.

COMMISSIONER MURRAY: Zoning district. So it could be ag, a small parcel of ag, within a zoning district

that's retail; is that what you're saying?

MS. ISTENES: Vegetable -- maybe, you know, a temporary pumpkin sale or vegetable sales or something like that --

COMMISSIONER MURRAY: Well, if you're --

MS. ISTENES: -- possibly.

COMMISSIONER MURRAY: Okay. You --

MS. ISTENES: Do you see what I'm saying? You're not selling clothing in ag zoning districts.

COMMISSIONER MURRAY: I understood you, and I appreciated your concern.

MS. ISTENES: Okay.

COMMISSIONER MURRAY: I'm trying to get it to the extent that that goes, and I was trying to feel whether or not somebody could sell clothing in a space that that -- if an area was zoned ag.

MS. ISTENES: No, to answer that question. But let's say you have a commercial parcel that happens to be selling -- well, I mean, I'm just kind of pulling what-ifs out. But if you're -- if you happen to have a small shopping center that doesn't happen to sell rugs, but it's a retail commercial center that could sell rugs, they could possibly do a short-term rug sale. You see what I'm saying?

COMMISSIONER MURRAY: Exactly. Now, holding that thought in mind, would that same condition prevent the retailer, who occupies that space legitimately and long term -- would that same condition prevent them from doing the same thing?

MS. ISTENES: No.

COMMISSIONER MURRAY: Okay.

MS. ISTENES: We have that, yeah.

COMMISSIONER MURRAY: Okay.

CHAIRMAN STRAIN: Okay. I'm going to propose a radical departure here from the normal. Let's take a 15-minute break. It gets pretty bad. 3:30 we'll come back and resume.

(Recess held.)

CHAIRMAN STRAIN: Okay. Welcome from the -- back from the much-needed break. And during the break it was resolved. Nick has asked us to finish Book 2 and go as far as we can to Book 3 until 8 o'clock tonight.

COMMISSIONER MURRAY: Thanks, Dave.

CHAIRMAN STRAIN: You do all these social events during the day, and you come here refreshed. It's a whole different program.

MR. CASALANGUIDA: Oh, Mr. Stain, Mr. Strain.

COMMISSIONER CARON: And he's promised to stop the Vanderbilt Extension --

CHAIRMAN STRAIN: That's right, because it wasn't needed, yes. Thank you, Donna. I needed that help.

But speaking of our agendas, it's 3:30. We have two more items to finish up in this one we're on for Book 2. If we all think we can hang in there, I'd like to see Book 2 done today and get it past us, at least to a point where it's either going to come back as rewrites or whatever. Book 3 will have to come up on the 10th.

I asked staff to start checking for another available date because, even with two days in March, we are not going to finish this LDC review in those two days, especially with the Immokalee one having been continued. That alone is going to take quite a while. We have a few others that are going to take some time, so I know we're not going to finish this month. With that in mind, we'll -- and I'm sure on the meeting on the 4th we can discuss that.

We left off on -- through Page 103. So let's look at Page 104 and 105.

COMMISSIONER SCHIFFER: Mark, I had --

CHAIRMAN STRAIN: Go ahead, Brad.

COMMISSIONER SCHIFFER: -- a question on 102 --

CHAIRMAN STRAIN: Sure.

COMMISSIONER SCHIFFER: -- b, up at the top. Is that per tenant, or is that por -- per mixed-use facility, or -- I mean, I think I know the answer. It's per facility. But what seems unfair is that, if there are multiple tenants --

MS. ISTENES: "b. The occupant of a lot, parcel, multi-tenant parcel or mixed use building may display 1 on" -- it's -- it's per tenant, I believe.

COMMISSIONER SCHIFFER: Okay. Good.

MS. ISTENES: Yeah.

COMMISSIONER SCHIFFER: All right. Thank you. And then on 103, 2.c, the grand opening can be obtained within the first three months of building, do you measure that from their certificate of occupancy?

MS. ISTENES: I'm sorry. I didn't hear you.

COMMISSIONER SCHIFFER: On 103, 2.c.

MS. ISTENES: Yes. I didn't hear your question.

COMMISSIONER SCHIFFER: Do you -- do you measure that from the certificate of occupancy, or how -- how do you know -- what's the three months measured from?

MR. BELLOWS: Occupational license.

MS. ISTENES: Yeah. I mean, generally, the -- not necessarily certificate of occupancy. Normally what happens is they want to be in the building before they have this. It's sort of senseless to put the sign up that says "grand opening" --

COMMISSIONER SCHIFFER: Right.

MS. ISTENES: -- if they're not having anything open to sell to you at that moment. Usually it's to generate business. So usually certificate -- I mean, the -- the day they open is usually the day we see it. And --

COMMISSIONER SCHIFFER: Okay.

MS. ISTENES: -- that's -- you know, when they come in and apply for it, they get the three months. So it's not a problem.

COMMISSIONER SCHIFFER: I'm good. Thank you.

CHAIRMAN STRAIN: Okay. We're on 104 and 105. Any questions?

Susan, under 105 Item d, this is for a temporary business ID sign. It says "may remain in place no longer than 120 days, or until construction has been completed, whichever occurs first." Maybe you want to add "or when the permanent sign is installed" as well.

MS. ISTENES: Sure.

CHAIRMAN STRAIN: Okay. Otherwise, they end up with a temporary and a permanent.

So anything else through 105? If not, 106, 107, any questions? 107 starts the annual beach events permit. 108, 109, most of it's all existing language. 110 and 111? 112, 113?

Susan, on 113 under 2, Line 27, the word "appropriate," if we just drop that, would it read better?

MS. ISTENES: Sure.

CHAIRMAN STRAIN: Okay. 114 and 115?

COMMISSIONER SCHIFFER: 114, a question.

CHAIRMAN STRAIN: Okay. Brad.

COMMISSIONER SCHIFFER: It's e, Susan. My thought was to add -- it's fire protection. I would add "and emergency access measures."

MS. ISTENES: Okay.

COMMISSIONER SCHIFFER: That's it. Thank you.

CHAIRMAN STRAIN: Okay. Anybody else through 115?

On the top of Page 114, Susan, we're talking about i and little i (sic). It's the provision that begins on 113 that says: "Adequate on-site or additional off-site parking use shall be provided as follows," a maximum of 10 percent of the parking required by the code and the required number of handicapped. But how is it -- is this where you would want to calculate it? How do you calculate the amount of additional parking needed? See, it says "shall be provided as follows." Is -- are they asking -- are they saying that you -- a maximum of 10 percent --

MS. ISTENES: They're -- what they're --

CHAIRMAN STRAIN: -- of whatever is required to be there or --

MS. ISTENES: Yes, of the parking required by the code --

CHAIRMAN STRAIN: Right.

MS. ISTENES: -- can be occupied by temporary structures and equipment and merchandise. So if you're having, you know, a tent set up or what have you in the parking lot, you can only take up a maximum of 10 percent of the required parking.

CHAIRMAN STRAIN: And that's in your existing code-required parking lot for the -- for your permanent structure?

MS. ISTENES: Yes.

CHAIRMAN STRAIN: Okay. And then this is a special event, so where do we show them -- or where do we have a requirement for additional parking for the special event itself? Or is it considered there's enough parking on the permanent facility to accommodate the special event?

MS. ISTENES: It's not always on the permanent facility. The conceptual site plan is required essentially to show -- like, for example, if you have off-site parking --

CHAIRMAN STRAIN: Uh-huh.

MS. ISTENES: -- sometimes you'll have shuttles and things like that. That has to be indicated on the -- on this conceptual site plan (indicating). And this can be drawn by hand. This is not any engineered drawing. It --

CHAIRMAN STRAIN: Just --

MS. ISTENES: It's just essentially a map to show the staff where things are going to be located, whether there's any safety concerns. We copy it and give it to code enforcement, the -- fire, transportation, sheriff, whatever the situation warrants.

CHAIRMAN STRAIN: How do we know the quantity of parking that we're going to ask them to provide for on their conceptual site plan? Is that -- I mean, do we have a re -- do we have a basis for it?

MS. ISTENES: Not in code, per se, not in the land development code.

CHAIRMAN STRAIN: Okay.

MS. ISTENES: Generally speaking -- do you want to add to that or --

MR. BELLOWS: I believe as long as they demonstrate they have the remaining nine -- 90 percent of the parking -- required parking demonstrated on the temporary-use permit, I mean, number -- little i just basically says a maximum of 10 percent. So whatever special event comes in, they show they have the parking for 90 percent.

MS. ISTENES: And if, for example -- you know, most people know when they're setting up these events. Obviously, they don't want people not to have a place to park. They -- and we know what kind of event it was -- is. They'll know about how many people they're going to have attend, especially if it's a regular event. And -- and we'll attempt to just ensure that they have adequate parking, either on or off site, just --

CHAIRMAN STRAIN: Okay. I don't mean to beat a dead horse. I'm just trying to figure out how we figure out how much they need.

MS. ISTENES: It's not really that scientific.

CHAIRMAN STRAIN: Okay.

MS. ISTENES: Honestly, it's not --

CHAIRMAN STRAIN: And we haven't had any -- we haven't had many problems with this issue?

MS. ISTENES: I don't want to say that. Sometimes people park where they're not supposed to, even if you have designated parking, and they block, you know, alleyways and roads and things like that. And it's sort of a live -- live and learn type of thing. If you have complaints, then next year you know that the parking was inadequate and they needed to have additional. Hopefully you remember and you -- or you have a record of it, and you can make accommodations to ensure they have adequate parking next time.

CHAIRMAN STRAIN: Okay.

MS. ISTENES: So it's -- you know, it's not scientific.

CHAIRMAN STRAIN: Okay. Under g on the same page: "If required, a faithful performance bond to guarantee compliance with the conditions of the permit." How do you side -- decide if it's required? You don't particularly like that group, so we're going to require one? I mean, we have to have a standard of some kind, I would assume.

MS. ISTENES: Some of -- like, if they're on county property, for example, I know the county has certain rules and regulations that require performance bonds and other type of assurances that the site will be cleaned up and --

CHAIRMAN STRAIN: So this isn't arbitrary on behalf of staff when they come in for the temporary-use permit? See -- and I'm thinking of that -- remember the concert that wanted to go in -- out in the fairgrounds or somewhere? And it was one of those concerts that, I guess, the community -- wasn't desirable. And one of the reasons they couldn't go there is, I understood, they couldn't put the bond up that was required.

MS. ISTENES: And that was in the county fairgrounds, correct.

CHAIRMAN STRAIN: Right.

MS. ISTENES: Yeah, the county's got some pretty explicit restrictions as far as the use of their property by outside people, and that includes performance bonds and insurance --

CHAIRMAN STRAIN: Okay. So the only --

MS. ISTENES: -- and approvals by the board, in some cases, or staff.

CHAIRMAN STRAIN: So the only time a bond is required is if it's on county property?

MS. ISTENES: I'm not aware of any other time a bond is specifically required, unless there's an agreement between two property owners to re -- require that, and that would be a private agreement. But as far as the code goes -- and -- and that's -- as far as the code goes, I'm not re -- I'm not aware of any, but I'll have John just kind of do a quick Municode search just to confirm that, if you wish.

CHAIRMAN STRAIN: Well, you know, what I'm suggesting is if it's -- I'd rather take the arbitrary nature of a requirement out of the hands of staff having to make that decision, because the way this reads, anybody -- a sunrise service, could come in, and, if someone at the county decided that they should have a performance bond, then -- this just says "if required." So maybe we should say, "On government properties, a faithful performance bond to guarantee compliance with the conditions of the permit," something like that, if that's the way it fits, is all I'm suggesting. Refine it if it's -- it needs to be to the spec -- specificity that --

MS. ISTENES: Okay.

CHAIRMAN STRAIN: -- may apply.

MS. ISTENES: I'll look in the code and make sure we're not --

CHAIRMAN STRAIN: Ms. Caron.

COMMISSIONER CARON: I was just going to go back up to c, "Limited activity hours." But we don't specify what those limited activities hours are, or we do somewhere else?

MS. ISTENES: Not that I'm aware of that it's specified. I mean, we may ask people -- what we try to do is -- we really -- on these permits, we try to ask people what they're doing, where they're parking, how many people they're going to have, what are their hours of operation. We try to get an idea of their impact, and we try to evaluate the site plan for any safety considerations or any access considerations or concerns. That way --

MR. BELLOWS: Music?

MS. ISTENES: Outdoor music, yeah, noise, obviously. When we are -- if there is a complaint or the public does question that, we have a permit with a map and all of that information on there so we can at least tell people what's going on, the extent to which their permit was issued, et cetera, et cetera.

CHAIRMAN STRAIN: Okay. Well, let's move on to --

MS. ISTENES: It's fairly wide open. I'm -- yeah.

CHAIRMAN STRAIN: -- 116 and 117. Anybody have any question on those two pages? They're existing language, I believe. 118 and 119? And that brings us to the end of that issue. And that is going to have some -- a couple of items need to be looked at to be back. Hopefully it'll be a shorter discussion when it comes back.

We'll move on to Page 120, automobile service stations. Susan?

MS. ISTENES: This is just returning what was left out of the re-codification of the LDC.

CHAIRMAN STRAIN: Anybody have any questions on Pages 120 or 121 and 122 and 123 all together? If there are no questions, does anybody feel like they want to make a motion?

COMMISSIONER SCHIFFER: I will, Mark.

CHAIRMAN STRAIN: Okay. Mr. Schiffer.

COMMISSIONER SCHIFFER: I move we forward a recommendation of approval and find it to be in compliance with the growth management plan the LDC amendment request for 5.05.05.

CHAIRMAN STRAIN: Second?

COMMISSIONER CARON: Second.

CHAIRMAN STRAIN: Ms. Caron. Discussion? All in favor, signify by saying "aye."

COMMISSIONER KOLFLAT: Aye.

COMMISSIONER SCHIFFER: Aye.

COMMISSIONER CARON: Aye.

COMMISSIONER WOLFLEY: Aye.

COMMISSIONER HOMIAK: Aye.

COMMISSIONER MURRAY: Aye.

CHAIRMAN STRAIN: Aye. Anybody opposed? Motion carries 8 -- or 7 to 0. Okay. Next and last item for today is Page 124, and it's three pages. Susan?

MS. ISTENES: This looks -- correct the time limit and return language previously removed that provides for notification to property owners with regard to neighborhood information meetings. I'm not sure when this was removed. That's kind of the question that pops into my head, is when it got left out. It must have been a previous amendment. I can check if you want. But, anyway, it's just replacing. And it says "correct the time limit." Let's see here. It looks like that's on 125 and 126 under 2.

CHAIRMAN STRAIN: Doesn't the sentence that's being added on 125 -- first of all, it says the "notice of the meeting shall be sent to all property owners who are required to receive legal notification from the county pursuant to" the sections of the code. Then it says: "Written notice of the meeting shall be sent to all property owners within 500 feet of the property lines."

Are we saying something twice? And is what we're saying in the second sentence I read that's been added the same or different than what was being referred to in the subsections of the first sentence?

MS. ISTENES: It looks like there's a period after "11" --

CHAIRMAN STRAIN: Right.

MS. ISTENES: -- there. And then it says: "Written notice of the meeting shall be sent to all property owners within 500 feet of the property lines of the land for which the amendment" is sought.

CHAIRMAN STRAIN: Wouldn't those be the same required to receive legal notification pursuant to subsections? I mean, I think it says the same thing. But one refers to a section of the code, and the other then redefines the distance requirement. I'm not sure if the subsection referenced just takes care of that.

MS. ISTENES: Let me look real quick, if you want.

CHAIRMAN STRAIN: Sure, that or we can bring it back. Anybody else have any questions? And that would be through Page 127. Ms. Caron.

COMMISSIONER CARON: Well, I just don't see a corrected time limit.

MS. ISTENES: Well, this is correcting something that was left out, so it may --

CHAIRMAN STRAIN: Where are you?

COMMISSIONER CARON: I see notification -- the change "to correct the time limit."

CHAIRMAN STRAIN: Well --

MS. ISTENES: Well, if it was left out, it may not make sense the way it's written in here, so I'll see if I can kind of figure that out. It looks like what was left out is just -- that's interesting -- okay -- is just simply that first part of the sentence up until after "11."

So there was a reference left out to 10.05 -- 10.03.05 B.10 or 11, and then the remainder of that actually is already in there. 10.03.05, let me go to B.11 just real quick. Okay. And that is a reference to the -- "for all petitions except small-scale or other site-specific amendments to the comp plan for subject properties located within areas of future land use element of the growth management plan that are not designated urban. All the foregoing notice requirements apply except that written notification must be sent to all property owners within 1,000 linear feet of the subject property."

CHAIRMAN STRAIN: Well, then the second sentence says 500 feet. So that would be a conflict, wouldn't it?

MS. ISTENES: Yeah, that doesn't make sense to me. Let me bring that back.

CHAIRMAN STRAIN: Okay. If -- yeah, maybe if you'd take -- yeah, take a look at it closer.

MS. ISTENES: Sorry about that. Yeah, I don't even know who authored this, but --

COMMISSIONER CARON: It just goes on in that paragraph to call out the 1,000 feet for the non-urban areas.

MS. ISTENES: Correct, yes.

COMMISSIONER CARON: All right. But my question is -- to correct the time limit is one -- is one of the changes, and I'm not sure what that means.

CHAIRMAN STRAIN: There doesn't seem to be a time-limit change.

MS. ISTENES: There doesn't seem to be one.

COMMISSIONER CARON: Right.

MS. ISTENES: So let me check on that too.

COMMISSIONER CARON: Thank you, Susan.

COMMISSIONER HOMIAK: There's a change in the date on Line 19 on Page 125, the number of days.

MS. ISTENES: Oh, yes, you're right. Thank you.

COMMISSIONER CARON: Oh, there it is. Thank you. I totally didn't see it.

COMMISSIONER HOMIAK: It also says when the notice should be mailed to property owners within 500 feet. It kind of says the same thing.

MS. ISTENES: Okay. Let me just double check on all that and make sure I -- I'm not even sure who wrote this.

CHAIRMAN STRAIN: Okay. Well, then what we -- all right. We're at the end of Book 2. We went through the first draft of both Book 1 and Book 2. And on the 10th of March -- there's a few that may come back on that date. I think the very first one that was scheduled for today will come back that day. That'll be first on the agenda on the 10th.

And, Susan, any other ones that need to be cleaned up from Books 1 and 2 -- not cleanup, not rewrites. But if we haven't heard them and they want them -- and we want to hear them on the 10th, if you can get them scheduled by then, that's fine, as long as we haven't got a bunch of data we have to reread by the 10th.

MS. ISTENES: Okay.

CHAIRMAN STRAIN: Okay. And then --

MS. ISTENES: I'll see how things --

CHAIRMAN STRAIN: -- what we'll do primarily on the 10th, then, is probably Book 3, unless the Immokalee one comes back. I don't know if you'll have it done by the 10th.

MS. ISTENES: Bob said he was going to try to and get it to you by Wednesday of next week.

CHAIRMAN STRAIN: And if he does, then we're going to spend a lot of time probably on the 10th just on that one.

MS. ISTENES: Okay. All right.

CHAIRMAN STRAIN: So -- and then you're going to have to find another date. Our next regular meeting on March 4th, Ray, if I'm not mistaken, the only thing on that date is the Immokalee master plan; is that correct?

MR. BELLOWS: That is correct.

CHAIRMAN STRAIN: Okay. And that's a continuation, and that will be for the data-analysis section and for the staff reports that we didn't go through and all the questions and issues on staff reports, for that matter.

MR. BELLOWS: I believe so.

CHAIRMAN STRAIN: Okay. With that, we need a continuation of today's meeting to March 10th. Ray, is it in -- I assume it's 8:30 in the morning on the 10th in this --

MS. ISTENES: Actually, I believe it's -- John, is that 1 -- 1 -- 1 o'clock, 1 p.m. on the 10th, yeah.

CHAIRMAN STRAIN: In this building.

MS. ISTENES: It's only a half-day meeting in this -- chambers, yes.

CHAIRMAN STRAIN: Okay. So does someone want to make a motion to continue today's meeting to March 10th at 1 o'clock in these chambers? Mr. Wolfley.

COMMISSIONER WOLFLEY: So moved.

CHAIRMAN STRAIN: Seconded by Mr. Murray.

COMMISSIONER MURRAY: That's fine.

CHAIRMAN STRAIN: Any other -- does anybody have any other discussion?

COMMISSIONER SCHIFFER: Just a question -- we can vote.

CHAIRMAN STRAIN: Well, if you've got some discussion --

COMMISSIONER SCHIFFER: I just want John -- John Kelly, this is Paul Midney's Packet No. 3? He's obviously not here, so you're going to get it to him.

CHAIRMAN STRAIN: If there's no other discussion, we'll -- all those in favor of the continuance -- or, yeah, continuing until March 10th, signify by saying "aye."

COMMISSIONER KOLFLAT: Aye.

COMMISSIONER SCHIFFER: Aye.

COMMISSIONER WOLFLEY: Aye.

COMMISSIONER MURRAY: Aye.

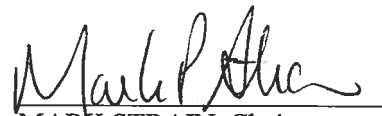
COMMISSIONER CARON: Aye.

COMMISSIONER HOMIAK: Aye.

CHAIRMAN STRAIN: Aye. Anybody -- better not oppose. Good. We're continued to March 10th. Thank you all.

There being no further business for the good of the County, the meeting was adjourned by order of the Chairman at 3:52 p.m.

COLLIER COUNTY
PLANNING COMMISSION


MARK STRAIN, Chairman

These minutes approved by the board on 4-1-10, as presented or as corrected _____.

TRANSCRIPT PREPARED ON BEHALF OF GREGORY COURT REPORTING SERVICE, INC., BY ELIZABETH BROOKS AND KAREN BLOCKBURGER, RPR, NOTARY PUBLIC