TRANSCRIPT OF THE CONTINUED CIE AND LAND
DEVELOPMENT CODE MEETING OF THE
COLLIER COUNTY PLANNING COMMISSION
Naples, Florida
January 28, 2010

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

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

ALSO PRESENT:

Jeffrey Klatzkow, County Attorney
Nick Casalanguida, Interim Administrator, CDES
Ray Bellows, Planning Manager, Zoning & Land Development
Susan Istenes, LDC Management, Comprehensive Planning

CHAIRMAN STRAIN: Good morning, everyone. Welcome to a special meeting of the Collier County Planning Commission, Thursday, January 28th.

If you'd all please rise for Pledge of Allegiance.

(Pledge of Allegiance was recited in unison.)

Item #2

ROLL CALL BY SECRETARY

CHAIRMAN STRAIN: Could we have the roll call, please.
COMMISSIONER VIGLIOTTI: Yes. Mr. Eastman is absent.
Commissioner Kolflat?
COMMISSIONER KOLFLAT: Here.
COMMISSIONER VIGLIOTTI: Commissioner Schiffer?
COMMISSIONER SCHIFFER: I'm here.
COMMISSIONER VIGLIOTTI: Commissioner Midney?
COMMISSIONER MIDNEY: Here.
COMMISSIONER VIGLIOTTI: Commissioner Caron?
COMMISSIONER CARON: Here.
COMMISSIONER VIGLIOTTI: Chairman Strain?
CHAIRMAN STRAIN: Here.
COMMISSIONER VIGLIOTTI: Commissioner Vigliotti is here.
Commissioner Murray?
COMMISSIONER MURRAY: Here.
COMMISSIONER VIGLIOTTI: Commissioner Wolfley is absent.
And Commissioner Homiak?
COMMISSIONER HOMIAK: Here.
CHAIRMAN STRAIN: Thank you.

Item #3

PLANNING COMMISSION ABSENCES

Planning Commission absences. Our next regular meeting will be next Thursday. Does anybody on this panel here today know if they're not going to be here next Thursday?

(No response.)

Item #4A

ADVERTISED PUBLIC HEARINGS – CONTINUATION OF CAPITAL IMPROVEMENTS ELEMENT (CIE) HEARING FROM JANUARY 21, 2010

CHAIRMAN STRAIN: Okay, we have the pre-agendas come out. We're going to have several items, so it would probably be another lengthy day. Nothing like today's going to be, though.

I thought I'd take a moment to explain today's process. Last week we had a meeting on the CIE, Capital Improvement Element, of the comprehensive plan. And it really is a document that involves the budgeting process in Collier County. It's required to be heard by the Planning Commission, sitting as a land planning agency.

We had to continue it to today for some further information. That information for the most part has been gathered, so we're going to start the meeting out by spending some time trying to finish up on that issue.

When that's over with, we'll move into the Land Development Code amendments, of which there's two or three packages. The first one is the one we'll be focusing on today. But I doubt if we'll even get through it before the

entire day's over with. It's rather lengthy.

But in that package are four private Land Development Code amendments. And then we get into the more general amendments put forth by county staff.

The private amendments are one for a C-5 commercial surgical manufacturing plant. Another one is for Vanderbilt Beach RT overlay. The third one is for a change in the industrial zoning districts. And the last one is a density standards and housing change. Those four will be the first thing up after we discuss the CIE. So I'm not sure what the time table is for those of you sitting in the audience, but I wanted to at least give you that much of a heads up.

I expect that the CIE part of it will probably take the first hour of the meeting, and then those other ones, I can't tell you how long they'll take. They might be lengthy. There's a lot of issues and a lot of language issues on every single amendment. So I have a feeling it's going to be a very long and slow process today. But it's one that's necessary, because we find that if we miss something on an LDC amendment, it comes back to haunt us later on in ways we never anticipated. So we will move carefully and we will move slowly today.

With that in mind, I wanted to also note that over the last few months especially there's been changes in county staff. A lot of the staff that worked on these amendments may not be here today. And a lot of the staff that would normally organize these amendments may not be here today. And so those that are left are doing the best they can to fill in. So I ask for patience with -- from us on the Planning Commission and from the members of the public who are going to speak. The staff is doing the best they can under the circumstances, and we just will have to ferret it out ourselves and work with them as best we can.

And the other item is, this is a special meeting, but because of an advertising glitch for the Land Development Code part of it, we will not be taking action today. We'll be holding off action until the next advertised meeting for Land Development Code amendments. So today we'll be doing all the discussion and making notes of our positions. And then by the time it comes up to vote it will probably be the next LDC cycle meeting. Which is when, Ray, do you know?

MR. BELLOWS: It's scheduled for February 26th.

CHAIRMAN STRAIN: February 26th?

MR. BELLOWS: That's a Friday.

CHAIRMAN STRAIN: Okay. So what we discuss today involving the Land Development Code will actually be voted on on February 26th. But today's meeting will hopefully have the meat of the discussion and the pros and cons and all the stuff put on the table.

Okay, with that having been said we'll move right into -- Ms. Caron?

COMMISSIONER CARON: Did you want to make an announcement about the Value Adjustment Board?

CHAIRMAN STRAIN: Oh, thank you, yes. This short-term memory's having a problem here today.

The Value Adjustment Board was originally scheduled for this room. It has been moved to the second floor at 9:00. So anybody involving the Value Adjustment Board, it's on the second floor at 9:00.

Okay, with that we'll move into the CIE. And before we go too far, I'd like to apologize to Norm Feder and Phil Gramatges. I had told them at the last meeting that I would try and get together with them to go over some of these issues. There are other priorities in life and unfortunately I just could not squeeze it in in the few days we had, and I will -- I'm sorry, I've got to ask all my questions here today. But that's the process we'll have to follow.

Corby?

MR. SCHMIDT: Good morning, Commissioners.

Each of you received an e-mail late last week with the updates to the staff report that followed your discussions at the previous meeting. Only one change has been made since that time that I'd like to point out.

In your edited staff report on Page 3 of the appendix in a paragraph that begins with: On June 22nd, 2004, the sentence ending that paragraph has been stricken entirely. It was a sentence that read: The program was modified by action of the BCC in 2009. And it goes on. And there was no good language to indicate that in a different way. And that is not the case. There was no action taken by the BCC in 2009, so it was best to simply strike that sentence.

Otherwise, all the changes in this document were as you discussed them last week.

CHAIRMAN STRAIN: Anything else, Corby, or you want us to go right into --

MR. SCHMIDT: I'd like you to go right into.

CHAIRMAN STRAIN: Right into, huh?

There's been several packets of information sent out to us in response to the questions we asked last week. I had posed many of those questions, and I don't mind starting out the discussion, but I don't want to take that from anybody else that may have a more prominent question to start off.

Does anybody have a general question they'd like to ask?

COMMISSIONER SCHIFFER: No.

CHAIRMAN STRAIN: Okay. And Corby, we have a packet from transportation, so I guess maybe Norm and I are going to have our discussion now.

The first page of the packet is titled transportation division, fiscal basis for CIE FY '10 to FY '14. I'd like to start with that page, Norm.

MR. FEDER: Okay.

CHAIRMAN STRAIN: The second paragraph on that page in the middle you have a statement: Rather than reductions are applied only to ad valorem for the entire transportation division based on the adopted 2010 budget.

Can you tell me what you mean by that?

MR. FEDER: Yes. Can you get the -- yes, Mr. Chairman. As was detailed in our last meeting, when we were asked by the Board of County Commissioners when they adopted the 2009 AUIR to come back with some alternatives in the Capital Improvement Element, specifically they asked us to look at ways, as did the Planning Commission and the Productivity Committee reviewing the AUIR, to try and reduce transportation's use of ad valorem taxes.

What we have done in these examples to bring to the board for their discussion is evaluate 11, 15 and 20 percent reductions in the division's overall ad valorem. Not just in the capital program, which is predominantly what you see in the AUIR of the Capital Improvement Element, but in our overall budget.

So every dollar that I get in ad valorem, whether it be general fund or be the unincorporated MSTD, known as Fund 111, is identified. And beyond the debt service we have then taken an 11, 15 and 20 percent. And so the question you had is what was the basis for that? The basis is the 2010 adopted budget.

Have I answered your question, Mr. Chairman?

CHAIRMAN STRAIN: Yes. And the reason I asked the question, I had pulled copies of the budget from the website.

MR. FEDER: Uh-huh.

CHAIRMAN STRAIN: And I -- unfortunately I have them in a different order than what we're going to have in the conversation, so give me a second here to find the right sheet.

In the FY 2010 current budget for the transportation department, you had 60,188,200. That was just pulled -- I pulled that from the website last night. I have it here in case you want to see it.

The problem is I still can't correlate -- and I know that 60 million is one of five years. I can't correlate that 60 million to any of the sheets that you provided me.

The attachment D, the approved AUIR update for 2009 was 79 million, 676. And the 11 percent ad valorem reduction actually increased your department to 89 million, 091. But the budget that was approved is 60 million, 188. And I just can't figure out how to bring those together.

MR. FEDER: Well, again, I have no idea what you pulled out on the budget.

I can tell you -- I can tell you -- was that the approved budget, the adopted?

CHAIRMAN STRAIN: It's on the website as the approved budget. It says approved budget for 2010, so I grabbed it. But I -- you know, if this isn't it, I don't know how to find what is. And I'd be glad to put this on the screen, if you'd like.

MR. FEDER: Yeah, if you would.

CHAIRMAN STRAIN: And Norm, this is where my problems started occurring in the last meeting. I cannot -- I can't find your starting point for the reductions that you've been telling us you're including. I have no doubt that you include a reduction, but some number that you started with, I can't get to.

MR. FEDER: The reason I pulled that up is you're looking at a number that's our total budget. But you're also looking at what the different funding sources are.

What I am attaching, the 11, 15 and 20 percent, is solely to all of my budget, capital and operating, that is funded by 001, which is general fund, or 111, which is the unincorporated general fund.

Here you've got transfers in and out, you've got gas taxes and other issues in there. So you've got a lot more

than just purely what is ad valorem.

CHAIRMAN STRAIN: Okay. In your reductions, you're looking at a five-year CIE and you're looking at 353 million, which was the approved AUIR. That was reduced to -- by 11 percent down to 329. But of course if you multiply 353 times 11 percent, you don't get to 329.

MR. FEDER: Of course not. Because again the 11 percent is only on the ad valorem portion. My impact fees will remain the same from the AUIR with one exception. In 2012 I didn't go up to 15, I stayed at the 12-five for another year, given the way the economy is going, and the gas tax revenues are in there as well.

So again, like I said, it is not as simple as taking the AUIR and subtracting 11 percent, 15 percent or 20 percent. It is -- and I'll go back to the other sheet.

What I presented specifically -- excuse me. What I presented specifically at the last meeting, which is a look at the ad valorem, which I was asked to reduce, reducing my impact fees makes no sense, other than the fact that they're doing it on their own, because I have to use it for transportation capital.

Reducing my gas tax, which can only be used for transportation and operating, it's doing it on its own. But again, not the issue. The issue was can you and how can you reduce ad valorem property tax, both general fund and unincorporated MSTD. And that's what these numbers are talking about.

CHAIRMAN STRAIN: Okay. If you were to reduce your overall department's operating cost, not -- I shouldn't say operating cost in a sense of the budget, but the overall cost for your department, whether they're capital or operating -- by 11 percent, you would then have a greater reduction in percentage cost than just the 11 percent affected by ad valorem; is that a fair statement?

MR. FEDER: Of course. I have other funding sources, impact fees and gas taxes. So if you reduce 11 percent of those, obviously that's going to be greater than just reducing 11 percent of one of the funding sources.

CHAIRMAN STRAIN: Okay. Well, I'm looking at reducing the 11 percent of the costs that those have to reimburse. And the reason I'm getting at that is you could then use that money to supplement where you're reducing your ad valorem if your whole entire department was reduced, instead of just the ad valorem funded portions of it.

MR. FEDER: If I understand what you just said to me, and make sure I do, that if I were to reduce all three funding sources, and let me go back to that in a second, that obviously that's a bigger reduction than the 11 percent. That's true.

I'm not understanding the second part of your question.

CHAIRMAN STRAIN: Actually, I'm focusing on funding sources when I mean expenditures. I don't care in this big pot where you spend the money from, I'm more concerned in how much money you spend.

Are we seeing an 11 percent reduction in the spending cost overall for the department or just those costs to drive the ad valorem tax down?

MR. FEDER: You're seeing an 11 percent reduction under the 11 percent in only the ad valorem, which results in an overall reduction but not at 11 percent. Because why would I reduce my impact fees and my operating? And 11 percent is considered a little bit higher than the current reduction in assessed value, 15 percent and 20 even more.

So yes, obviously you could tell me either reduce 50 percent of your ad valorem or reduce 11 percent of your overall budget, take it out of ad valorem, which might become, I don't know, I don't have the numbers, bear with me, 30, 40 percent.

CHAIRMAN STRAIN: Well, if you reduced other portions of your expenditures that were funded by say impact fees and things like that and those fees could be used somewhere else, I know impact fees happen to be a more restrictive use. But still they could use it to, I would assume, take care of some of the bonds that they -- for the new construction.

MR. FEDER: No. There are no bonds. Transportation did not bond its impact fees. There are no impact fee bonds.

The only thing I have, as we reviewed last meeting, was when I came here in 2000 and the sales tax didn't pass, there was a large backlog we had developed over the years, and we disproved the theory that if you don't build they don't come. Huge backlog. That backlog had shown to be funded for impact fees which would not been updated from '93 to 2000 to have been brought to the board's standard of growth pays for growth.

And we had a lot of fun in those issues and we actually worked very well with the industry who even went further and worked with us on 50 percent up front and 50 percent within three years to try and address the needs.

But I had to be able to show that in fact those impact fees were on new growth paying its way, not making up for the deficits of the past. And so the monies that you're saying that I have in debt service, that was basically gas tax bonded and ad valorem dollars provided to help pay the debt. So that portion is in there, that 14.6 million, as it got leveled off is in there.

What I'm then doing is using additional ad valorem, which made up the rest of that deficit, because the two bond issues in gas tax raised just over 200 million. The initial backlog deficit was well over $250 million. So the difference was being done by ad valorem.

Since then we backed off. As we discussed, it's no longer -- 24 million is now not almost 10 million over what I had to make up that backlog, it's been reduced as each successive reduction in ad valorem has come about. And here we propose an even further reduction in ad valorem to the division.

CHAIRMAN STRAIN: Okay. So the percentages that we're looking at for the reduction aren't a reduction in the overall department, it's purely for the funded portion that's ad valorem.

MR. FEDER: Correct. And that's what I was asked to do by the board, find some way to pull out your commitment to ad valorem. Because again, gas taxes can only be used in transportation, and impact fees, transportation impact fees can only be used in transportation for capital expansion.

CHAIRMAN STRAIN: Do you know, just out of curiosity, why they weren't interested in knowing what you could do as an overall percentage reduction for your department?

MR. FEDER: I have to ask the question of what we're trying to accomplish here. I'm offering up to the board, and the board -- and this board can make any recommendation it wants to the Board of County Commissioners, but the board wanted to address the reduced assessed values. But in reality, transportation, because it still had some capital program, was asked to take a strong burden of that, and even in the budget guidance is taking a significant portion of that so that we don't have to address that as hard across the board.

But I will tell you that I hope we're not venturing on job one becoming job done and venturing where we did in the early Nineties, that we no longer have to do anything anymore in transportation. Because that is not the answer, that is the one that got us to very high costs, very high impact over the last nine years, and at least some body parts out of the hole.

So I don't understand the basis of the question when in reality impact fees and gas taxes can only be used. And what I've been asked to do is reduce my level. And I've offered up three options, and there are any options that can be made, to reduce the ad valorem portion of my budget.

CHAIRMAN STRAIN: My question simply -- well, you have a reduction in gas tax and you have a reduction in impact fees, so you're automatically reducing your expenditures in those two categories, aren't you?

MR. FEDER: Already.

CHAIRMAN STRAIN: Okay. And as far as the -- trying to do what we did in the past, you sound like the utility department; when they all want to make a point they always throw up the failure of the North Naples plant for the sewage overflow.

I don't care about the past. We're not here to mimic the past, and no one's --

MR. FEDER: I hope not, yeah.

CHAIRMAN STRAIN: -- trying to do that, Norm, so I don't think that's a valid part of your argument.

Page 12 of your package you sent out, the Vanderbilt Beach Road extension project.

MR. FEDER: Yes.

CHAIRMAN STRAIN: You show that in Phase I and the 1/15/2010 budget you have $30 million. And then in Phase II you have 16. And down below you have expenditures to date of 13 million.

Which did it come out of, the 30 or the 16, the 13 million?

MR. FEDER: Predominantly it came out of the 30, but not entirely, because we had some whole takes in Phase II. As I noted previously, our first concentration was on the 21 whole takes. I believe I'm correct, and I've got staff here, that about 19 of those 21 have been acquired. And the bots (phonetic) are being acquired. But nevertheless, the first emphasis was on those whole takes and then we're going under a negotiation process with willing sellers that we can come to a reasonable but making them whole deal, and we brought those to the board over time.

CHAIRMAN STRAIN: You started out in 2007 with a Phase I of 37 million, and then in 2010 you ended up with 30 million. Is that seven million part of that 13 that was expended?

MR. FEDER: No. There's a little bit in there and it's also -- what you're seeing in the 37 to the 30 is simply the overall estimate of phases. The 13 is showing you what we spent so far to come to what we have remaining, when the two are added.

But you asked the question, and that is: How has the value in our estimate of costs changed over time. And that's what the first is showing you. Of all the parcels we had to acquire, in 2007 our estimate of cost to acquire was 37-eight and 28-three for a total of 66-two.

Now, we've had some reductions in values. And that's what's reflected in each year. And then we do the valuation before we go through the process. And that's brought that 66 down to 47-three.

And again, I need to caution you, when we're acquiring right-of-way for transportation, it is not the same as buying the two and a half acre lot out in the Estates. I can't go out and say I want a two and a half acre lot, get five or six different people to compete together and I choose the best priced one. I am out there designing, getting permitted and specifically telling property owner "X" I need a portion of their property. I then have to pay seven stanwiges (phonetic), because I can't buy the whole property.

So it's not -- and I've got administrative processes I have to do. I have to pay for attorneys and other issues that are fixed costs. So it is not always purely an issue of if property values have gone down 50 percent my cost of right-of-way acquisition don't follow exactly suit. But this shows you what the cost was.

So in answer to your question, the current estimate for both phases is 47. I've already acquired 13. Now, some of that I acquired when it was a little higher, some a little lower, so I can't give you an exact one-for-one. But nonetheless, of the overall cost I've acquired 13, so I took that off the 47. That leaves 33 still required. We've got 12 in the budget, which was based on the question that you had.

CHAIRMAN STRAIN: Right. And the 18-nine that you're saving then, is you're just going to reduce the 30 million that you could have potentially purchased, used in 2010 for purchase or right-of-way down to only -- to max it out at around 12 million; is that right?

MR. FEDER: We're going -- we still have 12 million, but that still doesn't buy all the right-of-way, based on our current estimates, yes.

CHAIRMAN STRAIN: I know that. I just wanted to understand how you got --

MR. FEDER: Yes.

CHAIRMAN STRAIN: -- to the 12 million.

On your bridge list that you've provided --

MR. FEDER: Yes.

CHAIRMAN STRAIN: -- you have two columns that I'm interested in. One says sufficiency rating, the other says health rating. And they're quite different. What is the significance of each column?

MR. FEDER: I'm going to ask Gary Putaansuu, who works with our design and bridges.

But essentially they've changed the process, but they equate in many respects to what was the former labels, which was structural rating, which is the actual worthiness of the structure and its soundness, and then to what's called a functional obsolescence, which is whether or not it meets current design and safety standards, does it have a breakdown lane guardrails of a certain height and the like.

Gary, can you elaborate any further on that?

MR. PUTAANSUU: Yeah, my name's Gary Putaansuu. I'm Principal Project Manager in Transportation, Engineering, Construction Management, and I have responsibility for the bridge program.

The sufficiency rating is a rating that -- okay, I guess to begin with, FDOT inspects all the bridges. They look at half of our bridges every year. In a two-year period they go through looking at all of them and they give us inspection reports.

Over the past -- in the past the sufficiency rating was the only rating they used. Health index didn't -- they didn't have that health rating. That's a new one that when that interstate bridge collapsed, federal highways looked at how the bridges -- it all comes kind of down from the federal highways. That's why all the inspections of all bridges are being done.

Their instruction -- they evaluate it and they came up with I think kind of a thing that was lacking in the efficiency rating and that they needed to look at the bridges a different way and that there were certain elements that failed on -- in that catastrophe.

And so they came up with the health index -- or the health rating. So now we kind of have both -- well, not

kind of, we have both numbers.

And for me in particular, I mean, you get into the numbers and things, but for me when I look at the whole listing, the numbers are an indicator of -- that I've got an issue, that I need to look further at that bridge.

And when I look at the inspection reports that have gone on our existing bridges -- well, for one, our existing bridges, more than half were built in the 1960's or earlier. So they're getting on 50 years old. This is our -- we're in a climate here, we have a high salt sort of thing. Corrosion of steel and things is really a big -- you know, so we have to be concerned about preserving the life of these structures and making sure that we don't have a catastrophe with them.

When I look at the reports, regardless of all the numbers, and I see the photos and we do have bridges that do have exposed steel, we do have bridges that do have some exposed strain, and we need to look further into how -- you know, what needs to be done in each bridge.

And in some cases it may just be more of a cosmetic or protection, you know, go in and preserve what we've got there. In other cases we've got bridges that were designed on an earlier standard, the decks may not be thick enough to support a rail that meets today's standard. Rails are an issue. So we can't just do a cosmetic repair. At some point we've got to look at what's the best thing to do, do we repair or do we in some cases have to go in and replace. And a certain amount of them are going to.

We already found that with Chokoloskee when we got into it that, you know, the deck's too thin to really put the rail we want. Now we've got to look at in the future replacing that bridge.

And that's a -- the other part of that is that while there may not be a lot of people out there, it's the only way back and forth, so those bridges are really important.

So, you know, what I see in looking at the photos is that we need to look at -- I've got a list of 23 bridges. We need to go out right away and, you know, find out the extent of the needs on each one of those.

And I've projected, based on what we've learned in the last couple of years getting into this, what -- from my experience there what the range of expenses are on them. We'll only know when we get in -- really get into looking at them, just to see how extensive conditions are.

And the other thing that we're into is channels. Let's -- the Goodland Bridge, for instance, we're up doing some rail repair and deck things on that -- or, you know, on the structure of a -- navigation-wise, we're really in poor shape. We're going through that bridge a little over a half a million dollars.

But also following up on that was that we have about a million dollars of channel repair that we need to do down in the channel to protect the foundations for that bridge. And a great share of these bridges I see evidence from the photos and inspections that we need to be looking at what's going on in these foundations and protecting them.

So here again, you know, it's going to be each site when we go out. But main -- we need to real -- you know, a year from now I guess I can tell you in better detail once we know more about all the different, you know, the ones.

We were going to go about it five bridges at a time, and then we've decided no, let's take a look at all of them that we know about, assess them, and then we move forward and repair what needs to be repaired, and look at -- what I do want to avoid is repairing something that I really have to, you know --

CHAIRMAN STRAIN: Tear down.

MR. PUTAANSUU: Tear -- yeah, I need to replace.

CHAIRMAN STRAIN: I've got a couple other peripheral questions, though. You have -- some of these are listed as drainage canals. What are you doing in a drainage canal under bridge maintenance? Is it -- because I -- for example, you've got Immokalee Road drainage canal, you've got the Ted Kersey Road drainage canal. Several like that. What is that kind of work?

MR. PUTAANSUU: Well, basically --

CHAIRMAN STRAIN: Is it bridge work? Let's put it that way.

MR. PUTAANSUU: Well, yeah. Our roads cross -- we've got a network of canals out there. And let's take Immokalee Road for instance --

CHAIRMAN STRAIN: Well, no, just tell me, is that the bridge crossing for the drainage canals?

MR. PUTAANSUU: Yeah, that's where we're at. We've got bridges across canals, and yeah, that's a great share of work, and bridges are --

CHAIRMAN STRAIN: Okay, most of them have the word bridge or something like that in it. And I just was questioning, because we've have a stormwater drainage expense fund or capital --

MR. PUTAANSUU: Yeah --

CHAIRMAN STRAIN: -- improvement fund, and those should be there.

MR. PUTAANSUU: Yeah.

CHAIRMAN STRAIN: The other question I have is, is this supposed to be strictly for repair and maintenance of bridges, since this is under that section of your budget?

MR. PUTAANSUU: Basically that's what we want to do primarily.

CHAIRMAN STRAIN: Because the -- on the sixth one down on the five-year program you have number one Estates at 23rd Avenue Bridge, and it's shown at a value that reflects the new construction cost. And I'm just wondering, is that a new bridge or is that an old bridge, or how is -- why is that on your five-year program? It's 2. -- almost 2.3 million.

MR. PUTAANSUU: Okay, 23rd, in order to -- there's only one -- the river on -- or the bridge on White, in order to replace it we have to take it out, and it's the only way in and out of there. And the 23rd connection, besides being on that Horizon Study, is one that we would need in order that traffic back in that area can --

CHAIRMAN STRAIN: The justification of it I'm not questioning.

MR. PUTAANSUU: But yeah, that's what --

CHAIRMAN STRAIN: I'm just questioning the allocation of it, not the justification of it. If it's new construction, wouldn't we want to be looking at impact fees instead of an operating budget or maintenance budget to put that under?

MR. FEDER: Again, impact fees is adding new capacity, not necessarily -- in other words, new lanes.

CHAIRMAN STRAIN: Right.

MR. FEDER: So if I'm not going to widen that bridge and adding new lanes, it wouldn't fall under impact fee capability.

CHAIRMAN STRAIN: This isn't -- on the 23rd Avenue one it's not a new bridge, it's an existing bridge?

MR. FEDER: There is an existing bridge there today and --

CHAIRMAN STRAIN: No, he's shaking his head no.

MR. AHMAD: Good morning, Mr. Chairman. Jay Ahmad, Director of Transportation Engineer.

The White Bridge is one of the bridges on the FDOT that is (sic) received very low score and indicates that it needs rehabilitation or replacement.

We have looked at it. It does look like it needs replacement.

In order to replace that bridge while under construction, the only alternative to having traffic, an MOT, maintenance traffic, to that area is to build a new bridge. And you're correct, that would be a new bridge.

CHAIRMAN STRAIN: Okay. Well, then again, back to impact fees. It would -- I don't know, why couldn't you put that under an impact fee cost instead of a maintenance cost?

MR. FEDER: We could on a new bridge.

CHAIRMAN STRAIN: Okay. That was my point.

So that's something that you could look at adjusting?

MR. FEDER: Yes, you could. But again, I need to make the point, there is only impact fees and a portion of gas tax remaining once you get past 11 percent reduction within the capital program. So you're replacing one dollar for another. In other words, it would be gas tax or impact fees.

CHAIRMAN STRAIN: Well, the largest area for permitting in Collier County for quite some time in the heydey was Golden Gate Estates. And it would seem that if a bridge is needed out of impact fees, they certainly were generated from that area, so --

MR. FEDER: And there's a lot being spent in that area, I agree.

CHAIRMAN STRAIN: Okay.

I'll try to finish up. I haven't got too many more.

Recycling. I see Dan's here today. That means Phil got tired of trying to answer his questions last time.

Dan, how are you doing?

MR. RODRIGUEZ: Good morning, Planning Commissioners. Good, thank you.

CHAIRMAN STRAIN: I'm assuming that you wrote the report in response to the questions about the tipping fees?

MR. RODRIGUEZ: Yes, we did.

CHAIRMAN STRAIN: Okay, one of the bullets you put on there, it says the recycled materials do not go

into the landfill and therefore no tipping fees are derived from those recycling streams.

Well, Waste Management doesn't seem like a nonprofit organization. So how do they get paid then?

MR. RODRIGUEZ: Sure. For the record, Dan Rodriguez, your Solid Waste Management Department Director.

Waste Management gets paid based on the tonnage that comes across the scale. Part of a life of site landfill operating agreement. They receive a percentage of the tonnage for the buried material.

CHAIRMAN STRAIN: Right. But what about the recycling material, how do they get paid for that?

MR. RODRIGUEZ: As part of our collections agreement, it's a comprehensive inclusive agreement where as part of the rate they're responsible for taking those recyclables and sending them to their MRF to be recycled, so it's part of that contract.

CHAIRMAN STRAIN: So the more recycling we have which brings the other solid waste down, the tipping fees theoretically then would go up to offset the loss of the weight that would have to be paid for the tipping fees for the other solid waste that is now recycled?

MR. RODRIGUEZ: Not necessarily. The more that we recycle, the less goes to the landfill. The less we bury, the less we pay Waste Management on the disposal side.

CHAIRMAN STRAIN: Okay. I also notice that under your landfill you progressively have gone down in your fees, revenues. And I think it was mentioned in here that it's due to the recycling effort? And it started going down in 2007. That's when our population started dropping, too. Didn't that have something to do with it as well?

MR. RODRIGUEZ: The economic decline had some portion of it. But the majority of it has to do with recycling. The single stream cart program rolled out in 2005, and we currently have an 80 percent participation rate of citizens in Collier County that use recycling, and therefore the residential side has decreased substantially.

And as well as with the implementation in 2005 of the mandatory commercial recycling ordinance, your commercial businesses are also recycling more and more and every year that amount continues to increase, bringing value back to the county.

CHAIRMAN STRAIN: Well, basically your department wasn't into this CIE for money issues, but you had one that led me to all these questions, and that was the revenue stream, you have an LTF, landfill tipping fees, and you show a revenue and an expenditure of 3.4 million.

What is that about? If it's all going to Waste Management, what are we running it through our books for?

MR. RODRIGUEZ: That's a very good question, thank you. That's a good question.

There's two separate tables. We have a contract with Waste Management for life of site. Irrespective of how much revenue they receive from us, they are required to build the cells for expansion.

So if the tonnage decreases, they earn less revenue. We have longer life of the landfill, so they need to construct less. It's their responsibility to develop a recovery fund to build those cells as part of that agreement.

CHAIRMAN STRAIN: So the 3.4 million is their recovery fund --

MR. RODRIGUEZ: That's correct.

CHAIRMAN STRAIN: -- that we're holding for them?

MR. RODRIGUEZ: No.

CHAIRMAN STRAIN: Why is it on our books?

MR. RODRIGUEZ: Good question.

CHAIRMAN STRAIN: Oh, okay. You tell me I'm probably right, that's a good question.

MR. RODRIGUEZ: Well, we were asked to put that in there two years ago. We were asked to put that in there as part of a CIE so that we're similar to other departments. But really that's not our CIE program. That's Waste Management's program.

CHAIRMAN STRAIN: Is there -- okay, that's a good question.

Does that mean we can take it off our books? I don't know why we'd want to show something that isn't necessarily supposed to be there, nor is it run through Collier County's processes.

MR. GRAMATGES: Mr. Chairman, Phil Gramatges, Public Utilities.

We put that number there because we were requested to put that number there in 2007. Should this committee recommend to the board that we should not report those numbers in the future, we certainly will support that.

We did not report it before 2007. And we were asked, I don't remember if it was this committee or the

Productivity Committee who asked that we put those numbers in there.

CHAIRMAN STRAIN: Okay. But we can be assured from our viewpoint that number does not flow through the county's book, it's not money the county's having to account for, it was just a holding value that somebody decided they wanted to see on the books; is that a --

MR. GRAMATGES: That's correct.

CHAIRMAN STRAIN: Okay. It just adds to the confusion of our overall budget. So I for one would certainly like to see that removed, and I'd like to see that bridge program for the new construction straightened out. And with those two issues, that kind of sums up most of my concern, so thank you.

And I have one more question of Norm that I have to ask. Thank you, Phil and Dan. Oh, go ahead, Mr. Murray, then Ms. Caron.

COMMISSIONER MURRAY: Just briefly on that issue, and while we wouldn't necessarily -- maybe a memo item on our books, although I agree it shouldn't be there, per se, but you do have some means that you record the information inasmuch as it's almost essentially being treated as an escrow. So you are nevertheless accumulating that information or you are in some fashion putting it in some book, are you not?

MR. RODRIGUEZ: We're not actually. What we do is we manage the contract with Waste Management. There's language in the contract that requires them to provide to us and the Florida Department of Environment Protection a scheduled construction schedule. And as part of the AUIR and it's also in our contract, they have to have permitted built cell capacity for two years on-site and 10 years of permitted capacity. So that's our check and balance to ensure they're in compliance of having those --

COMMISSIONER MURRAY: Yes. And it's in your interest to know that --

MR. RODRIGUEZ: Absolutely.

COMMISSIONER MURRAY: -- they continue to fund that in anticipation.

MR. RODRIGUEZ: That's correct.

COMMISSIONER MURRAY: Okay. But you receive that as a report rather than having it in a book.

MR. RODRIGUEZ: Absolutely.

COMMISSIONER MURRAY: Thank you.

CHAIRMAN STRAIN: Ms. Caron?

COMMISSIONER CARON: Yeah, no one remembers, though, and no one can state for us why it was requested of you to put that three million or whatever the figure might be into our CIE.

MR. GRAMATGES: Commissioner, we were -- Phil Gramatges, again.

We were not told as to the reason. And I believe that the reason that was given is for clarity purposes.

I would disagree that it clarifies matters, but that's only my personal opinion. And that's the reason why we say that it is confusing and we certainly would support your recommendation to take it out of that report.

COMMISSIONER CARON: Okay, thank you.

CHAIRMAN STRAIN: Okay, thank you very much. Appreciate it. And Norm, I have one other question.

MR. FEDER: Yes, sir.

CHAIRMAN STRAIN: The bridge operations and maintenance, that is an ad valorem cost?

MR. FEDER: The bridge operations and maintenance portion of it is ad valorem. Most of it is gas tax.

CHAIRMAN STRAIN: Last year you were asked to reduce your ad valorem budget by 11 percent. Do you know why 11 percent was arrived at?

MR. FEDER: We were asked to try and identify a millage neutral and a further cut. At the time that we developed this we were told it was initially 15, then we were told 11, now they're talking about 10, but nonetheless we did 11 because that's what we were told at the time.

CHAIRMAN STRAIN: Okay. And I ex -- I know that -- I kind of knew the answer, but I wanted to understand from you that it matched what I was thinking in that we expected or if we did have a certain estimated cut in ad valorem taxes last year and every department was supposedly trying to match that or --

MR. FEDER: It's actually for the upcoming year, but yes, an expected cut based on reduced assessed values.

CHAIRMAN STRAIN: Do you expect the cut the upcoming year that this budget's being set up for to be more severe or less severe than last year's?

MR. FEDER: Again, we're confusing matters here. Last year we had a cut basis. This one is probably a little less severe. And right now it's projected about 10 percent.

CHAIRMAN STRAIN: Okay, thank you.

Anybody else have any questions?

COMMISSIONER SCHIFFER: I have.

CHAIRMAN STRAIN: Brad?

COMMISSIONER SCHIFFER: Norm, a quick one.

In the new bridge, would the total cost of the bridge be allowed to impact fees or do you prorate it for existing use?

MR. FEDER: The total amount of the bridge, because it's brand new in added capacity and we can make that adjustment. It's a matter of it won't change overall funding but it will allow us to make that adjustment, if that's the desire of this group.

We did commit the bridge funds, as you're well aware -- I mean the impact fees -- in those districts to the Oil Well/Ave Maria agreement that we're just going under construction. That's the only caveat I'll place to that. But we should have sufficient impact fees in that district to allow that bridge to be covered by impact fees.

COMMISSIONER SCHIFFER: Okay. But, you know, the question kind of is, you can build a new bridge totally out of impact fees. In other words, you don't have --

MR. FEDER: Well, you're adding new capacity, which you would be on any of the lanes you're building on a new bridge. Of course you didn't have that capacity previously. You could argue a little bit beyond that, but we would stay to only the bridge.

COMMISSIONER SCHIFFER: Okay.

CHAIRMAN STRAIN: And Norm, the last thing in your particular department's percentages, when you move from 11 percent to 15 percent, to get to the 15 percent two things seem to have occurred: That you've taken the Santa Boulevard (sic) Copper Leaf to Green expansion and put it off till FY '14, and that removes 17 million, 800. Is that a fair statement for the first --

MR. FEDER: I believe you may have moved it well beyond that. But yes.

CHAIRMAN STRAIN: Well, it says FY '14 --

MR. FEDER: '14 initially, yes.

CHAIRMAN STRAIN: Okay. And then you took some of that 17-eight that was saved by moving that beyond and increased the reserves that used to be underfunded by the 11 percent by a negative 1.2 to now make it a positive of four percent. You're almost over five percent increase in funding of your reserve. So we didn't lose the full 17-eight from your budget. We lose the portion of it that wasn't funded to the reserves; is that correct?

MR. FEDER: You balance the program. The 17-eight could no longer be afforded, but there were dollars and those were distributed into the reserves, yes.

CHAIRMAN STRAIN: That's the only difference between the 11 and 15 percent that I can see.

MR. FEDER: That is the primary difference, yes.

CHAIRMAN STRAIN: Okay, thank you.

Is there any other comments from the Planning Commission? Any other questions?

(No response.)

CHAIRMAN STRAIN: Okay, is there any members of the public that wish to speak on this exciting CIE budget?

(No response.)

CHAIRMAN STRAIN: I saw everybody was totally absorbed in this thing.

Ray, there's no other staff information reports?

MR. BELLOWS: No other reports and no one has registered to speak.

CHAIRMAN STRAIN: Okay. Then I will be looking for a motion from the Planning Commission on this item. I'll be glad to suggest one.

I would suggest as a motion that we remove the tipping fee notation in the budget amount, since it is not something that needs to run through the county's books.

That the new bridge that's listed in the operations and maintenance section of the road and bridge be transferred to another funding source through either impact fees or gas tax, whatever the normal source is.

And that the values that Norm has presented, that we use the 15 percent column instead of the 11 or 20 percent.

Anybody have any comments?
(No response.)
CHAIRMAN STRAIN: Okay, I'll make that in the form of a motion if there's a second.
COMMISSIONER MIDNEY: I'll second.
CHAIRMAN STRAIN: Mr. Midney seconded.
Discussion?
COMMISSIONER MURRAY: Yeah.
CHAIRMAN STRAIN: Mr. Murray?
COMMISSIONER MURRAY: Would you enlighten us why you would like to use the 15 rather than the 11?
CHAIRMAN STRAIN: I just explained to Norm that very answer.
COMMISSIONER MURRAY: Well, would you help me, please?
CHAIRMAN STRAIN: Okay. If you go to your book that was originally passed out, we originally had an 11 percent column that provided certain listings that were already cut to provide the 11 percent deduct.
Then we had the columns under 15 percent that provided cuts to 15 percent. There were only two changes in the cuts, one of which actually was a betterment. It increased the reserves so that Norm has a reserve now that's substantial, and it decre -- or put off a construction area at Santa Barbara Boulevard that I drive constantly and I'm not seeing that as needed as -- I would have to agree with Norm, it certainly could be put off. Those are the only two changes from 11 to 15 percent.
COMMISSIONER MURRAY: Okay.
CHAIRMAN STRAIN: So I didn't see a problem with them.
COMMISSIONER MURRAY: All right. And I want to thank you for that.
CHAIRMAN STRAIN: Okay. There's been a motion and second. Is there any further discussion?
(No response.)
CHAIRMAN STRAIN: All in favor, signify by saying aye.
COMMISSIONER SCHIFFER: Aye.
COMMISSIONER HOMIAK: Aye.
COMMISSIONER KOLFLAT: Aye.
COMMISSIONER MURRAY: Aye.
COMMISSIONER MIDNEY: Aye.
COMMISSIONER VIGLIOTTI: Aye.
COMMISSIONER CARON: Aye.
CHAIRMAN STRAIN: Aye.
Anybody opposed?
(No response.)
CHAIRMAN STRAIN: Motion carries, and we're 8-0.
Corby, thank you. And I certainly appreciate all of staff's time and especially transportation's input. And the utilities, and Phil and Dan, thank you for your patience here for two meetings. Very much appreciated.
MR. SCHMIDT: Thank you.

Item #4B

LAND DEVELOPMENT CODE (LDC) AMENDMENTS

CHAIRMAN STRAIN: Okay. Now, the item that everybody has been waiting for. We'll get into the Land Development Code amendments.
And the first one up today is -- and Susan, do you want any preliminary statements or comments that you'd like to make?
MS. ISTENES: Please, thank you.
CHAIRMAN STRAIN: Go right ahead.
MS. ISTENES: I just have a quick question. Does all of the commission members have a copy of the agenda

I e-mailed you? If not, I have copies here. Because then I would like to distribute -- or leave the rest out for the public.

CHAIRMAN STRAIN: I passed out copies to everyone this morning.

MS. ISTENES: Okay. Then I'll go ahead and leave these on this back table for members of the public. And that's all I have at this point.

CHAIRMAN STRAIN: I'm switching books.

Okay, David Weeks did an analysis on the first item up on our agenda today. Unfortunately it was handed out a few minutes ago.

Now, there's two things that have to occur. We ought to be given the ability to read it and the applicant ought to be given the ability to continue his item to one of our next meetings if they want time to respond to it. So before we decide how fast we've got to read this, let's ask the applicant's representative what they would like to do in the matter.

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

It's a little scary that we're of the same mindset this early in the morning, because I was going to request a continuance so that we could answer questions raised by this memo between now and -- my understanding would be February 26th, because I think you're coming back again.

CHAIRMAN STRAIN: You'd be first up on February 26th.

MR. YOVANOVICH: That would be great. If we can have that courtesy, I would appreciate that.

CHAIRMAN STRAIN: Not a problem. These are too important to just miss anything. And I would honestly like the time to read David's memo, because his comments are very carefully written by him. So that would give us all time to read them.

MR. YOVANOVICH: Thank you.

CHAIRMAN STRAIN: Okay, thank you.

So the very first item, which is the medical surgical item on 2.03.03 E.1 is delayed until the 26th of February.

Tor, did you have a comment?

COMMISSIONER KOLFLAT: I had a comment in general on these amendments coming up, and it's a question to Jeff Klatzkow.

CHAIRMAN STRAIN: Okay.

COMMISSIONER KOLFLAT: As you know, my wife and her daughter are trustees of some residential property which is involved with county litigation that pertains to the following issues and LDC amendments on this agenda. They are, number one, definition of corridor through and interior lots on Page 80. Excuse me, Page 80. Front yard setback court (sic) through acre method of measurement, which is on Page 83. A rewrite section of the lot line adjustment on Page 193.

My question to Jeff is should I recuse myself from either discussing or voting on any of these LDC amendments?

MR. KLATZKOW: Yes.

COMMISSIONER KOLFLAT: Thank you. I so do.

CHAIRMAN STRAIN: Okay. So Tor, when we get to those and we ask for the vote, just note that you're abstaining.

There is a form I believe that you need to fill out, but we won't be voting today anyway, so none of it will apply to today. But on the 26th of February you need to have those forms filled out.

MR. KLATZKOW: If you vote on them.

CHAIRMAN STRAIN: If you -- we can't vote on them today.

MR. KLATZKOW: Right.

CHAIRMAN STRAIN: If we vote on them at all.

MR. KLATZKOW: Right.

CHAIRMAN STRAIN: Right. Well, good point. Because I certainly have my issues.

Thank you, Tor. Anybody else have any general comments before we go into the next item, which is 2.03.07.L?

MS. ISTENES: Mr. Chairman?

CHAIRMAN STRAIN: Yes.

MS. ISTENES: May I?

CHAIRMAN STRAIN: Go ahead.

MS. ISTENES: In light of what just happened with Rich's amendment, I did want to make you aware, and I had discussed this with you earlier, I do have another draft copy of a memo from David Weeks relative to the industrial zoning district's Anthony Pires' private application.

It does not -- it reaches the same conclusions I did in the memo you already have. So I just wanted to make you aware of that. I have copies, I can certainly hand them out to you. They still have draft written all over them. And I did ask for one without draft and I did not get one, but at this point they're public record and I don't think they're going to change.

It's pretty benign. But I'd be happy to hand it out to you, but I just wanted to make you aware of the same situation with that. It's just a little bit different in that it doesn't change or doesn't modify or isn't that different from my conclusion that you already received a couple weeks ago.

CHAIRMAN STRAIN: But it is a new document --

MS. ISTENES: Correct --

CHAIRMAN STRAIN: -- by a new staff member. And the applicant for that will have the same courtesy offered to him as Mr. Yovanovich's was just received.

Tony?

MR. PIRES: Mr. Chairman, if I may --

CHAIRMAN STRAIN: What would you like to do in regards to this?

MR. PIRES: I'd like to have it continued. I've not even seen that draft memo yet.

CHAIRMAN STRAIN: And I know how picky you are with words. So I'm sure you'll look at every single word of it.

So with that we'll just bring you up as the second item up on the February 26th meeting.

MR. PIRES: Thank you.

CHAIRMAN STRAIN: Well, that moves us faster today.

Go ahead, Mr. Yovanovich.

MR. YOVANOVICH: Mr. White called me yesterday and graciously offered to allow me to go back-to-back with my two petitions so I wouldn't have to wait. So is it possible for me to jump in front and deal with the timeshare issue prior to getting into the Vanderbilt Beach overlay? It doesn't matter -- I mean, I appreciated him making that gesture. So if that's possible, I'd love to do it. If not, I understand.

CHAIRMAN STRAIN: Patrick?

MR. WHITE: Yes, sir.

CHAIRMAN STRAIN: When you get to the microphone, please.

MR. WHITE: Good morning. Patrick White for the record.

Yes, Mr. Chairman.

CHAIRMAN STRAIN: I know you just heard Richard.

MR. WHITE: Yes, I did.

CHAIRMAN STRAIN: Any problems with that?

MR. WHITE: None at all.

CHAIRMAN STRAIN: Okay, then that's fine.

Susan, are there any additional hidden drafted magic documents that we need to have on the next two?

MS. ISTENES: Not that I'm aware of.

And if you would just work from your agenda. John put together a really easy agenda to follow, so you'll be starting on Page 69 with this amendment. Of your book.

CHAIRMAN STRAIN: Okay. So if everybody will turn to Page 69. And it may be easier said than done.

Okay, everybody on the Page 69?

Richard, are you making the presentation?

MR. YOVANOVICH: Yes, sir.

Good morning. For the record, Rich Yovanovich, on behalf of the applicant.

With me today also is Bob Duane, who can answer any other questions you may have that I can't answer regarding our proposed LDC amendment.

What we're trying to address is an issue that has come up over the last few years regarding timeshares.

The way your code treats a timeshare is it treats it as a land use, when in reality a timeshare is a form of property ownership. It is not a land use. Just like a condominium is not a land use, it is a form of ownership. You don't regulate multi-family based upon whether it's a condominium form of ownership versus it's owned by just one entity.

So we've run into confusion when a property owner wants to develop a hotel or a transient use with the timeshare form of ownership, because under the RT zoning district the timeshare is treated as a use and it's actually treated as a multi-family use for purposes of density or intensity.

So the amendment you have in front of you today is to clarify and address the ownership issue related to timeshare versus the zoning type of use that it's commonly treated as right now under the RT zoning district.

So the amendments are -- there's a couple -- it's a little confusing because the definitions of timeshare that are in your code are in the old LDC. They didn't come forward. So we're trying to revise the old definitions that you find in your old LDC. And in that timeshare it's referred to as a dwelling unit which connotes residential.

So we would either like to just strike the definitions of timeshare or simply reference the statutory definitions of timeshare. And that's one amendment.

The second amendment is to the footnotes to clarify that if your use is a transient use, hotel or motel, it can be a timeshare form of ownership and you would be entitled to 26 units per acre. And you would have to meet the dimensional standards for a hotel/motel unit.

And I noticed one typo in the staff report. The actual unit sizes are 300 square feet to 500 square feet. And that's on Page 2 of the item number two.

So we are operating, we'll meet the same unit size requirements for hotel and motel units, the same operational requirements for hotel units, we just simply want to be able to have the ownership be a timeshare form of ownership.

If you read my memo that went along with it, the statutes are pretty clear, you can't regulate timeshare as a land use, it's a form of ownership. And that's all we're trying to do is clarify those provisions within the Land Development Code.

We don't have any objections to the staff recommended changes and clarifications in the memo. And with that, I'll answer any questions you would have regarding the purposes of these amendments.

CHAIRMAN STRAIN: Well, we normally take these documents sentence and page at a -- actually page at a time, so I'm assuming we'll approach it that way. Unless someone tells me they strongly object, that's how we'll do that.

But if there's any general questions before we get into the page-by-page analysis, I'd sure like to hear them now. Then we'll get into the page by page.

Ms. Caron?

COMMISSIONER CARON: The language that did not carry forward, do you have a copy of that language to put up there?

MR. YOVANOVICH: Oh, is it not -- do you not have --

MS. ISTENES: This -- Ray's putting it up on the visualizer. This is from 91-102, the three definitions that did not make it into 04-41.

CHAIRMAN STRAIN: Anybody else?

COMMISSIONER CARON: I just wanted it to be up there.

CHAIRMAN STRAIN: I have a couple general questions. First of all, is there anybody from transportation in this room?

(No response.)

CHAIRMAN STRAIN: Ray, can you ask that someone from transportation be available? Are they -- do you know why they're not here?

MR. BELLOWS: They were here.

CHAIRMAN STRAIN: I know they were.

Then before we -- since I can't get that answer, I have another one.

You're asking for density.

MR. YOVANOVICH: No.

CHAIRMAN STRAIN: Okay. You want 26 units per acre.

MR. YOVANOVICH: I'm asking to recognize that timeshare is an ownership interest, it's not a land use. I already have the right to do 26 hotel and motel units per acre.

CHAIRMAN STRAIN: But you want them as timeshare units.

MR. YOVANOVICH: I want to be able to own them as timeshare. I don't -- I'm not asking for any additional density.

CHAIRMAN STRAIN: Okay. So timeshare itself wouldn't carry the connotation of 26 units, they'd be allowed. You're saying you want them to be allowed to utilize timeshare and hotels that have the 26-unit density.

MR. YOVANOVICH: Correct, right. And if we operate it as a multi-family use, then the timeshare would only be allowed to have the 16 units. So I'm not asking for any changes in the density, I'm just asking that timeshare not be referred to as a use, i.e., multi-family.

CHAIRMAN STRAIN: Okay. And my last question, before we get into the page by page, you're not obviously doing this out of the goodness of your heart. Who's your client, or where is this to be located?

MR. YOVANOVICH: Well, this particular project is for -- it's in Port of the Islands and for Sunstream is the client.

CHAIRMAN STRAIN: Is that facility currently run under this manner? I mean, is there --

MR. YOVANOVICH: It's not a timeshare currently --

CHAIRMAN STRAIN: -- a timeshare down there now?

MR. YOVANOVICH: -- no. It's not a timeshare currently. And it would actually -- it would apply to probably some new units that would be constructed out that way.

CHAIRMAN STRAIN: Okay. With that, and without transportation here yet, I guess we'll go into the very first page, which is Page 69.

Does anybody have any comments on that?

(No response.)

CHAIRMAN STRAIN: Other than I think Susan's memo was -- I had made a note about the same point. We don't normally in our definitions reference a Florida statute. We put the definition in there. So I think we're going to need to see the definition as it would have to appear in our document.

And the reason it's important that we see it is because a lot of times in Florida statute, one sentence refers to another statute. And before you get done you're going through a chain of statutes. And so I'd like to see a succinct definition that is intended to be used for these three as it would be put in our code.

MR. YOVANOVICH: Well, I think the simpler approach, if it's acceptable to the Planning Commission, is to delete from the code the definitions of timeshare and then simply rely on the statutes.

CHAIRMAN STRAIN: Well, maybe by the end of the discussion that's something that we should --

MR. YOVANOVICH: Because I think you'll see that they're rather lengthy. And now do you -- if those definitions change in the statute, do we now go back and amend the LDC every time there's a statutory change.

CHAIRMAN STRAIN: Well, one way or the other, the way it's presented doesn't work, I don't believe, so -- Ms. Caron?

COMMISSIONER CARON: So what you're saying is you have a problem with the way our code always read in defining timeshare.

MR. YOVANOVICH: Right. Because it says an interest in a dwelling. And a dwelling is a residential concept, it's not a hotel/motel. And I didn't want someone to now go back and say timeshare can only be in the residential context because the word dwelling is in the definition. I just wanted to eliminate the potential ambiguity that that creates.

CHAIRMAN STRAIN: How would you operate a timeshare? Don't they generally operate on a week minimum?

MR. YOVANOVICH: And that would be a tran -- that's a transient type use.

CHAIRMAN STRAIN: So you would then be using a hotel as a week stay --

MR. YOVANOVICH: Correct.

CHAIRMAN STRAIN: -- for someone. So you're looking at 52 clients per hotel room instead --

MR. YOVANOVICH: 52 owners, yes.

CHAIRMAN STRAIN: -- of 365, say.

MR. YOVANOVICH: Potentially. I mean, you don't know. I mean, most people are multi stays at a hotel

unit anyway, so --

CHAIRMAN STRAIN: Right.

MR. YOVANOVICH: So I was just -- yes. The answer to your question is yes, we would be a tran -- we'd still have to be transient. We'd still have to have the same characteristics and operate like a hotel and a motel.

CHAIRMAN STRAIN: Okay. Any other general -- any questions on Page 69? If not, let's --

COMMISSIONER CARON: Well, let's --

CHAIRMAN STRAIN: Go ahead, Ms. Caron.

COMMISSIONER CARON: -- just go back to these definitions.

If you took the word dwelling out of where it says timeshare estates.

MR. YOVANOVICH: Okay.

COMMISSIONER CARON: Do you have a problem with the definition as it sits?

MR. YOVANOVICH: Any interest in what would we say? Any interest -- I think that either delete it altogether or I'll come back to you and show you what the actual definitions are in the statute.

I'd like there to be consistency between the statutory regulatory scheme and the Land Development Code. And that's why I simply thought it would be better to reference the statute definitions. If you want to put them in there verbatim, we can do that.

COMMISSIONER CARON: All right, so it would be a problem for you if it said any interest in a unit under which the exclusive right of use, ownership blah, blah, blah?

MR. YOVANOVICH: Yes, because if you look at the statutory definition, it actually gets into and clearly says that it can be a hotel/motel unit. There's a laundry list of -- for example that I think would make it clearer.

COMMISSIONER SCHIFFER: Mark?

CHAIRMAN STRAIN: Mr. Klatzkow?

MR. KLATZKOW: My preference would go with the existing statutory definitions of these things so that we're consistent with the Florida statutes.

CHAIRMAN STRAIN: But would you have a preference whether they are in or out of our code?

MR. KLATZKOW: I prefer them out of the code, because the legislation from time to time's going to tinker with those definitions. And this way we'll always be consistent with the Florida statutory framework.

CHAIRMAN STRAIN: Okay. And I notice transportation's here.

And Norm, I didn't mean for you to have to be here, because I thought Nick would be here all day.

MR. KLATZKOW: He's no longer transportation.

CHAIRMAN STRAIN: Well, I know that, but he's the one that --

MR. KLATZKOW: I keep telling him, it's not your job anymore.

CHAIRMAN STRAIN: But see, with Nick when he's here, I've always got to make one comment to get him fired up.

And Nick, we don't need the Vanderbilt Beach Road extension.

MR. CASALANGUIDA: Sir, we do, on the record.

CHAIRMAN STRAIN: See, I knew you were going to do that.

Okay. Norm, I only had a small question. From an ITE traffic engineering viewpoint the density and the calculations and how you look at hotels, residential, motels, multi-family, single-family, does timeshare connotate any different calculation or special calculation, just like a residential might in another category?

MR. FEDER: Hotel/motel is basically what's applied for a timeshare.

CHAIRMAN STRAIN: Okay. So they do fall under -- that's the worst case scenario and they do fall under that.

MR. FEDER: That's correct.

CHAIRMAN STRAIN: Okay. That was my question. Sorry to drag you back here for that. I thought Nick was going to give us the courtesy of hanging around here for a little bit, but --

MR. FEDER: I always love the opportunity to be here, Chairman. Thank you.

CHAIRMAN STRAIN: Thank you.

COMMISSIONER SCHIFFER: Mark, I have a --

CHAIRMAN STRAIN: Go ahead.

COMMISSIONER SCHIFFER: Rich, in the definitions could you put the word transient into that definition?

I notice they don't. Some of the state statutes do have it.

MR. YOVANOVICH: Well, see, the problem, Commissioner Schiffer, with that is you can have a timeshare that's a multi-family use. So it can't be -- that's why when you look in the footnotes we were very clear to say a timeshare that's operated like a hotel gets 26, and staff wanted to clarify that timeshares that are operated as multi-family get 16. So that's -- I think that's the better place to put it is in the footnotes than in the definitions.

COMMISSIONER SCHIFFER: The word transient?

MR. KLATZKOW: Commissioners, I was once in this business. There are several different types of models for timeshares. Some of them are no more different than a hotel. I mean, Marriott for example has part of their rooms might be timeshare, part of their rooms might be regular hotels, and they'll do this basically to create, you know, an equity in their property. And the hotel itself will sell off the rooms various days, and then they'll broker it to resell it to others when people don't want to do it.

Other models, more that people will come for a month at a time. It's many, many different models. So I really would suggest you go with the state on this. Because if you try to define what it is right now, it's an ever-changing business and we'd be constantly amending it.

CHAIRMAN STRAIN: Mr. Schiffer, anything else?

COMMISSIONER SCHIFFER: Other than just get the word transient in there, I'd be happy.

MR. YOVANOVICH: Yeah, it's in the footnote. Footnote number three, I believe.

CHAIRMAN STRAIN: Mr. Murray, did you have a comment? Mr. Murray, I thought I heard you say something.

COMMISSIONER MURRAY: No, maybe I did and I don't know it.

CHAIRMAN STRAIN: That's no problem. I didn't want to miss anybody.

COMMISSIONER MURRAY: I may have hrrmp'd or something, who knows.

CHAIRMAN STRAIN: Okay. So I guess the consensus is we do not include a definition, we fall to Florida statute, is that --

COMMISSIONER MURRAY: That's what I was agreeing to.

CHAIRMAN STRAIN: Okay. Any questions on Pages 70 and 71? These are the tables in which the timeshare reference would be added.

(No response.)

CHAIRMAN STRAIN: Now, I notice this is in the Vanderbilt Beach RT, which you know is coming up for discussion next.

MR. YOVANOVICH: This is in the general RT.

CHAIRMAN STRAIN: See Page 71? Is that the same as the issues that we got discussing the --

MR. YOVANOVICH: Unfortunately I don't have Page 71, but I'm happy to look over here. I have a page but it's not by that number.

CHAIRMAN STRAIN: Okay.

MR. YOVANOVICH: Okay, I see.

CHAIRMAN STRAIN: I just want to make sure if there's a conflict with anything else we're reviewing today --

MR. YOVANOVICH: It is -- it's a general change to all the RT zonings within Collier County. So there's the -- you have the VBRTO and then you have other areas that are RT that are not within the VBRTO. So yes, it applies to both sections. Although I was not engaged to deal with that particular issue, but it's a general revision.

CHAIRMAN STRAIN: Go ahead, Ms. Caron?

COMMISSIONER CARON: So if your intent is to have this apply everywhere, have you had any discussions with the Vanderbilt property owners?

MR. YOVANOVICH: No, no. My intent is to clarify the code that's incorrectly referring to this as a land use instead of a form of ownership. I'm not trying to change any of the land use characteristics anywhere in Collier County, I'm just trying to clarify the ownership issue.

CHAIRMAN STRAIN: Okay, we're on Page 72. Anybody have any questions on Page 72?

COMMISSIONER SCHIFFER: I do, Mark.

CHAIRMAN STRAIN: Go ahead, Mr. Schiffer.

COMMISSIONER SCHIFFER: Rich, and first of all, you can look at three. This is I guess where you want

to put transient in. It's not in there.

MR. YOVANOVICH: You're right, Mr. Schiffer. I thought hotel and motel, since that is a transient use, took care of it.

COMMISSIONER SCHIFFER: Yeah, but here's where we want to be careful. We don't want somebody to use this to bend the rules to get something else.

And the other question I'm having, can we reference the LDC section that establishes the square footage? In other words, you want to put in there meets the standards for hotels and motels, but that could -- just so that it's clear what we mean by that, that it's the size of the unit.

MR. YOVANOVICH: It's within the RT zoning. I believe itself has the unit size standard. But I don't have an objection to doing that.

COMMISSIONER SCHIFFER: Well, if staff's comfortable that -- in other words, we don't want this to apply to -- because some timeshares are rather large, or essentially, like you say, multi-family. And we don't want this bent.

MR. YOVANOVICH: Yeah, I don't know offhand which section that is. But I don't have an objection to a cross-reference.

CHAIRMAN STRAIN: Susan, the standards for the hotel and motel I know have certain sizing limitations. And if this lang -- would this language tie them to that sizing to resolve Brad's concern?

MS. ISTENES: Yes. I mean, that was my understanding. Certainly if you need further clarification, although Ray tells me it is in the RT zoning district already, so -- but there's certainly no objection, if you want to clarify it even further. It just makes it easier for people to understand it.

COMMISSIONER CARON: It's usually easier.

COMMISSIONER SCHIFFER: Right.

CHAIRMAN STRAIN: Yeah, if you could word a clarification of that issue for that footnote, that would take care of that issue.

MS. ISTENES: And that was footnote number --

CHAIRMAN STRAIN: Three.

MS. ISTENES: -- three. Thank you.

COMMISSIONER SCHIFFER: And I think some of the other ones it might -- four has the similar wording. I just don't want somebody to say, you know, we meet the towel standards for -- you know, that sort.

COMMISSIONER CARON: It's true, though.

CHAIRMAN STRAIN: Okay, any other questions on Page 72?

(No response.)

CHAIRMAN STRAIN: If not, we have a supplemental information, which is Page 73 and 74. Any comments?

(No response.)

CHAIRMAN STRAIN: And 75 is the existing language or the ones that's on the board in front of us. And 76 is some more information about language.

Then we get into Susan's memo. I don't know if it's in your book or not, but Susan had provided a memo of about four pages in length -- three, actually.

Richard, have you received her memo?

MR. YOVANOVICH: Yes, sir.

CHAIRMAN STRAIN: Do you have any objections to her recommendations?

MR. YOVANOVICH: The only clarification was to item number two, the unit sizes range from 300 to 500 feet, not 200 to 500 feet.

MS. ISTENES: Sorry.

MR. YOVANOVICH: That's okay.

And no, other than that, no, we don't object to her recommendations and conclusions, based upon our discussions about how we're going to deal with the definitions.

MS. ISTENES: Mr. Chairman?

CHAIRMAN STRAIN: Yes, ma'am.

MS. ISTENES: I do have another issue that kind of -- when researching timeshares, which is kind of a broad,

as Jeff pointed out, very broad and confusing and ever-changing business.

The one thing I recognized that the code doesn't address that we may want to put in here again for clarification, again just so everybody understands what's counted in density and what isn't, is this notion of lock-off units. And I don't know if you're familiar with that.

But I guess what happens is there's a unit and there's the ability to lock off a portion of it. And they can range anywhere from studios to one-bedroom to two-bedroom. And unfortunately I should have probably printed out a floor plan, because when I was researching it they did show some examples of some floor plans.

But if you can imagine perhaps a studio apartment that's attached to a timeshare unit and it actually has a small kitchen area and its own bathroom and bedroom and living space.

And the question I would have is how would you account for that in the density? I looked up Lee County, and they actually had a provision in there. And I believe I took this from them. And they actually had a dwelling unit count, depending on the type of lock-off unit. And I can certainly put this up there and you can see what I'm talking about. But studios were counted as .1 dwelling units, one-bedrooms were .25. And I'm not suggesting that's the -- you know, the density count for that. I am just suggesting that we may want to put something or recognize that in the code so that it's clear how you count the density for those types of units, should they be developed.

CHAIRMAN STRAIN: And I would agree with you. And we run into this in other categories too. If you've got a timeshare unit with a kitchen and bathroom, and of course an area for just general living, that's a unit. If you have a studio and it has a separate or additional kitchen facilities and bathroom plus an area to live in, wouldn't that be another unit in itself?

MS. ISTENES: Yes. I mean, from our perspective, yes. I think --

CHAIRMAN STRAIN: Well, then I think that needs to be --

MS. ISTENES: -- my point is it probably just needs to be clarified in the code. And that's just my suggestion. So I throw that out there for discussion.

CHAIRMAN STRAIN: Well, I -- I mean, I thought it was a given, but I guess you're right, nothing is a given anymore.

MR. YOVANOVICH: I think you're regulated by keys.

COMMISSIONER SCHIFFER: And Mark, here's what happens is like the example she has, you could have a foyer that you go into with a key. Then there's two doors off that foyer. One is just to a bedroom, or a typical hotel room. And the other one is to --

MR. YOVANOVICH: Another unit.

COMMISSIONER SCHIFFER: -- a typical hotel room with a kitchen. So that could be a two-bedroom unit or one.

But wouldn't our 500 feet kind of capture them, that they can't get bigger than that?

MS. ISTENES: I don't know, honestly, Commissioner. I'm just -- I'm not that familiar with timeshares and how they're set up. And --

COMMISSIONER SCHIFFER: Well, let me ask you --

MS. ISTENES: -- like I said, they're always changing. So that was just a concern I wanted to raise.

COMMISSIONER SCHIFFER: How many units would that be what I described?

MR. YOVANOVICH: Which one?

MS. ISTENES: It sounds like it would be two.

COMMISSIONER SCHIFFER: It could be rented to two separate people. So it should probably be two.

MR. YOVANOVICH: And I think what you'll find, is like I said, there will be two separate actual hotel keys. You'll have a key to get in and then the other family will need their own key.

I don't think you're intending that if you have a hotel room that has a bedroom door that has the regular house lock on it to call that a unit. I think you're talking about when you can have multiple families in it and they have their own hotel key and they can lock themselves off --

COMMISSIONER SCHIFFER: Right.

MR. YOVANOVICH: -- from the other unit. That I would agree, based on hotel keys would be two units. The first scenario where you just may have a door to have your kids sleep on the couch and you have privacy in your own room would not be two units.

COMMISSIONER SCHIFFER: Because it could not be rented as two.

MR. YOVANOVICH: Right, right.

CHAIRMAN STRAIN: Susan, I think that's a legitimate concern that ought to be addressed.

Ms. Caron?

COMMISSIONER CARON: Yeah, I was just going to say, I think Susan brought up a valid point. We should clarify it. We should look at it. I for one didn't even know about it. So if you can provide the information, that's good. I'd just -- I'd like to know about it.

CHAIRMAN STRAIN: We have the same thing happened in a lot of condos where they create guest suites on the lower floors and they try not to count them as density. But they are. That's where additional people stay and it has an impact, just like a unit does because people are living in them.

So I certainly think this ought to be addressed. And when it comes back for final vote and review, that's one of the changes I think you should bring back with it.

MR. YOVANOVICH: I hope I won't slow down the process, because that may be something that you really want to put in a totally different definition. That may be something you want to put in a general regulation applicable to hotels and motels and not just RT.

CHAIRMAN STRAIN: And that may be, but for now we want to catch the one that's coming before us. So let's just get it in this one so we don't miss this, and then if we have to expand it to other parts of the code, let's just do so.

MR. KLATZKOW: Has this been an issue in hotels and motels?

CHAIRMAN STRAIN: I honestly don't know. But I can tell you --

MR. KLATZKOW: Because if it's not --

CHAIRMAN STRAIN: -- in condominiums it's done routinely.

MR. KLATZKOW: What I'm saying, if it's not an issue in hotels and motels -- because every time we make a change we get unintended consequences. If we have issues, existing issues, we should deal with them. If we don't have existing issues, you're going to be creating them.

CHAIRMAN STRAIN: I know, but we're creating a new form here.

MR. KLATZKOW: You're just treating timeshare like a hotel. I know what a unit is.

MR. YOVANOVICH: This is -- I'm not asking you to change any of the unit standards. I'm not -- I'm staying at the three to 500 square feet. I'm not asking you to change how you would deal with lock-off units; I'm not asking you to change anything, I'm just asking you to recognize that timeshare is not a land use, it's a form of ownership. I'm just -- I'm not asking for any changes to the code as far as the standards go.

COMMISSIONER MURRAY: Code needs changed, can do it.

MR. YOVANOVICH: Right. If you need to deal with that issue, if it's an issue, I'd rather it wind its way through the normal process than maybe being attached to something and slow -- confuse things even further. Because timeshare is a confusing topic, as recognized by your own code.

CHAIRMAN STRAIN: If this particular project came in next -- after this was approved, say six months down the road, and they have these lock-off units in it, how would you look at it? How would staff look at it?

MS. ISTENES: Exactly as I described, as a separate unit.

I think -- and to get to Jeff's point, I mean, we haven't had any problems with hotel and motel. And I agree, I mean, why kind of mix up. When you start getting into these short-term and long-term rentals, our code -- and timeshares, our code is in my opinion kind of weak.

So I wasn't trying to throw a monkey wrench into Rich's process, it was just something I recognized that we may want to address simply for clarification purposes in case a site plan comes in and staff doesn't know how to apply it or the public has a certain expectation and, you know, staff's opinion or application of the code at the time of site plan review doesn't meet with that expectation. That's my only intent.

CHAIRMAN STRAIN: Okay. Well, then at this point let's sum up the changes that we need on this in order to vote on it next time.

We're looking at removing the definitions and correcting the footnotes that were discussed.

Is there any other issues that need to be fixed before it comes back to us for a vote?

(No response.)

CHAIRMAN STRAIN: Okay, we're done for that one, thank you.

COMMISSIONER MURRAY: Wait, we --

CHAIRMAN STRAIN: Go ahead, Mr. Murray.
MR. BELLOWS: Mr. Chairman?
COMMISSIONER MURRAY: Mark, you were saying --
CHAIRMAN STRAIN: Oh, there's speakers? Okay, just a second.
Mr. Murray, go ahead.
COMMISSIONER MURRAY: Yeah, you were saying you're going to remove the definition.
CHAIRMAN STRAIN: Right.
COMMISSIONER MURRAY: You're really not going to remove --
THE COURT REPORTER: Mr. Murray?
CHAIRMAN STRAIN: Use your speaker.
COMMISSIONER MURRAY: Excuse me.
I want to be clear. You're not removing, you're removing the old definitions. Aren't you going to reduce it down to those three that we now have?
CHAIRMAN STRAIN: No.
COMMISSIONER MURRAY: You're not going to keep these in here at all?
CHAIRMAN STRAIN: They're not needed.
COMMISSIONER SCHIFFER: State law.
COMMISSIONER MURRAY: Well, I understand they're state law. But I thought I heard our County Attorney saying it was -- we should go by that. That's why I raised the question.
MR. KLATZKOW: We'll refer to state law. We'll put in a quick clause saying --
COMMISSIONER MURRAY: Okay.
MR. KLATZKOW: -- that these --
COMMISSIONER MURRAY: I think that's necessary.
MR. KLATZKOW: -- definitions cease -- yeah, I agree.
COMMISSIONER MURRAY: Thank you.
CHAIRMAN STRAIN: Well, if you're going to refer to state law in a definition for timeshare in the definition section of the LDC, then you're going to have to bring it back next meeting for us to see.
MR. YOVANOVICH: You already -- it was part of my application. You should have --
CHAIRMAN STRAIN: I know that.
MR. YOVANOVICH: -- it there.
CHAIRMAN STRAIN: But it's right here. Whatever is going -- if Jeff is going to have something in our definitions concerning timeshares, it's got to get brought back to us next time.
MR. KLATZKOW: Well, actually, it's going -- if you go look at Page 69 --
CHAIRMAN STRAIN: You want --
MR. KLATZKOW: If you go to Page 69, sir, my recommendation is to use that language but then say as amended from time to time.
COMMISSIONER MURRAY: Yeah.
CHAIRMAN STRAIN: Well, I mean, if that's legal advice, I can still vote no on it, because I don't see the -- I don't like our code cluttered up with references to other statutes. And next thing you know we'll have Florida Administration Code and all kinds of code references in there, and that's just not going to help a member of staff trying to do their job. It's going to be cumbersome and difficult.
So I guess you have instruction, Susan, to bring back the -- leave the definition section in and we'll just deal with it at the next meeting. Okay.
MR. YOVANOVICH: When is the next meeting that --
CHAIRMAN STRAIN: February 26th.
MR. YOVANOVICH: Is when you'll actually vote on this particular one?
CHAIRMAN STRAIN: Yeah, we're going to do all the ones we're talking about today right up first on February 26th and vote on those --
MR. YOVANOVICH: Okay.
CHAIRMAN STRAIN: -- and then go into the rest of the ones we haven't dealt with after today.
MR. YOVANOVICH: Thank you.

COMMISSIONER CARON: Now, did you also mention any of the changes that Susan made?

CHAIRMAN STRAIN: No, we have a speaker too, so we've got to address the public speakers.

And after every single one of these, I will try to remember to ask for public speakers. If you don't register, it's not that big of a deal, you still can speak. I've just got to remember to ask you. So sometimes we get wrapped up up here and I forget. Susan or Ray, just tap me on the shoul -- just yell at me, but remind me to ask the public, please.

And with that, Ray, would you call any registered speakers? And after the registered speakers, I'll ask for any member of the public that would like to speak on this issue.

MR. BELLOWS: We have one speaker. Kathleen Robbins.

MS. ROBBINS: Good morning. I'm Kathleen Robbins and I represent the Vanderbilt Beach Residents Association.

And I asked to speak on this issue, because this completely was a surprise to us. The many references in this proposal to the VBRTO, the Vanderbilt Beach Residential Tourist Overlay, was a surprise.

Maybe perhaps you are aware, maybe not, that we have an issue with a timeshare within our overlay right now that we're trying to work through. And to us it seems that we're being sandbagged or blindsided by this.

We'd like some more time to study this and to talk and find out why there are specific references to the Vanderbilt Beach Residential Tourist Overlay in this. Seems like it's just narrowed in on our overlay. Even though Mr. Yovanovich did say it was all RT overlays, there's specific reference to ours in there.

So we would appreciate, while we use the time between now and the end of February, to study this and find out why this change is being made.

If it's being made for existing timeshare, I have a problem with that. For new time shares, you know, we'll do what we are going to do. But to change an existing timeshare, the definition of it seems, as Mr. Klatzkow said, maybe fraught with unintended consequences that we're very concerned about. Thank you.

CHAIRMAN STRAIN: If you have -- I mean, you have a month basically that this is really going to be voted on. So I would suspect that's time that you could get together with your group and see if you have any concerns.

But if you do have concerns and they're -- could you be very specific as to what they are and why they are, so we know -- we can relate it to what's being presented here today.

MS. ROBBINS: Yes, the concern we have specifically on the one instance on our overlay is that there -- now what's basically been considered for many, many years as a residential environment, they are trying to add commercial uses to it, which is specifically prohibited by our overlay.

So if you change the definition, now that opens it up to allow commercial uses.

CHAIRMAN STRAIN: Well, I think what's being suggested is the definition will be as state law dictates. And you, I, nobody in this county can change that. So we're stuck with it.

So you might want to look at what the definition is, and if you don't like it, you need to tell your state representatives, because there's nothing we can do about it because it's already state law and we can't supersede state law.

MS. ROBBINS: I understand that, thank you.

CHAIRMAN STRAIN: Okay?

Does anybody else wish to talk on this specific item before we move into the next one?

(No response.)

CHAIRMAN STRAIN: Okay. With that, I think we have enough instruction to go forward on that one.

MS. ISTENES: Mr. Chairman, may I ask for clarification?

CHAIRMAN STRAIN: Yes.

MS. ISTENES: Number six of my memo on -- it's 76.C, Page 76.C. I just want to make sure the Planning Commission -- I know Rich said he was okay with my recommendations, I just wanted feedback from the Planning Commission relative to number six. And number five actually, too.

CHAIRMAN STRAIN: Well, number five talks about a related amendment. Does that mean at this time frame or sometime in the future?

MS. ISTENES: This time frame.

CHAIRMAN STRAIN: So you can slip that in?

MS. ISTENES: I'll make sure I can. If I can't, it will be next time.

CHAIRMAN STRAIN: Okay. So let me -- so the audience understands what this is about, staff recommends a related amendment to delete timeshare facilities as a permitted use in an RT zoning district to eliminate the reference to and regulation by a form of ownership.

Now, that's not saying you're not going to allow timeshare, you just don't see the need to state it because it's a form of ownership, not a use; is that right?

MS. ISTENES: Correct. And I -- kind of based on our discussions, and I might look to Jeff for some advice on this too, we're talking about regulating by a form of use. But if leaving it in the RT is more consistent with Florida statutes and the intent, I'm open. But I just wanted some direction on that.

CHAIRMAN STRAIN: Do you think it provides confusion if it's taken out, rather than what does it hurt if it's left in?

MS. ISTENES: Yes, honestly. Based on our discussions, yes, I'm kind of getting that feeling.

CHAIRMAN STRAIN: I have no -- I would rather see it left in. And obviously, as the lady just spoke, they know then what this all means. And I would hate to see a timeshare pop up say in Vanderbilt Beach that -- and they come back and say wait a minute, your code doesn't say you can do timeshare. Next thing you know, we've got a bigger problem. It's either -- black and white is a lot better than --

MS. ISTENES: Okay.

CHAIRMAN STRAIN: -- nothing at all.

MS. ISTENES: Yeah, I agree.

CHAIRMAN STRAIN: From Susan's staff report then we would eliminate number five as a possibility and strike that from being -- and sup -- implement it into the ordinance.

And number six, Susan, what is it you're ref -- you're referring to the --

COMMISSIONER MURRAY: It's the lock-out.

CHAIRMAN STRAIN: That's the lock-out issue?

COMMISSIONER MURRAY: Looks like it.

CHAIRMAN STRAIN: Susan, what is specifically number six referring to in the language of the amendment?

MS. ISTENES: I guess what I -- well, what I am saying here is just simply to treat them as hotels and motels.

And I think we had that discussion. I think Rich was in agreement with it. And that's kind of what I'm asking, are you inclined to treat them as hotel and motel. Essentially, I mean, he's suggesting that they are. And I agree with that. I mean, it's a transient use.

CHAIRMAN STRAIN: Ms. Caron?

COMMISSIONER CARON: They are if they meet the criteria.

MR. YOVANOVICH: Right.

COMMISSIONER CARON: They're not if they've been established already as residential essentially multi-family timeshares. They are not. They don't follow necessarily the motel -- hotel/motel criteria.

MS. ISTENES: So you all -- and let me just get it in my head. You want to keep a distinction between residential and nonresidential.

COMMISSIONER CARON: Well, I think we have to because we have some that already are established. I don't see how we get around that.

MR. BELLOWS: That also would help with the density issue.

MR. YOVANOVICH: Right.

COMMISSIONER MURRAY: Yes.

CHAIRMAN STRAIN: And how do you keep the transient connotation of a timeshare out of it if it's in a residential area?

MS. ISTENES: You don't.

CHAIRMAN STRAIN: Well, then --

MS. ISTENES: That's kind of my point.

CHAIRMAN STRAIN: Now we're -- but see, now a timeshare becomes a use, not an ownership --

MR. YOVANOVICH: No.

CHAIRMAN STRAIN: -- because it actually has a physically different manner in which it operates than a multi-family unit does.

MS. ISTENES: And that was kind of the point of number six, and it's related to number five. That's what I'm asking. That's why it gets real confusing.

CHAIRMAN STRAIN: Well, it already is confusing, so we need to clear it up, because we do not want to proceed with something that's going to give us unintended consequences. So --

MR. BELLOWS: For the record, Ray Bellows.

I believe the timeshare was listed in the RT, residential tourist area, to allow -- to specifically note the difference between the RT district and say an RMF-16 zoning district where you would not allow timeshares.

So I think that was created for the purposes of making it clear that in the RT district if you have a condominium type building you can conduct timeshares. Where that would not be allowed in the RMF-16.

COMMISSIONER SCHIFFER: Right.

CHAIRMAN STRAIN: Okay.

MR. YOVANOVICH: You -- okay, see, that makes my point. You can't have a transient use in a residential zoning district. The form of ownership doesn't matter, you can't have a transient use. You can have 52 people on a deed in a residential home, multi-family unit. There's nothing that says you can't have multiple parties on that deed. You just can't run it like a hotel.

CHAIRMAN STRAIN: Absolutely.

MR. YOVANOVICH: That's why I'm saying, that's why we need to -- that's why the timeshare is confusing, is people were saying timeshare connotes "X". Either a multi-family use or a hotel use.

It's an ownership, like a condominium is an ownership. I have to meet the character -- in the RZ zoning district where I can have a hotel, I have to meet the unit size and the operational, including towel size requirements of a hotel, or I am then multi-family and I'm capped at 16. That's why I'm saying, I'm not changing any of the uses. I'm just saying, look, you have this reference to a timeshare as if it's a use. It's not.

MS. ISTENES: But on the flip side of that, would you not then have to list timeshare as a permitted use in RMF-16?

MR. YOVANOVICH: No. Because again, that's -- do you list condominium as an allowed use in RMF-16?

MS. ISTENES: I understand that. But if we're not regulating by form of ownership, I have no reason to list condominium. If we're regulating by the form of the use and you're saying you can have timeshare in RMF-16 --

MR. YOVANOVICH: I could have --

MS. ISTENES: -- it just has to meet a certain density requirement, then should it not be listed as a permitted use.

MR. YOVANOVICH: No, Susan, what I'm saying is, take -- timeshare is not a use, it's an ownership. If I build a multi-family building in the RT zoning district at 16 units per acre, and I operate it like a hotel, I'm okay because I have 26 units. I'm allowed to do that --

CHAIRMAN STRAIN: And your --

MR. YOVANOVICH: -- I can have that.

CHAIRMAN STRAIN: Wait a minute, now. If you do it as a multi-family unit in the RT zoning and you operate it as a timeshare, instead of getting --

MR. YOVANOVICH: I operate it as a hotel or I operating it as multiple family. Those are your two choices.

CHAIRMAN STRAIN: Okay, but if you operate it as multi-family, what density would you be looking at?

MR. YOVANOVICH: If I operate it as multi-family, I'm capped at 16.

CHAIRMAN STRAIN: Okay.

MR. YOVANOVICH: Now, how I own it doesn't matter, it's how I operate it.

CHAIRMAN STRAIN: What's the difference in an operation that has the same number of people going in and out of it whether it's called a multi-family or a hotel?

MR. YOVANOVICH: Let me -- if I --

CHAIRMAN STRAIN: Is this a commercial enterprise that's part of the hotel that wouldn't be part of the multi-family?

MR. YOVANOVICH: Let's step aside. Let's say my single-family home, which is zoned RSF-1, if I rent that out on a weekly basis, that's probably a transient use, correct? If I -- well, is it? I don't know. I mean, transient is -- what does transient mean? Okay, that's what the issue is. I've got to operate it as a transient use.

CHAIRMAN STRAIN: Jeff?

MR. KLATZKOW: You know, I thought this was the simplest amendment he had. Honest to God. Because in my mind a timeshare is no different than a hotel, period, okay? You can't have a timeshare in a residential area.

MR. YOVANOVICH: Correct.

MR. KLATZKOW: Period. You can't be renting out your house on a weekly basis in a residential area, period. Okay, this doesn't change anything in the code. Where you can have hotels, you can have time shares.

MR. YOVANOVICH: You can own it as a timeshare.

CHAIRMAN STRAIN: Where you cannot have hotels, you cannot have timeshares. A timeshare is a commercial use, not a residential use.

COMMISSIONER CARON: But Jeff, that's not the case here in this -- in Collier County. Because we do have some time shares that are not operated, nor were they ever intended to operate as a hotel or a motel. There are others that we have that were specifically set up to -- with criteria to operate as hotel/motel.

MR. KLATZKOW: We're going to need to -- the staff's going to have to sit down with the petitioner here and come back.

COMMISSIONER CARON: He doesn't have a problem.

MR. KLATZKOW: Well, apparently staff does.

CHAIRMAN STRAIN: Well, no, staff brought up a good point.

And I think, Susan, between now and the 26th of February, you need to ferret this thing out. We're only going to get into more confusing discussion here today on the matter. Would you look at it hard and come back with a recommendation on the 26th?

MS. ISTENES: Certainly.

CHAIRMAN STRAIN: Okay. Anybody else have any question on this issue?

(No response.)

CHAIRMAN STRAIN: If not, let's take a break until 10:20, 15-minute break for the court reporter.

(Recess.)

CHAIRMAN STRAIN: Okay, we're back on -- we're back from break, and I'm a minute late. Last time that will happen.

***Well, we left off with an enlightening discussion on timeshares, and we're moving on to an even more enlightening discussion on subsection 2.03.07.L, which is the Vanderbilt Beach RT Overlay.

MS. ISTENES: That's on Page 34 of your package.

CHAIRMAN STRAIN: Starts on Page 34. And when we get done with presentations, that's where we'll start our discussion.

Mr. White, it's all yours.

MR. WHITE: Good morning, Mr. Chairman, members of the Planning Commission. Patrick White representing the Vanderbilt Beach Residents Association. I'm with the Naples office and law firm of Porter, Wright, and a registered lobbyist.

I have some clarifying magic language, based upon some minor changes sought by the DSAC when we met with them for the third time earlier this month. I'm going to distribute those. They're in red as to the changes. They are, as I said, minor, and they pertain only to the desire on the part of DSAC to have various words capitalized.

And for the purposes of consistency, I added the word site. I don't have the page references readily available, but I will put them into the record momentarily. I'm just going to hand these out to you all. They have previously been provided to staff and the County Attorney's Office. And Susan, thank you.

The specific changes that are being sought as part of this amendment arise largely from the experiences that the community has gone through since the original adoption of the overlay.

Some of you are probably aware of the contentious nature of the adoption of the original regulations. It had a hard fought history.

We are proposing a series of modifications that I would like to just generally like to give an overview and history on, and then address the staff comments in the report that you were provided.

We've done our best, since you received those a week ago, to be able to respond to them. But key among them from your perspective sitting as the LPA is the notion that staff, as proposed, is of the opinion that they are consistent with the comprehensive plan. So hopefully when we get around to the brass tacks of voting on the 26th of February, that won't have changed.

Moving forward from there, what I have put up on the side board here is just an expanded view of what is in the overlay already. I do have a copy I can put on the visualizer, if that will help. What I've essentially just done is identify the parcels to which the overlay itself applies and to which these amendments would pertain.

Let me first address where the changes are, if you'd like me to, Mr. Chairman. As I said, they were pretty minor. But I can put them on the record, if you desire.

They were particular to capitalizing the words Site Development Plan and Site Improvement Plan to reflect a degree of distinction that was desired by the DSAC.

Hearing no comments, Mr. Chairman, let me go ahead --

CHAIRMAN STRAIN: Well, I thought you were just doing it as you just spoke, so go right ahead. There's only two -- looks like there's a couple of small ones, Patrick. Go ahead and state them for the record, if you --

MR. WHITE: I believe you'll find them on Page 37, under 5.D. And the other is on -- I believe it's Page 39. To add the word site. Under the vested rights provision.

I think I gave away my last copy of the color coded ones.

I thought I had extras.

MS. ISTENES: I gave them all out.

MR. WHITE: Really? I'm sorry. Thank you.

Yeah, that would be 5.D. And as indicated, with respect to the vested rights provision, your Page 37, I believe, is what I said. I apologize, Page 39.

At this point, knowing that there was litigation involving some of the development that took place during and after the adoption of the original overlay, in a settlement agreement that was reached there was an understanding on the part of the proponents of the overlay, a citizens group essentially amalgamated into an association known as the Vanderbilt Beach Residents Association, the petitioner here, that had a set of expectations as to how subsequent development would occur. Specifically as to setbacks and other issues.

A more recent project, Moraya Bay, has in fact brought to light that the intent of this particular set of provisions in this overlay were not being adequately addressed by the code as written.

The purpose largely of today's regulation changes is to address those concerns, both with respect to in part that particular project, but also other development activities that have come to light in terms of multi-slip dock facilities.

So for those reasons, to further both the purpose and intent, there are minor changes to text proposed in L.1, which is the section as I indicated, for purpose and intent.

And although I know you'd prefer, Mr. Chairman, that if I could identify them by page, if I can, because of the relative few number of pages, actually use the code sites, it would help my dialogue going forward with you.

CHAIRMAN STRAIN: Go ahead.

MR. WHITE: So I'm going to try and just stick to the code, so to speak.

The purpose and intent obviously is to talk about a geographically distinct area, even though there are the three separate portions of it that are RT. It in and of itself is an overlay that has a very distinct geographical feel to it.

And the concerns about -- in the history of its development, canyonization, loss of view of the Gulf and other issues are ones that drove this community to seek and have approved this overlay.

So you find that there are not only the provisions in purpose and intent, but the idea that there are some suggested standards both as to the 2001 community character plan that is encouraged, as well as a series of four figures at the end of the regulation that look to open space relationships and view plans.

What we're proposing to do is to slightly modify the standards, as well as hear the procedures, in particular, notice the procedures.

And when we met with the DSAC, which we did three different times, there were a series of different members present. We addressed many of the issues that staff has comments about in great detail with a, I think, very active and productive dialogue with the DSAC members. I expect we'll have the same today.

The point of it is that looking to purpose and intent, we're proposing some minor text changes that to my knowledge the staff has only one suggestion, but otherwise agrees to. And as to their staff comment on that, we would agree with their proposed suggestion to add the phrase to the end of L.1 the words: And the Gulf of Mexico. So we would be in agreement with them on that point.

Again, looking to L.2, applicability, we're proposing again some clarification both to reflect that the

regulations and procedures apply, not only to development but redevelopment within the overlay.

And I believe that staff has no comment on that. And I would take that to be acquiescing to the proposed changes.

The geographic boundaries remain unchanged. And although there was discussion about the figures under L.4, some from the DSAC thought that they should be removed. We're not proposing one way or the other, but it may come up as a topic of discussion.

Under five, L.5, we'll begin to have I think some conversation after I make my comments about these in particular. We note that under 5.A, permitted uses, number -- small letter iv does indicate timeshare facilities. So I would suggest that to the extent Mr. Yovanovich's prior amendment has some final outcome, that this provision may be affected as well.

In looking at staff's review comments, their number three, they had a concern about removing the ability to have a multi-slip docking facility of greater than 10 slips as a use permitted by right. Under 5.Biii, small iii.

My position is that we are not looking to drastically alter any aspect of the use allowances here. And I will make my arguments as to why we don't believe that's true, but let me begin by saying that if this body doesn't agree with that argument and more so looks to what the staff's position is as to those changes, then I'll have some further recommendation as to text changes that may be needed.

As you heard, there was a dialogue in the last discussion about types of ownership. I start from the perspective that what we have in the code today as to uses accessory to permitted under iii are private docks and boat houses. There isn't a place where that is defined.

Similarly, under c immediately below, again in iii, you have the phrase noncommercial boat launching facilities. We're proposing under each of those b and 3 -- b and c, excuse me, iii to make some text changes. We're not proposing, as I said, to drastically alter.

When you look at what the underlying RT zoning district does as to these specific types of uses, meaning private docks, boat houses and noncommercial boat launching facilities, there really isn't any difference in RT as to those. You have essentially a circumstance where the noncommercial boat launch is already a conditional use, and in the same fashion it is seen that the private docks and boat houses are accessory as well.

There is in my opinion an ambiguity and lack of clarity in not only these provisions in the RT overlay but in many of the underlying -- excuse me, any of the neighboring and other zoning districts throughout the county as to these two specific points.

We're not looking to make suggestions in that regard, but I would point out for example that if you look at the other zoning district that has a large Gulf of Mexico waterfront presence, the RSF-3 district, in that district you have a circumstances where it is clearly indicated in the code that for multiple dock facilities, they are treated as a conditional use. Regardless of the number of those slips, whether it's 10, more than 10, less than 10. It's two or more.

So the point is that although there's a reference that it's subject to 5.03.06, as staff indicates in subsequent comments below there is a missing cross-reference as well to the marina provision to the extent that in a particular zoning district where there are multiple slips of 10 or more, there's no reference to the provision of I believe it is 5.5.2.

So seeing that there is some disconnect in the threads already, we simply were looking to clarify those as to how they would apply in the overlay as to the distinction we see between what are essentially multi-family as opposed to multi-slip. And those that are for private that would in particular be more so applicable to anything in RT that was developed as single-family or to duplex.

The point being when you get to that three or more slips, you should, in our opinion, be looking at that both as to the Manatee Protection Plan to some degree, but more so you should be treating them as differing types of uses, whether they are permitted or conditional.

We've gone ahead and clarified from our point of view that for a multi-slip docking facility -- and let me just say now that as to the staff comments about the numbering of more than 10 versus 10 or more, we're in agreement with them and would readily adjust these provisions to harmonize with those in 5.5.2 that talk about under the Manatee Protection Plan 10 or more.

So stepping over that, if you look directly to what 5.5.2 talks about, it is in fact standards that are applicable for all multi-slip docking facilities with 10 or more. And they -- under 5.05.02.D, one through three make specific reference not to multi-slip but to multi-family facilities in talking about the distinction between the various types of sites one would be entitled to construct, meaning preferred as opposed to moderate development as opposed to a

protected site under the table for rating that is found elsewhere in 5.5.2 for marinas and multi-slip docking facilities of 10 or more slips.

So that is the fundamental thread of why I think when we're talking about a multi-family type of a use we're simply saying that if there's 10 or more of those, then kind of like the RSF-3 district, you should in fact go for a conditional use. The notion being that there's a strong parallel between the undefined term noncommercial boat launching facility and the idea of 10 or more slips in terms of what the impacts would be. And that is again paralleled in the Manatee protection provisions in 5.05.02.

I know it's a lot of code. It is a very detailed analysis. It is one, though, that is suggestive of why we're not coming to the conclusion on our part that we're looking to modify the existing structure and essentially delete an existing use. There is no strike-through language in 5.biii for private docks and boathouses. We're simply indicating that as to the correct citation to both 5.0.36 and 5.0.52, which is missing in all the rest of the code, that so long as the notice is provided that we'll soon talk about in D below, for all multi-slip facilities with or without a boathouse, those are still going to be a lot. As long as the notice is provided.

We create a distinction for what I'll now going forward refer to as 10 or more in the notion being similar to RSF-3 you should have in conditional use application.

Given that there's a degree of difference between the arguments and the background for these changes and the ones that will follow, if you'd prefer, Mr. Chairman, to have the dialogue and questions asked about it now, I'm happy to address it. If you want to do it at the end of the presentation, either way, it's certainly one that's more to your convenience.

CHAIRMAN STRAIN: When you finish with your presentation, we're going to approach it a sentence at a time, page by page, like we always do.

MR. WHITE: Fair enough. Thank you.

Then let me move forward to what may be, certainly has been in terms of the discussion thus far with DSAC and EAC, the greatest degree of dialogue and modification to the various drafts of these provisions.

What you see before you is essentially a synthesis of those provisions and agreement on the part of applicant to a simplified single form of notice. The original proposal sought to have mailed notice to property owners within 500 feet. That was supported by the EAC. It originally was modified, our first dialogue with the DSAC, to 300 feet.

In subsequent discussions after we had gone to the EAC, there was an agreement to remove all of those mailed notices and simply go forward with believing it was a still viable means of giving notice to the community that simply one mailed notice to the association upon any Site Improvement Plan or Site Development Plan application pertaining in part or whole to the VBRTO, when those are submitted, there should be a corresponding notice to the Vanderbilt Beach Residents Association or its successor or assign.

This was intended to be a very brief and simple notification that is just a synopsis of what the application requests and should be prepared by the applicant so as not to burden the staff. A particular concern these days.

The applicant is also responsible to document and provide evidence of mailing the notice as a kind of check box item for the staff's review comments to go forward. In other words, for the application to be considered complete and under review by staff, they would have to demonstrate that the notice was proper and that evidence of that mailing was made. Very similar to other standards that applicants readily know how to comply with and that are not burdensome to the staff.

We understand that in the staff comments there is not an agreement with that position. In fact, staff recommends that the requirement to provide notification by the applicant being considered simply as a courtesy the applicant's willing to provide, but that any errors or omissions with requirement, either on the part of the county or the applicant or even the recipients won't delay the review process nor automatically cause the county's recipients, nor -- excuse me, or the recipient shall not delay the review process, nor shall it automatically cause the county's determination of approval to be in error or invalid.

I'd suggest to you that that is a major departure from the way that the staff conducts business today. The idea that an applicant wouldn't be responsible for meeting the code requirement I think is the type of precedent that we certainly want to avoid in this county.

And I would point you not only to staff's comment and our response to it under number seven of their comments, but also under their more general comments, additional comments number four that you find at the bottom of the document. We're not able to agree with this last phrase about errors or omissions, regardless essentially of who

makes them, having no accountability. That would seem to be really gutting the provision to the degree that, well, perhaps it shouldn't even exist.

In number four of the additional comments, staff proposes alternate language that says, the failure to provide proper or correct notice by the applicant or the county shall not cause a delay to the review of a site plan application nor cause a change in status to an already approved site plan.

As I indicated, that's an unprecedented precedent. And the idea that staff and an applicant would not be accountable for what could potentially be their own intentional acts, in particular on the part of an applicant, is a circumstance that really is addressed quite easily by the straightforward notice requirements we've put forward.

Giving an applicant a pass on any review requirement is not consistent with government's root for its authority to adopt land development regulations that arise from the police powers, and won't promote the health, safety and general welfare of the residents or citizens in this overlay.

The next set of comments training to staff's number eight --

CHAIRMAN STRAIN: Patrick?

MR. WHITE: Yes, sir?

CHAIRMAN STRAIN: You've had about a half an hour. In fact, in two minutes it will be a half an hour. Are you going to be getting to a conclusion here soon so we can discuss it? Because we have I'm sure audience participation. And I'm sure we're all going to have a lot of questions, and I don't want to spend all day on this one amendment. So I need to know what your time frame is, if you don't mind. I'm not asking you to stop, I'm just suggesting that can we get to a point --

MR. WHITE: I am merely responding to what were a series of detailed comments provided by your staff.

CHAIRMAN STRAIN: I know. And I --

MR. WHITE: And I want you to have --

CHAIRMAN STRAIN: And just to give you a heads up, we got a copy of that.

MR. WHITE: I understand.

CHAIRMAN STRAIN: Okay.

MR. WHITE: So did I, a week ago. And I'm merely responding to those so you'll have an appreciation of our position.

CHAIRMAN STRAIN: Well, my intention is not to stop you from having everything you need on record, so proceed.

MR. WHITE: Thank you, Mr. Chairman.

The next set of concerns I think focus largely around the provisions that we're proposing with respect to L.6, small letter c, dealing with yard requirements.

Again, the staff was very concerned about some aspects of that in an effort to try to shorten the dialogue as much as possible from my end. Suffice it to say that the concerns that the staff have we feel are ones that if you adopt their position it again effectively guts these provisions that we're recommending go forward. These are the ones that in particular deal with what were from the association's perspective unintended consequences in the subsequent development application.

In particular what we're looking to do is to simply remove a series of what are, from a design standards perspective in the code, exemptions and exclusions, so that those exemptions and exclusions wouldn't apply in the overlay. Our rationale for that is that to do so furthers the purpose and intent as to view corridors, visual access to the Gulf, the concerns about canyonization, all of which were documented in part of the original planning study.

Staff expressed a concern that as to the amendments there wasn't a bolstering planning study. I'd submit to you that the need for a study is supplanted by the direct experience that the residents have had that have raised these concerns and brought these proposed changes to you for your consideration. Those being again the yard requirements.

Number eight of their concerns dealt with the clarification of required yards being based on building zoned height. Staff indicates that in L.6, again, C, small ii and iii pertaining to front side year yards where the word zoned is underlined and being added, that they have no concern with that, that it clarifies the current practice.

It's difficult for me, therefore, to understand in 6.D, the immediately following section that deals with maximum height, where the current text is very confusing, and it in fact is perhaps internally in conflict and reads as existing today, that the height of the building is measured according to building, actual height of and building, height. Which to me suggests something other than actual, which only could be zoned height.

Those are the only two definitions we have. We've got A and we've got Z, actual or zoned. What we're simply putting under maximum height is to clarify as it says up above under C.1 through 3, that it is zoned building height.

I think my clients may agree that if we're going to go along with the staff suggestion, that it ought to be actually may be. But I'm sure we'll have a dialogue about that.

The next area of concern deals with distances between structures requirement that's in 6.f, small f, the distance between structures.

Staff makes note of the fact that there isn't a -- any provision for the separation between I believe it's principal and accessory. We in fact are not proposing any changes as to the relationship between principals and accessory, and that's why they're not referenced in any way.

Again, you have a circumstance like those pertaining to multi-slip docks and marinas where there's an interplay between these provisions and others in the LDC. Here we think that we have adequately analyzed and come to the conclusions about the interplay to not have the concerns. We went through this in painstaking detail in front of the DSAC, and after some modifications back and forth of the text you now see it, it was agreed that this in fact best met the intent of this overlay, as well as most clearly expressed how to reach those desired changes.

There are obviously details that the staff has in their comments that if we get into the dialogue I can respond to. I'm just doing my best to hit the tops of the waves.

The -- I think text --

CHAIRMAN STRAIN: You know, Patrick, it might be more effective to --

MR. WHITE: I've just got one more, and then I'll be happy to take your suggestion, Mr. Chairman.

As to the vested rights provisions, we're simply looking to clarify those. And I believe staff had no comments on that. I'm sorry to interrupt, but I just wanted to wrap up.

CHAIRMAN STRAIN: Okay, I'm sure we're going to have some comment from staff on all this. And before we do, I want to ask anybody if they have any general questions of Mr. White while he's up here.

COMMISSIONER MURRAY: Yeah, I --

CHAIRMAN STRAIN: Go ahead, Mr. Murray.

COMMISSIONER MURRAY: Yes and no, I guess.

CHAIRMAN STRAIN: That's going to be hard to figure out.

COMMISSIONER MURRAY: Yeah, that's right, that's what I'm struggling with.

I guess I first have to ask, is it our common practice to send notice to any organization or individuals in the Site Development Plan level?

MR. WHITE: No, sir.

CHAIRMAN STRAIN: Who are you asking?

COMMISSIONER MURRAY: I'm sorry, I -- well, I was asking it of Ray, because of the fact that I needed to get that as a predicate for anything else I'm going to ask.

MR. BELLOWS: Mr. White is correct, we do not currently send --

COMMISSIONER MURRAY: Okay.

MR. BELLOWS: -- notice on --

COMMISSIONER MURRAY: So this is a new baby. And I wanted to verify that, that I'm not going off on a tangent.

You made a comment that -- now, this is to you, Mr. White -- made a comment that the petitioner, for lack of a better word at the moment, would create the notice and then have staff verify its acceptability. Does that put staff into a position of question as to what is appropriate, inasmuch as we don't make notice at the current time? Are you looking for a standardized form or notice, again, something that may not in any way be standard?

MR. WHITE: We're as private petitioners for this amendment not trying to step too greatly into the staff's ability to write administrative code procedures. We're simply in the LDC proposing a set of what I guess I would call simple and straightforward check box standards.

The staff routinely generate notices for more complex matters than site improvement or development plans when they do zoning changes for PUDs and other far more complicated Growth Management Plan notices. This is simply a mailed notice that let's the association essentially know where and what.

COMMISSIONER MURRAY: Yeah, I understand that part of it. And I certainly have no objection to

people receiving notice. I'm certainly -- you know, that's nice. But -- we're drilling down, as they like to say these days.

But I thought I heard you say that you were only interested in having that notice go to the association. And if that's true, don't we run into a snag should A, they never receive it or B, having received it not act upon it and members of their association who are ignorant of that notice then are in a position where they object or have problems, that we will actually be creating? Why would we not -- if we're going to send notice, why would we not want to have it go to all the members of the association?

I recognize fully there's an expense associated with that, but that's not what I'm asking. I'm asking about its viability, why.

MR. WHITE: We believe that from the original position that the petitioners have taken about requirement for mailed notice that this is effectively a good middle ground where there is one notice required. The association then has, as to its membership and its decision-making internally, the responsibility to disseminate that information. It is not a responsibility of the applicant or the county. And so as to any, quote, failure, it is on the association to address those internally.

COMMISSIONER MURRAY: So what is the remedy to any individual or individuals within that association who because they never were made aware of such a notice and of such an event, what is the remedy against the county or their remedy with whomever? I realize they can be angry with the association executive. That won't get them where they want to go if it's a fait accompli. So what does that get us?

MR. WHITE: If I could -- I don't know that they have a remedy other than the courts. And I would not want to opine as to whether they would have standing or not. That would be a matter of a completely different hypothetical and a set of facts that aren't before us.

But suffice it to say that it is essentially as between that particular association member/resident and its association as to not providing notice. There isn't the need for any greater remedy against the county than what exists already in terms of the ability to have standing and bring suit.

COMMISSIONER MURRAY: Yeah, I appreciate --

MR. WHITE: I don't think it changes the contours.

COMMISSIONER MURRAY: And you recited a number of activities where they were all subject to hearings where notice is appropriate, and this is something that's a nuance. It may very well be appropriate, but I think that's going to be part of this dialogue. Thank you.

MR. WHITE: Absolutely. And I hope I helped to address your concerns.

CHAIRMAN STRAIN: Are there any other general questions before we go to staff?

(No response.)

CHAIRMAN STRAIN: I have just one.

The areas that are being changed are just those areas in yellow there or green on our sheet in front of us; is that correct?

MR. WHITE: That is, as I understand it, the geographic scope of the VBRTO.

CHAIRMAN STRAIN: Okay. The residents association, are they primary people who live in that green area or that yellow area?

MR. WHITE: I do not have any information about the distribution of memberships, but I would believe that they have sufficient number of members within those areas to not only have the kind of grassroots understanding of what has happened in those areas, but also the notion, as I mentioned before, the kind of requisite root to bring these requirements forward.

CHAIRMAN STRAIN: Patrick, just simple yes or no. You --

MR. WHITE: I don't know.

CHAIRMAN STRAIN: Okay, good.

MR. WHITE: Maybe one of the speakers --

CHAIRMAN STRAIN: No, that's --

MR. WHITE: -- could address --

CHAIRMAN STRAIN: -- fine, we're going to have all the speakers. I'll ask the questions as I need the answers.

MR. WHITE: Yes, sir.

CHAIRMAN STRAIN: Did your organization -- because you are actually -- and I take strong objection to your characterization of these as minor. They are significantly major. You are changing setbacks, you are changing processes, you are changing heights. You are doing a lot of things that change the abilities of people to use their property.

Now, I don't doubt at all that there are a lot of problems in Vanderbilt Beach. And I have personally tried to help many times the residents up there. But I want to make sure that everybody is on the same level playing field. Do you have notifications of mailers that you sent to the various property owners within those RT districts whose property rights you'd be changing by this procedure you're processing here today?

MR. WHITE: There's no code requirement to do so that I'm aware of, sir.

CHAIRMAN STRAIN: And that's the same thing that your very organization is instituting this for, because you don't believe you've gotten proper -- or notification on things.

I think that's an interesting twist here, because there are a lot of people in those areas -- I don't mind everything being fairly discussed, stakeholder meetings, people and owners in those green areas being notified that their property rights are being modified or attempted to be and having meetings to discuss it and then coming here with a consensus with all the people that want to participate here. I'm not sure that happened in this case, and what you just testified to verified that for me.

MR. WHITE: I'm not under oath so I'm not testifying, but suffice it to say, Mr. Chairman, that there are members here who I believe can address the fact that indeed there were dialogues with landowners that did appear to have concerns.

CHAIRMAN STRAIN: Are you --

MR. WHITE: There was a general notice provided, as there are for all LDC amendments.

CHAIRMAN STRAIN: Are any of your comments to me today or to this board purposely misleading?

MR. WHITE: Of course not.

CHAIRMAN STRAIN: Okay. Then I'm going to consider it as truthful as testimony. Thank you.

Any other general questions before we ask for staff?

(No response.)

CHAIRMAN STRAIN: Nick, I see you standing behind there. Do you have any comments you want to make before we go into our page-by-page discussion on this?

MR. WHITE: Thank you.

MR. CASALANGUIDA: Good morning, Commissioners. For the record, Nick Casalanguida.

First of all, Mr. Chairman, thank you for your comments this morning. I appreciate you recognizing what we're under and what we're trying to accomplish here today and the rest of these LDC amendments.

We've been tasked to do something different, which is treat Community Development as a business. We recognize we have customers, we recognize we have shareholders. We are tracking our time almost in 15-minute intervals at this point in time in projects and what we do. And I've worked with Patrick in the past, many times on projects when he was a county employee.

On Page 1, you note that they say fiscal and operational impacts and they write none. I would argue that that's not true. I would argue that putting out notice as he's recommending here brings the phones up, brings concern up. Which may be rightly so. The residents may have questions they're entitled to be answered to.

But it is a fiscal and operational impact. And it's significant. And it's not consistent with what we do anyplace else in the county. And so I want to put on the record that when you look at section 5.D, it does have an impact on what we do.

And we have no problems being accountable. That's what our job is, to be accountable. If we make mistakes, we're accountable. And I don't think Susan's recommendations or comments about errors and omissions was to note that we should not be accountable for what we do.

But providing notice is a good thing on land use changes. On administrative procedures, I don't think it is. I think it sets a whole new precedent on what we do. I have no problem with an applicant coming in and putting an application and a resident asking us questions.

But when notice goes out, people that don't understand the process start calling us. And that means someone's got to take that call and courteously respond to them. And that's a significant amount of time.

And my question is, based -- we're a fee-based company. Who pays for it? Do you pay for it, does the

applicant pay for it? There are fiscal and operational impacts that go with this amendment, and you should be aware of that.

I'll let Susan or Ray address the other components of this.

MR. BELLOWS: Yeah, for the record, Ray Bellows.

I would also like to point out that the purpose and intent of the public notice requirements for rezones, variances and conditional uses is to engender a cooperative effort in the review process, not only with the petitioner but with the adjacent residences. We hold neighborhood information meetings, we have professional staff who are trained to deal with the public. They're the principal planners, basically.

And the result is the concerns that arise during, say, a rezone process can be addressed by staff, brought to the Planning Commission for review and comment.

When you're dealing with an administrative process, everything's already been worked out and is established in the code. And what is the purpose of notice? We can't change the code. And when we don't have fees that cover the time to go into all the detail, explain every step of the process but, you know, certainly understand the need to be open in our process. But anybody can come in and look at plans when they come in, but --

CHAIRMAN STRAIN: Okay. And we're going to go through this and start asking questions, but general questions?

Mr. Schiffer?

COMMISSIONER SCHIFFER: Yeah. I mean, Ray, but obviously their concern is over an incident where they weren't aware plans were being reviewed and they had some problems with the project once it was built. And once it was built, it's too late. So they're trying to head that off at the path. Why are we making that sound so sinister here?

MR. BELLOWS: My understand is --

COMMISSIONER SCHIFFER: I mean, send them a letter.

MR. BELLOWS: -- you have code requirements. And if the buildings are meeting code, what can staff do to change that?

COMMISSIONER SCHIFFER: Well, maybe if people reviewed the plans of the building in question prior to construction, they might have some discussions as to whether it is meeting code and they're looking for the benefit of that.

MR. CASALANGUIDA: Commissioner Schiffer, I agree with you. That's absolutely beneficial if that happens. Our fee base does not -- our structure, the way we're set up, if it increase in activity because of an application goes up, our fees would go up (sic). Note that in the application. Note that on Page 1, fiscal and operational impact, increased staff time to respond --

COMMISSIONER SCHIFFER: Right. But we're talking about a stamp here, you know. I mean, and maybe a half hour to write a letter. Or maybe an e-mail or maybe something simple. Alls they just wanted was the ability to come down and look at something that was being done prior to it going so far where their input left everybody where there's really nothing you can do.

MR. CASALANGUIDA: I'm okay with that. And we did a time-tracking study so when an application comes in and puts something in, we track how much time a planner spends on that so we can charge the appropriate fee.

So when -- you have a Site Development Plan and we say that takes an average of eight hours. Now, you can imagine if this was a county-wide adopted process. Because if you're doing it in this area it probably should be done county-wide because it's consistent to everybody.

When SDP is filed, notice would go out, the phones would start ringing, people would ask for copies and come down and want to spend time with us. That's okay. It's just someone's got to pay for that. And it should be noted that that's going to cost some time and staff effort. I'm okay with what you're saying.

COMMISSIONER SCHIFFER: Well, but here's the problem I have. We live in a republic, these are the people, these are the citizens. They have a staff. And now you're saying they can't get the access they need to their government, their ownership of government because of the administrative staff.

MR. CASALANGUIDA: No, sir, that's not what I'm saying at all. Let me be clear. Because we traveled yesterday to Miami-Dade County and we saw how they do that. They're fee-based as well too.

I'm being very clear that says if you want to do that, and that's the wish of this Planning Commission and the

wish of the board, budget for it. Say we need to set aside some funds --

COMMISSIONER SCHIFFER: I think if you established a reasonable fee where they could sign up and they would pay per notice, I'm sure that something like that, they would -- you know, the citizens will pay for the staff that works for them.

MR. CASALANGUIDA: That -- I'm all for that.

COMMISSIONER SCHIFFER: But that shouldn't be an excuse not to do it.

MR. CASALANGUIDA: No, absolutely not.

CHAIRMAN STRAIN: But how would someone pay, for example, the Moraya Bay Club? I have seen the reams and volumes written about the issues that occurred there. And I'm not saying who's right or wrong, because there are issues. But who paid for that? Is that all the taxpayers of Collier County?

Because that's the process that's going to occur every time a notification is out, because you really have to educate people how to read blueprints, how to understand the code, how to understand the level of service standards and everything else that every application involves that's already addressed in the rezone process and in the GMP process.

And I'm not saying they don't have a right to it. But I think the point is if you do it for one, you've got to do it for all. And if you do it for all, what burden on the taxpayers of this county are we going to put on them, and when do we want to put that on them? And I think that's what it boils down to.

MR. CASALANGUIDA: Mr. Chairman, you're absolutely correct.

CHAIRMAN STRAIN: Mr. Murray? Then Ms. Caron.

COMMISSIONER MURRAY: And also, how long would the process remain open for questions, critiques and all the other that follows? Would you have a time frame that -- I mean, the Site Development Plan needs to go forward because it's already been approved, some portion.

MR. CASALANGUIDA: Commissioner Murray, you raised a good point, because it meets our codes. Our time criteria for review is to approve it within say 30 days or 45 days, whatever it is. And yet you're going to have people that will say I don't agree with that code, I want it to stop. And you'll have that argument that goes forward as well too.

COMMISSIONER MURRAY: So does that become a BZA issue or what?

MR. CASALANGUIDA: It -- no, it would be approved. And then it would become a civil or board action; it would come to the board as a petition and say we disagree with how staff approved the item, even though they approved it per the code.

MS. ISTENES: Nick, they could file an appeal to the staff decision, and essentially it would proceed that way and then on.

COMMISSIONER MURRAY: And that could ultimately be a process that could extend and extend and extend.

MR. CASALANGUIDA: Again, to Mr. Schiffer's comments, I agree with you, you have every right to review it, and it may be helpful. You've got to define it, you've got to quantify it and you've got to budget for it.

COMMISSIONER SCHIFFER: And Mark, maybe the point you made about the volume of effort, anxiety and time wasted post-construction could have been avoided.

And it could have been -- you know, the issues were narrowed down to a few and they were issues that could have been discussed and they were issues that could have been resolved and even in an appeals process within the county.

CHAIRMAN STRAIN: But see, Brad, here's what happens: Staff reviews something and they have a history dealing with the code and they have a consistency in the way they deal with the code.

They have a finding. And now it's put to question by another review done privately with people who don't have the same background or understanding of the way the codes are interpreted.

They contact staff, which takes time. They don't like the results there, they contact their political people involved. And the next thing you know, it gets into a process that is not professionally done through the evaluation of staff but it becomes challenged through a process I don't believe is going to be defensible if you were to tell an owner no on something that consistently have previously been addressed and approved.

COMMISSIONER SCHIFFER: But as mentioned earlier, staff does have the ability. In other words, if the staff has made a commitment and a decision, the citizens do have a way in which they can appeal that decision

through the commission. That's the track this thing should take. It shouldn't be a bunch of people running around complaining, having meetings, having meetings that are useless, having meetings that are useful. You know, it should be done and it should be narrowed in a process. That process has a fee attached to it. And the citizens should have a right to I think analyze staff's decision and appeal it if they don't agree with it.

CHAIRMAN STRAIN: Mr. Klatzkow, you've been trying to say something.

MR. KLATZKOW: As I hear this discussion, you have two policy issues in front you. The first one is raised by Nick over here, and that's a cost issue. The cost should not be coming out of fees, okay, because the fees are based on a certain process. The costs are going to have to come out of ad valorems. Somebody's going to have to calculate what these expected costs are going to be and put it in the fiscal impact, because there is a fiscal impact.

COMMISSIONER MURRAY: Oh, yeah.

MR. KLATZKOW: Okay? That doesn't mean we can't do that, okay?

And the second issue is do you want to just limit this procedure to this one area of the county, or is it appropriate to allow everybody within the county to have the same ability to review these site development plans?

I mean, correct me if I'm wrong, once upon a time site development plans went through this board and there was a public process. We can do this as a little time element to it, as a cost element, but we can do this.

But the two questions: How much is it going to cost, and we need a fiscal impact for that because it can't come out of fees, it's got to come out of ad valorems. And the second issue, do you want it localized or do you want it county-wide.

CHAIRMAN STRAIN: Well, I think the problem with the localizing -- first of all, it isn't -- if we do it in one segment of the community, to be fair to the taxpayers who will be paying the burden to carry that segment, it ought to be the same in all segments of the community. That's right -- what I think is a fair standard from the get-go.

Then what do you do? How many organizations in Golden Gate Estates do you want to notify? We've got plenty. How many do you want to notify in every community in this county? Which ones do you take in and which ones do you not? If I form an organization with my neighbor, I want to be notified. So where do we draw the line? I mean, we've got to have a system that works. And I'm worried that we're going to get into a system that's going to be more radically broken than anything we've even dreamed of right now.

And Ms. Caron actually was next and then Mr. Vigliotti.

Did you still want to say something, Donna?

COMMISSIONER CARON: Yeah. Oh, I sure do.

Right now if I want to come down and review site development plans, I make a phone call and somebody puts the plans in a room and I'm able to review them.

MR. CASALANGUIDA: Yes, ma'am.

COMMISSIONER CARON: Nothing about that will change with this.

If I want -- if I don't agree with those, my option is to take it to the Board of County Commissioners and try to get them to initiate some action for me. That doesn't change with anything that we're talking about here.

So the only thing that's -- the big issue here is some staff time. If I want -- if I look at these plans and I say I don't really understand this or I don't see where in the code whatever is happening, how it applies and I want to speak to Ray Bellows who heads that department or is the planner on that piece of business --

MR. CASALANGUIDA: Yes, ma'am.

COMMISSIONER CARON: -- what is the problem --

MR. CASALANGUIDA: None at all.

COMMISSIONER CARON: -- with charging a fee for that? I mean, why is it a big deal, if I want an hour of his time, to charge 50 bucks for the hour?

MR. CASALANGUIDA: Not at all, ma'am. It would be at the board's discretion, your discretion to recommend that to the board and we would staff appropriately and be able to provide that service.

COMMISSIONER CARON: So it's really not this big overarching issue that has to -- you know, that's going to just bring down the county here if we allow people to have a better understanding of what is happening in their neighborhoods. We should want that. We should want them to understand and to know. We should want that for our people, wherever in this county.

MR. CASALANGUIDA: Ma'am, my job, my task is to make sure we provide you the best service possible, and that it's fee based and accounts for everything we do and it's transparent. I have no problem with what you're

saying. And what you suggest is fine by me, if that's the way this board and the next board wants to go, the Board of County Commissioners, we would do a fiscal analysis and we would say typically you get so many or fee-based service where you come in and sit down and meet with the planner. That's not my issue.

My issue is that he says fiscal and operational impacts, none. And I think it's significant.

CHAIRMAN STRAIN: Mr. Vigliotti?

COMMISSIONER CARON: I just don't think it's significant.

COMMISSIONER VIGLIOTTI: Yeah, I have a couple of major concerns. One is the cost, two is the notification that Mark brought up. How many people are you going to notify? Who are you going to notify and what happens if you miss some of them?

MR. KLATZKOW: We do notify when we have rezonings. I mean, we do have parameters as to who gets the mailings and whatever. You can do the same thing. You can create a process here if you think a process is necessary. It's a policy decision.

COMMISSIONER VIGLIOTTI: My concern is the cost.

MR. KLATZKOW: Well, I agree. That's part of the policy decision whether or not the cost outweighs the benefits.

COMMISSIONER SCHIFFER: Mark?

CHAIRMAN STRAIN: Yeah, Mr. Schiffer.

COMMISSIONER SCHIFFER: Susan, on the website is there any place that the citizens can go and see what SDPs are being processed?

MS. ISTENES: Not currently. And, I mean, that's kind of an idea that, you know, might gain some footing if you think sometime in the future, Nick, you might have some GIS maps available where when applications come in there's a highlighted area or some information. But right now you don't have that.

COMMISSIONER SCHIFFER: And Nick, remember the lesson that we were told, the major lesson was transparency. So if the SDP process is transparent to the citizens, we don't even need to have this conversation, the citizens can monitor their own neighborhood. Every neighborhood can monitor their own neighborhood and it's -- if we have transparency into your process, then these kind of things won't happen.

MR. CASALANGUIDA: Sir, I'm nonpartisan. I agree with you.

COMMISSIONER SCHIFFER: And it's free.

MR. CASALANGUIDA: It's not free.

COMMISSIONER SCHIFFER: Well, somebody -- yes, it is free, Nick, because if you have a software system that is tracking SDPs that the citizens can look at, it's free. It's your tracking system that we can peak in -- it's the transparency that --

MR. CASALANGUIDA: Commissioner?

COMMISSIONER SCHIFFER: -- we heard yesterday.

MR. CASALANGUIDA: I will tell you, and I'll do the same presentation I do the Board of County Commissioners in about two months, and I will tell you what's free and not free.

COMMISSIONER SCHIFFER: Okay.

MR. CASALANGUIDA: I will tell you everything we do has a cost to implement, to maintain and to manage. And I will be fiscally prudent and explain it to everybody so it's clear. I will do whatever this board or the next board, Board of County Commissioners, directs me to. But there is a cost that goes with that. And when you find out and we do our business review, you'll see that everything we do has a cost.

COMMISSIONER SCHIFFER: But one of the points here is proper organization, especially with the computer, that the transparency is essentially a by-product, a free by-product.

MR. CASALANGUIDA: Agreed.

COMMISSIONER SCHIFFER: And that would be the case here, the neighborhood could watch it, they see something coming up that flags them, they can start paying attention. And they can -- it doesn't cost anything. Maybe the fiscal is right with the right operational software.

CHAIRMAN STRAIN: Mr. Murray?

COMMISSIONER MURRAY: I -- Nick, right now if somebody comes, you've indicated that somebody will sit down and try to explain some things to them, and there's a cost associated with that. But you're basically --

MR. CASALANGUIDA: It's built into it.

COMMISSIONER MURRAY: -- accepting that cost.

MR. CASALANGUIDA: It's built into it right now.

COMMISSIONER MURRAY: Yeah. And I understand. That's good, that's fine.

But if this is legitimized in this fashion, this becomes a procedure and people will exercise it to the extent that they will.

In either case, what satisfactions can you provide to any individual if in fact they come, they look at a plan, they say oh, I don't like that and you say, well, it's being built to code. What satisfactions can you provide them?

MR. CASALANGUIDA: Non, sir, other than just to show them where the code is and explain to them how the code was adopted and what it means. That's the best we can do.

COMMISSIONER MURRAY: So I'm trying to understand, the association were to get the information, they would either retain it, dispense it, dispense it to whomever, or even circulate it widely to the community. And then members of the community would come in one after the other seeking to understand what's going on and disagree with certain things.

MR. CASALANGUIDA: As one of the commissioners said, there might be a benefit where they'd find problems that someone didn't see. No one's -- you know, human nature, you might miss something. That's the benefit I would see.

COMMISSIONER MURRAY: Oh, we always want to do that.

MR. CASALANGUIDA: Sure.

COMMISSIONER MURRAY: But I'm not talking about that. I think Commissioner Strain brought up the fact that now that somebody -- if it's already in the code, the only alternative that they may see or you may say to them, we have an administrative appeal. But if they're cynical they're not going to want to go to that, so the next thing to do is to go to their political person.

MR. CASALANGUIDA: That's right.

COMMISSIONER MURRAY: I'm just trying to see a resolution that can be gained from this that does benefit. I completely agree that the community needs to understand what's going on there, if it wants to pay attention. But I want to make sure that it is used in a fashion that does in fact provide that and not result in unnecessary work and unnecessary activity, especially when the matter has already been deemed to be concluded. That's all.

MR. CASALANGUIDA: I think including this in this amendment, as the Chairman and other folks have pointed out, has broader implications of fairness throughout the county, and as I've noted to you, has operational and fiscal impacts. And it should be documented so you have a clear review of it, you understand it and you know what you're voting on. There's a lot more to be discussed than just putting it in one section of an LDC amendment for one overlay.

COMMISSIONER MURRAY: I appreciate it.

CHAIRMAN STRAIN: Nick, just out of curiosity, the way this was presented was the areas that are in yellow were where the impacts are going to go. But actually if you look at this procedure paragraph, for SIPs or SDPs. It would be everywhere on that map that isn't zoned single-family. All of your commercial to the south, all of your multi-family, all of the other places that are there, including modifications to any of the facilities that are there now. If someone wants to put a new enclosure around their trash bin or move it, that's an SIP. It has to be notified and then all that. So you'd be talking a much broader area than just the yellow on that plan.

MR. CASALANGUIDA: I believe that's the case.

CHAIRMAN STRAIN: Okay. Well, if -- Mr. White's shaking his head no. That's fine. I mean, I think we're going to be disagreeing a bit as we go through these pages.

COMMISSIONER CARON: Well, except that there is a definition to the overlay, so --

MR. WHITE: That's it.

COMMISSIONER CARON: -- that's what it would apply to --

CHAIRMAN STRAIN: Well, I'm looking at the --

COMMISSIONER CARON: -- from this.

CHAIRMAN STRAIN: Okay, the definition then of the overlay is what? The picture that's in this VBRTO-1, this is not the overlay?

COMMISSIONER SCHIFFER: No.

COMMISSIONER CARON: No.

CHAIRMAN STRAIN: Just the yellow?
COMMISSIONER CARON: It's up there in yellow.
MR. WHITE: Just the yellow is the RT overlay.
COMMISSIONER CARON: Yeah, that's right.
MR. WHITE: So the only place an SIP or SDP notification would be required would be for any application within those geographically confined areas, which as I indicated is pretty much the corridor along Gulfshore Drive which, I would submit, is geographically distinct, sufficiently so, that this board, meaning the County Commission, adopted the overlay in the first place.

We're looking to further the purpose of the overlay and to further what this Commission, the DSAC, the EAC, the Board of County Commissioners all do in its efforts to bring transparency. Everything from a GMP to a zoning to a conditional use to a variance you have a process, including neighborhood information meetings, where people are made aware. And they have an opportunity to identify issues and to work within the process to resolve them. That is the intent and goal of the applicant here.

There's been a lot put on the record today about interference, about uninformed, about not being compensated. I suggest to you Commissioners that if there has been all of this time that has taken up on staff's part, where's the documentation of it? If there is a fiscal impact and they're tracking their time, certainly they could have brought it forward and indicated what it is. My goal here would be simply to say going forward --

CHAIRMAN STRAIN: Patrick, you gave your presentation. We really need to move forward. You're making it almost impossible for us to ask a question because we get a dissertation as a response. Please try to limit your --

MR. WHITE: I'm simply trying --

CHAIRMAN STRAIN: But Patrick, you've said all these things, we've heard them. I understand what you're going to say. If you could just get more succinct, we could move faster through this.

MR. WHITE: Thank you. I did not say anything about the staff and fiscal and operational, and I think it's key to understand that if the staff has a concern and objection, we asked. They saw these things for months and they never objected to it until today. Now, if they have a concern and they can document it going forward, what I would suggest is that that provides the basis for a fee.

CHAIRMAN STRAIN: Mr. Murray?

COMMISSIONER MURRAY: Yeah. I'm sorry, Mr. White, I know you're being erstwhile in doing your job for other people that have hired you to do your job, but I mean, just common sense says that if the staff have been assigned work activities and they're in the performance of their work and they have to digress to take care of other activities that they haven't had to take care of before, there is undoubtedly a fiscal impact. I think it's inferred and it's strongly inferred. And I'm not going to argue any further on that.

CHAIRMAN STRAIN: Okay, we've still got to move through the document. Is there any other questions from the Planning Commission on general issues at this point?

(No response.)

CHAIRMAN STRAIN: If not, let's start on Page 34.

COMMISSIONER MURRAY: Are we going to use Mr. White's iterations?

CHAIRMAN STRAIN: My notes are on my original. I don't -- haven't even read Mr. White's. There's only two changes to that anyway, so I'd just as soon we kept to our original.

COMMISSIONER MURRAY: Good. Good.

CHAIRMAN STRAIN: Anybody have any comments on Page 34?

Ms. Caron?

COMMISSIONER CARON: Go ahead.

COMMISSIONER SCHIFFER: My question was just the phrasing of the word assure reasonable use and access. I'm not exactly sure what that means, for who, the necessity, and the importance of those phrases.

MS. ISTENES: Just on -- Susan Istenes.

It's really just part of the purpose and intent, which are really broad statements anyway. So --

COMMISSIONER SCHIFFER: Scope issues.

MS. ISTENES: -- my recommendation is I wouldn't worry about it.

COMMISSIONER SCHIFFER: Thank you.

CHAIRMAN STRAIN: Ms. Caron?

COMMISSIONER CARON: But since the overlay's been in place for all this time, that language wasn't there, there's -- was no problem with it, and nobody ever suggested it before, I'm just -- I'm not sure what the purpose is.

MS. ISTENES: My read was it was more of clarification over essentially -- I mean, if you look at Moraya Bay, for example, one of the points there in that whole process was to provide some more public access to the Gulf of Mexico, and that's kind of the context I read it in. I mean, that being an example of a project that --

COMMISSIONER CARON: Okay. But in point of fact, that was a separate zoning issue. This talks about the prevention of the canyon-like effect. And access to the lagoon has nothing to do with that, with preventing the canyon effect on Gulfshore Drive.

MS. ISTENES: I don't necessarily disagree with you, Commissioner Caron.

COMMISSIONER CARON: Yeah, I just don't see that it shows any purpose, and it kind of gets away from the overlay's actual intent, which was to prevent -- protect light and air movements and to prevent the canyonization of Gulfshore Drive.

MS. ISTENES: I guess I was more looking at it as is that necessarily a bad thing, access to Vanderbilt Beach Lagoon and the Gulf of Mexico for a public purpose. And that was kind of the view I took.

COMMISSIONER CARON: Oh, I don't think that there's necessarily any problem. However, Mr. Strain's all concerned about taking away people's rights. Well, I don't know whether we take away anybody's right with that language, so I say why change what's already there.

CHAIRMAN STRAIN: Well, I am concerned about taking away people's rights. And I haven't voiced my expression on this one yet, but I will when I get to my turn.

Mr. Klatzkow?

MR. KLATZKOW: Just real quick. This is a private amendment. And the intent of the changes, I'd like to hear from the petitioner or the applicant what is intended by these changes, rather than staff. Staff has reviewed these things, but it is a private amendment.

CHAIRMAN STRAIN: Mr. White?

COMMISSIONER MURRAY: Hey, Ray?

MR. WHITE: If I may, Mr. Chairman? The intent is as I indicated when I began my presentation. It refers to the changes that are sought under the provisions five for development criteria pertaining to private docks, boathouses and the multi-slip dock facilities. That's the reasonable use that we're talking about.

CHAIRMAN STRAIN: As the applicant, do you want that change in your language?

MR. WHITE: We're proposing it.

COMMISSIONER CARON: Okay. Fine.

CHAIRMAN STRAIN: Thank you.

MR. WHITE: It in essence makes no difference as to the real concerns. And if you prefer to strike it, that's fine.

MR. KLATZKOW: Well, do you prefer to have it or not?

COMMISSIONER CARON: He just said they did.

MR. KLATZKOW: I don't know what he said.

CHAIRMAN STRAIN: You --

MR. WHITE: We would have no objection if it's stricken.

CHAIRMAN STRAIN: Would you have any objection if you left it in?

MR. WHITE: None.

CHAIRMAN STRAIN: Great. We're going real fast here today. Thank you.

Okay, anybody else have any questions on Page 34?

(No response.)

CHAIRMAN STRAIN: I have a couple.

You referred to the word -- you add the word and procedures. That's all going to center around this SDP review. So I'm going to reserve certainly my comments on that, pending when we get to the page with the SDP review.

Also, towards the end under applicability, the word procedures again pops up. But you also have all

development or redevelopment.

What do you consider development, Mr. White, since you were the one that wrote this?

MR. WHITE: As defined in the code and in Section 380.04 of the Florida Statutes, I think it's all development orders and development permits, but as limited in these provisions.

CHAIRMAN STRAIN: What do you consider redevelopment?

MR. WHITE: The same thing on a site that had prior development.

CHAIRMAN STRAIN: Can you show me in the code where redevelopment is defined?

MR. WHITE: It is not defined, and that is why it is not in bold.

CHAIRMAN STRAIN: Neither is development in bold.

MR. WHITE: That's -- maybe it should be. Because I believe it is --

CHAIRMAN STRAIN: You know, under development, what do you consider redevelopment?

MR. WHITE: As I'd indicated, it's any site where there have been prior development and there is going to be a further development on that site, either by removal and replacement or some addition or some modification to existing.

CHAIRMAN STRAIN: Do you consider reconstruction redevelopment?

MR. WHITE: If a development permit is required, yes.

CHAIRMAN STRAIN: Do you consider alteration of the size or material change and the external appearance of a structure on land to be redevelopment?

MR. WHITE: Potentially so, again, if a development permit is required.

CHAIRMAN STRAIN: Do you know what in the definition of the word development that's already defined in our code is not included in your perception of what redevelopment is? Because we have a -- what I just read to you was one of six items defined -- or seven items defined in our code as development. So if it's already included in development, why do we need to add the word redevelopment? It's undefined and it makes it very concerning as to what someone's intention is there.

MR. WHITE: Mr. Chairman, if you read the existing text, all you have is, these regulations shall apply to the overlay district. The point is is that they in fact apply to the activities that take place within the district, which are development and redevelopment. That's the complete set of what those activities could be.

CHAIRMAN STRAIN: Okay. But again, I don't know what redevelopment is. I know what development is. It's defined. And I just read to you that under development we include what seems to be redevelopment. So why do we need to say redevelopment and redevelopment?

MR. WHITE: I'd be happy to remove the suggested text of or redevelopment, sir. Happy to do so.

CHAIRMAN STRAIN: Okay, anybody else have any objections to that?

COMMISSIONER MURRAY: No.

CHAIRMAN STRAIN: Okay. Page 35. Anybody have any questions on Page 35? There weren't any changes, so --

(No response.)

CHAIRMAN STRAIN: Page 36? Anybody have any questions on Page 36?

COMMISSIONER SCHIFFER: No.

CHAIRMAN STRAIN: I have the same issues that I brought up on number five up on top, the word procedures and the reference to redevelopment and the non-bolding of the word development.

Under b.iii, and the reference to private docks and boathouses, it references the SDP process, which is on the next page when we get to that. My concerns with that will have an impact on b.iii.

And under the last one, c, we have a iii, says noncommercial boat launching facilities and multi-slip docking facilities for greater than 10 slips.

That is by right -- is that a by right issue now, Susan or Ray, do you know? And is it we're converting it to conditional use or is it -- how is this -- is this just a whole new conditional use without a basis for any kind of right or provision at this time?

MS. ISTENES: In this district I read it as a new process for multi-slip docking facilities for greater than 10 slips. I hope I'm answering your question.

CHAIRMAN STRAIN: Yes, I think you are.

And what you said in your change is that it would be 10 or greater. Is that --

MS. ISTENES: That was my recommended change, yes.

CHAIRMAN STRAIN: Okay. Do you know the average standing width of a lot in the residential section of Vanderbilt Beach?

MR. BELLOWS: Depends on what the site is.

CHAIRMAN STRAIN: Well, any one of the fingers. They're all standard size. I'm just wondering how 10 slips equates to the distance that a typical lot would get.

COMMISSIONER CARON: Mark?

CHAIRMAN STRAIN: Yes, Ms. Caron.

COMMISSIONER CARON: That's not part of the RT district, the finger --

CHAIRMAN STRAIN: I know that. It has nothing to do with it. But if the people in those homes, for the amount of space they have, have a right to a boat, then it would seem the slips that they're saying are limited, depending on the length of shoreline those people own in the RT district, should have some equal right comparable to those to the same amount of boat slips.

And I'm just wondering if that break point -- how we justify the break point being 10, that's all. Had nothing to do with whether it was an RT or not.

MS. ISTENES: Well, the RSF would be 80; I think is normally 80. I'm just guessing. I'm pretty sure --

CHAIRMAN STRAIN: And what is the slip -- is it one slip for how many feet of shoreline now, do you recall, for noncommercial? It's in our Manatee Protection Plan.

MS. ISTENES: Not offhand. I could look --

COMMISSIONER SCHIFFER: Ten per 100, isn't it?

CHAIRMAN STRAIN: Yeah, one per every 10 feet.

COMMISSIONER SCHIFFER: One per every 10 feet.

MR. WHITE: If I may, Mr. Chairman?

CHAIRMAN STRAIN: Yes.

MR. WHITE: It depends upon the type of classification you get, whether it's preferred, moderate or protected.

CHAIRMAN STRAIN: Okay.

MR. WHITE: It's 18 per 100 if preferred, it's 10 per 100 moderate, and one per 100 for protected under 5.05.2.D.

CHAIRMAN STRAIN: Okay. Anybody else on Page 36?

(No response.)

CHAIRMAN STRAIN: If not, Page 37.

COMMISSIONER SCHIFFER: I do, Mark.

CHAIRMAN STRAIN: Go ahead, Mr. Schiffer.

COMMISSIONER SCHIFFER: But you're going to jump on D, so I'll stay away from that.

CHAIRMAN STRAIN: I'm not going to jump on it. I said all I'm going to say and I will not support it, so that's where it's going to lie, so --

COMMISSIONER SCHIFFER: Then I will ask a small question.

Pat, were you interested in insubstantial changes being notified, too?

MR. WHITE: To the extent they're SIPs, yes.

COMMISSIONER SCHIFFER: Okay. Down on c --

CHAIRMAN STRAIN: That's everything.

COMMISSIONER SCHIFFER: -- these are yard requirements. And by definition a yard requirement is that any structure higher than 30 feet (sic) is not allowed. So why are we worried about ramps or parking garages and stuff like that? I know we have an issue with it. But the point is that by straight definition of a yard, a yard is not a setback, that what the code wants is from 30 inches up everything could clear. So what are you going to achieve with all these additional wording here?

MR. WHITE: The goal, Mr. Schiffer, is to remove what are the exemptions and exclusions in the cited LDC provisions for a variety of different kinds of projections that otherwise penetrate into the view space.

COMMISSIONER SCHIFFER: Okay. But are those projections in setbacks or are they projections in yards?

MR. WHITE: They are both the same in that application, where the yard effectively creates the distance that the face of the building otherwise has to be set back from the property line.

COMMISSIONER SCHIFFER: Okay.

MR. WHITE: They're essentially equivalent.

COMMISSIONER SCHIFFER: Well, I think we're going to talk about that later in this booklet. But they're -- historically they're not equivalent. But the -- so what you're concerned about is -- and you're putting parking ramps because there is a parking ramp that is essentially in the yard and a violation. But would this not actually give the impression that prior to this it was allowed?

MR. WHITE: I'd ask staff to comment on that. I'm not in agreement with what occurred, but --

COMMISSIONER SCHIFFER: A structure that supports vehicles is not a driveway, and it is greater than 30 inches. So I'm -- the concern I have is I think because of the fact that when they did this they used the word yard instead of the word setback. They were really intending to have a clear area.

You adding that to me makes it look like prior to that it was allowed, and I don't think that's the case. And I don't think any -- you know, we have a definition of what a yard is. All of this is redundant. You're not allowed to build any structure greater than 30 inches in that yard.

MR. WHITE: If you look at the site provisions in 4.02.01.D, four through eight and 10, those in fact are a series of exemptions and exclusions that allow encroachments. That's the staff's word, into the yard space.

COMMISSIONER SCHIFFER: And it uses the word yard, not setback?

MR. WHITE: I'm not sure where you're referring to.

COMMISSIONER SCHIFFER: Well, you know, and I had a checkmark here that I was going to look it up and I didn't. My terminal's down or I would have looked it up in your presentation. But --

CHAIRMAN STRAIN: Do you need those sections? I have them here, if you'd like.

COMMISSIONER SCHIFFER: If you could grab one quick.

CHAIRMAN STRAIN: No, here it is right here.

COMMISSIONER SCHIFFER: Does it use yards or setbacks?

CHAIRMAN STRAIN: Well, I'll make sure he reads it himself, that way --

MR. WHITE: One of the things we did in working with the DSAC was compile a list of all of those provisions to which there was the potential for application. And what table 2.1 refers to is the table of minimum yard requirements, parenthesis, setbacks, closed parenthesis, for base zoning district.

COMMISSIONER SCHIFFER: They do use the word yard, okay.

I think staff brought up a point that you can end up with some really boring looking buildings if you're not careful with this. I mean, some of these are very minor, they're cornices that are 12 inches, there's -- you know, they don't really intend to be that obtrusive.

MR. WHITE: My suggestion --

COMMISSIONER SCHIFFER: They certainly aren't occupiable areas and stuff, so --

MR. WHITE: My suggestion would be that to one of those creative types of architects they simply would have to recede, and as you'd indicated originally, stay clear of the yard. They could put all of those architectural embellishments that they would like on any of the facades to any degree they would feel comfortable and could be otherwise approved under the code.

COMMISSIONER SCHIFFER: And so what you're saying, if you want those embellishments, pull your building back.

MR. WHITE: Just a little bit.

COMMISSIONER SCHIFFER: Okay, that's a statement.

The -- when you do this you say, you know, the yard requirements are as follows, and then you put a comma and you start except for all -- and you start listing a whole bunch of things. And when you come out of the parenthesis you have another comma. Essentially what you've described is everything. Do you really need that between the commas?

MR. WHITE: You mean between the parentheses?

COMMISSIONER SCHIFFER: Well, maybe even, are as follows. In other words, why don't you just make the statement that the provisions of 4.02 or 1.D, whatever, are not required -- are not applicable. In other words, what you're defining is essentially every building you could think of, right?

MR. WHITE: I think the yard requirements likewise apply to all buildings and structures.

COMMISSIONER SCHIFFER: Right. So I'm saying, isn't -- I mean, the point of that paragraph is essentially that you don't want the provisions for the exceptions to apply.

MR. WHITE: Correct.

COMMISSIONER SCHIFFER: So in that paragraph you try to define everything so if somebody comes up with something that's not in your definition, that may mean that they're allowed to be in a yard, and we don't want that.

MR. WHITE: The point of the parenthetical is in an effort to identify as desired by the DSAC what some of those applicable circumstances might be. Looking not to capture all of them, but certainly giving anyone who's an applicant a better idea of how they would apply these provisions to a potential SDP or SIP.

COMMISSIONER SCHIFFER: Okay. But what it's stating, you know, it's all buildings, you know, whether principal or not. And then you do clarify parking ramps. But, you know, the parking ramp problem is not that it's a building, it's that it's a structure greater than 30 inches. So you're eliminating structures and other things. I mean, theoretically I could put a barbecue out in the front yard and stuff like that.

In other words, the point is do you really need to define what's not allowed in the yard, since nothing is allowed in the yard?

MR. WHITE: Other than looking to eliminate the exclusions and exemptions?

COMMISSIONER SCHIFFER: Yeah.

MR. WHITE: No.

COMMISSIONER SCHIFFER: Okay. So I would just kind of look at the wording of that and just say you want to exclude all the exceptions. Because what I'm saying is that I could come up with a structure that's not what you define, and there may be the impression that I can put that in the yard.

MR. WHITE: I would simply indicate that the text that exists presently doesn't have any of that initial header that's all underlined, and all it talks about are the building heights, not structure heights. So I think that there's a rational basis for staff's determination with regard to a parking driveway or ramp, that that may be it.

COMMISSIONER SCHIFFER: Right. I mean, it's a minimum yard requirement. We have a definition of yard. A yard is nothing -- no structure greater than 30 inches.

MR. WHITE: I would just say that for the purposes of these three types of yards, that where it says building I think that it's understood and generally applied that structure, any over 30 inches, would likewise be considered.

COMMISSIONER SCHIFFER: Okay. But when you do go, as follows, that's a precise term. And that means if I can wiggle between those words, I can do it. I just think it's dangerous.

MR. WHITE: What you see is because of what DSAC desired. And if you have a different preference here, we would certainly be glad to change the text.

COMMISSIONER SCHIFFER: Just maybe think about that. I'm done, thank you.

MR. WHITE: We'll simplify it.

COMMISSIONER SCHIFFER: Thank you, Mr. Chair.

CHAIRMAN STRAIN: Mr. Murray?

COMMISSIONER MURRAY: Yeah, Mr. White, Commissioner Schiffer asked you about notice for the SIP, and the question -- you responded something to the effect of if it's for an insubstantial change, no.

I think we need to understand what that really will mean relative to this, because I think the genesis of this is persons who think that what somebody thinks is an insubstantial change to be potentially a substantial change.

If you're going to provide notice, wouldn't you want to have notice to everybody for all of the issues that you're seeking to gain some insights into?

MR. WHITE: We can go back and look at the distinction that the code provides between insubstantial and substantial and give you a better position on it. But my answer was, and it may not have been a complete one, but as to all SDP's and SIPs, I think it may be worth having the insubstantial changes, provide notice for as well. Because that's all this is. This isn't about a review process. There's no provision in here that deals with giving anyone additional rights or changing any of the process. It's simply sending a letter in a checkbox item on the staff sufficiency review.

COMMISSIONER MURRAY: Well, who makes the judgment about the insubstantial change? That would be the next --

MR. WHITE: The code does, in terms of the staff applying it as they review a petition.

COMMISSIONER MURRAY: The code allows for it to be determined by somebody.

MR. WHITE: Yes, sir.

COMMISSIONER MURRAY: When does that happen where? I mean, in this process that you'd like to see go forward.

MR. WHITE: There are a set of what the insubstantial changes are for an SDP and SIP. They are defined in the LDC. And the staff routinely makes that call.

COMMISSIONER MURRAY: Oh, routinely. See, I was a unaware that that was a routine matter.

But you were willing to drop it on the insubstantial change --

MR. WHITE: No, correcting you for the record that my point was that it should be SIPs and SDPs, regardless of whether insubstantial or not. I only said SIPs, but I should have said SDPs and SIPs.

COMMISSIONER MURRAY: Okay. I may have misheard you, but I could have sworn you said that you --

CHAIRMAN STRAIN: Okay, we -- I do not think we're going to finish up this particular amendment of the LDC before lunch. And I feel very strongly that we won't be able to, because it's 15 minutes away. So why don't we go ahead and take lunch now and come -- while the line's not too bad downstairs and come back at 12:45 and resume on Page 37.

COMMISSIONER MURRAY: Wonderful.

MR. WHITE: Thank you, Mr. Chairman.

(Luncheon recess.)

CHAIRMAN STRAIN: Tell me when you're ready, Cherie'. You're all set to -- well, you had your hand in your ear, so I wasn't sure your fingers were ready.

Okay, before we went to lunch we left off still discussing the Vanderbilt Beach overlay. And we are missing some of our Planning Commission members, but we will still have to proceed.

We left off on Page 37. And we're looking for any further questions from the Planning Commission on the language on Page 37. Anybody here have any further questions?

Ms. Caron?

COMMISSIONER CARON: I'm just not sure whether Brad was done or not.

COMMISSIONER SCHIFFER: Yes.

CHAIRMAN STRAIN: Brad's done. Did you have any questions you wanted to ask?

COMMISSIONER CARON: I do. And it has to do with 6.c under the minimum yards. In the parens that says specifically including ramps for parking facilities, I had a note about this. And then Susan gave us her report the other day with questions about whether it could be interpreted to just mean parking facilities. And so my suggestion is just that you end that parens after ramps and take out for parking facilities.

COMMISSIONER SCHIFFER: Mr. Chairman?

CHAIRMAN STRAIN: Okay, Mr. Schiffer.

COMMISSIONER SCHIFFER: I mean, I really think Patrick should look at taking out most of that stuff.

COMMISSIONER CARON: Yes.

COMMISSIONER SCHIFFER: He's describing stuff that shouldn't be there. And you're right, the danger is, you know, what if somebody had a food service delivery ramp, so that's allowed? In other words, when he starts defining things he starts running the risk of somebody being able to interpret what he doesn't define to be allowed.

CHAIRMAN STRAIN: Okay, does anybody else have any --

COMMISSIONER MURRAY: Mr. Klatzkow has an interest.

CHAIRMAN STRAIN: Go ahead, Mr. Klatzkow.

MR. KLATZKOW: Are what we getting at is the Moraya Bay ramp? Is that the intent here?

COMMISSIONER CARON: To prevent it from happening --

MR. KLATZKOW: Prevent it from happening again.

COMMISSIONER CARON: -- again, I think that's pretty much, yeah.

MR. KLATZKOW: Then maybe we can just redraft this language so that it just hits that particular issue rather than spilling over to other potential issues. Just a suggestion. If that's the intent of it.

MR. WHITE: It certainly is, Mr. Chairman and Commissioners, to a very large degree. It also, as I had indicated in my initial presentation, was in part responding to the DSAC's desire to have a bit more specificity put in.

We're fine to retract from it and make it as simple as possible. And the goal is more so to address the exceptions and exemptions specifically as the request from Mr. Schiffer that we would agree to implement.

CHAIRMAN STRAIN: Go ahead, Ms. Caron.

COMMISSIONER CARON: Well, I'd just like to get back to the whole issue of how we read our code to begin with. If we allow something in this overlay or if we allow it in the code, it's allowed. If it's not mentioned there, then it's not allowed. That's the way we read our code. And we keep drifting off from that because everybody wants to read it the way they want to read it. But let's have this discussion here. Is that not correct, Susan?

MS. ISTENES: Susan Istenes for the record.

Yes, the code is a prescriptive code. Now, I will tell you over time that has been chipped away, and I think -- and I'll just offer my own opinion on it based on observation. Your LDC does not -- you cannot feasibly address every situation with every piece of land, with every structure, with every circumstance in an LDC. You never will be able to do that. That's why you have professional staff that interpret and apply the LDC.

I think over time perhaps there was some disagreement or unhappiness with some of those interpretations, and consequently I think people started adding lists of prohibited uses, for example. And you'll even see that in PUDs.

And that, you know, comes about for a variety of reasons. But that's I think one of the ones I've observed that may be the reason for that.

But yes, it is generally structured as a prescriptive code, meaning if it's permitted, it's listed; if it's not permitted, it's not. When you're talking about land uses. And same with development standards.

CHAIRMAN STRAIN: Mr. Schiffer?

COMMISSIONER SCHIFFER: Well, I mean, just, you know, you give the impression that there's secret parts of the code that nobody would even know about unless they knew of these interpretations. For example, yard is very clear in the code that it's no structure above 30 inches. And then the last sentence even states, with the exception of walls and fences. So wouldn't that mean no structures above 30 inches? Are some structures allowed in front yards -- or in yards above 30 inches from the ground?

MS. ISTENES: I've had people put landscape features in front yards and other people claim that it's a structure. I can't answer that question. It's really a matter of interpretation based on the facts presented at the time, Commissioner, and what the code says. I mean, you're asking a really broad question that just can't be answered.

COMMISSIONER SCHIFFER: But like Jeff said and that triggered the neighbors, it is the Moraya Bay ramp that everybody's worried about. That was interpreted -- it had to be interpreted that that was allowed. That's definitely higher than 30 inches, definitely a structure. It's not a driveway going up a mound of earth, it's a ramp structure.

MS. ISTENES: It was interpreted that way. And the setbacks were applied that way.

COMMISSIONER SCHIFFER: But this isn't setbacks, this is in the yard. Setbacks and yards are two different creatures.

MS. ISTENES: I understand that. But in some cases they overlap. And --

COMMISSIONER SCHIFFER: But it was interpreted --

MS. ISTENES: I could rereview the plans, because I'm not sure what you're -- exactly what you're getting at. But my recollection is that's how the staff applied it. They looked at it as a structure and then --

COMMISSIONER SCHIFFER: So the staff of Collier County interprets a ramp structure as allowable in a yard. Essentially if it's greater than 30 inches, any ramp structure is allowed. And the reason I bring it up -- I don't want to belabor that point, but I'm saying, if there are a lot of things that are allowed, as a design professional, you know, how are we supposed to know it? And as a citizen, how are they supposed to have a predictable code? If I'm designing a building today, can I put a ramp in a yard? I guess I can. Because I have examples of staff interpretation. But it doesn't meet the definition in the LDC.

MS. ISTENES: I guess I'm not sure what the question is at this point.

COMMISSIONER SCHIFFER: Well, I guess --

MS. ISTENES: There's a lot of hypotheticals, which is difficult for me.

COMMISSIONER SCHIFFER: The simplest question, is there a lot of things allowed that are contrary to the way the LDC reads?

CHAIRMAN STRAIN: Well, that's like asking her what kind of mistakes do you make and can you tell us now what they're going to be. I'm not sure, Brad, that's a good direction to go in the question that you're trying --

maybe if we stick to what Jeff was suggesting, why don't we try defining what the problem is more closely and see instead of --

COMMISSIONER SCHIFFER: But the problem --

CHAIRMAN STRAIN: -- the other parts of it.

COMMISSIONER SCHIFFER: The problem in what Patrick's writing is that there is a reliance that the word yard means what the word yard means in the code. When Donna asked the question, she got the impression that there's an interpretation, so the words in the code aren't enough.

I think that -- first of all, I think that if staff does make an interpretation, they should make that aware to everybody. And, you know, in the code it should be -- the code should be changed to include that from that point on.

MS. ISTENES: We do. On our website there's things called staff clarifications, and we've posted all of those up on the website so that the public is aware, for consistency purposes, how we've applied the code in various situations.

COMMISSIONER SCHIFFER: I've actually never seen that.

MS. ISTENES: Yeah, and some of them do end up as LDC amendments.

COMMISSIONER SCHIFFER: I'll go look for that. I've never seen that.

So a design professional would be able to go to that site and he will find that a ramp is allowed in the yard.

MR. BELLOWS: And for the record, the -- what normally happens is if there are questions during the design process, staff has asked questions, sometimes it's through a zoning verification letter, but we work with different design professionals as part of the review process to clarify code requirements. So it's not necessarily you're having an architect trying to guess or figure out the code. They call staff and we work with the zoning manager or director at the time and we get those answers, if there's a question.

COMMISSIONER SCHIFFER: But the code should be predictable and consistent to everybody.

MR. BELLOWS: As much as we can. And that's what we're trying to do today, I guess.

COMMISSIONER SCHIFFER: Thanks, Mark, I'm done.

CHAIRMAN STRAIN: Ms. Caron?

COMMISSIONER CARON: But let's get back to the reason that we're here on this. Obviously the people in the Vanderbilt Beach overlay perceive that their intent -- they wrote this, this is an overlay -- their overlay is not being followed to their intent. They are trying to close loopholes and problems. So instead of just saying, well, that's not the right language, let's craft some language that solves the problem that have been coming up.

CHAIRMAN STRAIN: But this is a private application, so it's Mr. White or the people that need to craft it, not staff. I think that's been part of the problem.

COMMISSIONER CARON: I understand. But certainly since staff worked on the overlay with the Vanderbilt people to begin with, they have some input, and they're the ones that are going to end up interpreting it. So we need to know that what they're going to interpret is the intent of what the overlay stands for.

CHAIRMAN STRAIN: Right. And so if Patrick could craft some language that follows along with the thoughts and concerns of some of the commission members here and send it in as part of their review package, then I think that will exactly happen the way Ms. Caron is suggesting.

MS. ISTENES: Did you read number three of my additional comments in my memo? Because that gets to your point, and it does deal specifically with this language of ramps and the possibility of there being a misinterpretation or misapplication, or quite frankly, I'm not sure what was intended or what it means so -- it was meant for a discussion item really rather than a recommendation.

CHAIRMAN STRAIN: Talking about number eight on Page 3, right?

MS. ISTENES: I'm sorry, number three on -- it would be 43.E, and it would --

COMMISSIONER CARON: Page 5.

MS. ISTENES: Of Page 43 in the handwriting. And then under additional comments, it's number three, and there's a lengthy discussion about ramps and setbacks and what have you.

COMMISSIONER SCHIFFER: Well, I can ask a -- well.

CHAIRMAN STRAIN: Go ahead.

COMMISSIONER CARON: Go ahead, ask your question.

COMMISSIONER SCHIFFER: My points are going to the same thing. And I'm piling on myself. But you do in there define that that ramp was a structure. And the reason I think it's important is because that's why the

neighbors are all here. They had a get-together, they had to pay money, they had to buy lawyers to do something that maybe to my mind wasn't even necessary. But here you're stating that it's not a driveway. Driveway is on top of ground. It is a structure.

So how do they protect themselves in the future? And I'd like it to be worded in such a way that it doesn't make it appear it was allowed prior to this wording too.

Does (sic) the words here protect themselves?

MS. ISTENES: Commissioner, I don't mean any disrespect, but in staff's opinion the site plan was approved according to code. So I can't really have any lengthy discussion or debate with you about that, because I disagree. And I've been through that for months through e-mail and through meetings and conversations.

I'm trying to understand what the issue is, and I think what I understand is they don't like the ramp for whatever reason and they don't want it. I don't know. And that's kind of why my comment was made and the writing is please explain what they're intending to try to do. Because the issue of whether it was allowed or not allowed or whatever in staff's mind is done. And so I'm not sure --

COMMISSIONER SCHIFFER: Well, we know you agree with it --

MS. ISTENES: -- how productive a discussion --

COMMISSIONER SCHIFFER: -- it's built. So somebody must have agreed with it. All the way down to the guy placing concrete agreed with it.

But the question is, could they do -- would the wording that Patrick proposed, can -- and you and the staff was back in that same situation on another project with the same conditions, I'm trying to make the hypothetical work here, would the interpretation be the same?

MS. ISTENES: I don't know. I don't know what he's trying -- attempting to preclude here, because what I thought the issue was is not how this is written to protect the desire not to have a ramp, I guess. He needs to answer that.

COMMISSIONER SCHIFFER: The issue is that there's a wording in the code that a yard, anything above 30 structures -- above 30 inches in a yard is not allowed. He's trying to come up with words that would keep structures that are higher than 30 inches out of the yard.

CHAIRMAN STRAIN: Why doesn't he just say that?

COMMISSIONER SCHIFFER: What?

CHAIRMAN STRAIN: Why don't we just say that?

COMMISSIONER SCHIFFER: We've been saying it every which way --

CHAIRMAN STRAIN: No, but why doesn't this paragraph just throw that in then, anything that's considered a structure over 30 inches will not be allowed in the yard. Then you've got the point you want to make --

COMMISSIONER SCHIFFER: But that's --

CHAIRMAN STRAIN: -- not saying everybody agrees with that.

COMMISSIONER SCHIFFER: That's the definition of yard. Why does he have to say that? You know.

CHAIRMAN STRAIN: Well, obviously somebody's got to say something, because this isn't working the way it is.

MR. WHITE: We'll be happy to take that approach and replicate what is essentially the definition in yard. We'll simplify it as much as possible. I'm certainly willing to work with staff to try to do that and bring you back a work product that we both could support.

CHAIRMAN STRAIN: Well, I think we could talk a lot about it here today, but something needs to happen between you and some e-mails back and forth, I assume, with Susan to get to a point where you're both on the same page as to what it means.

MR. WHITE: Well, part of the difficulty is the way that a yard is defined and then the way that the table for, quote, yards and setbacks exist. And then complicating that is what's on top of it in the overlay itself. As to those particular yard requirements, one of which adds the word zoned that doesn't otherwise exist in the tables or as part of the definition of yard.

COMMISSIONER SCHIFFER: Well, I can -- Patrick, that's because building height in the past has been the zoned building height. We added the actual -- again, it's really for this association who is tired of having things blossom taller than they imagined, so we came up with a definition that's a height from the center line of a road, the average center line of a road.

So somebody -- and Frank Halas was the one that wanted to be able to stand in a road and know how tall this building's going to be built without any wizardry, and hopefully ending using the word tippy-top. That didn't happen.

But anyway, the -- so, you know, in the prior code building height was always zoned building height. I think any time nobody defines which one, it should always default back to zoned building height.

MR. WHITE: That's why we proposed it that way.

CHAIRMAN STRAIN: Any other question on --

MR. WHITE: We will clarify 16. Sorry, Mr. Chairman.

CHAIRMAN STRAIN: Okay, on Page 37, any other questions?

COMMISSIONER MURRAY: I forgot we were doing that.

CHAIRMAN STRAIN: Pardon me?

COMMISSIONER MURRAY: I said I forgot we were doing that.

CHAIRMAN STRAIN: Did you have any questions, Mr. Murray?

COMMISSIONER MURRAY: No, sir, I'm glad to go back to this.

CHAIRMAN STRAIN: I have a couple on 37. On this -- maybe not questions as much as 6.C being what it is really doing. You are eliminating the right for various protrusions into the side and front -- any setback, really. You have right now the sections of 4.02.01.D, four through eight and 10 that you referred to include sills, awnings, air conditioning, chimney, bay windows, pilasters, fire escapes, stairways, balconies, roof overhangs, eaves and gutters, just to name a few.

Well, some of those have protrusions up to five feet. And what this would do is say basically if you want to use -- if you have a building with a balcony, your setback is measured from the outer edge of the balcony. And if so, you've actually increased the side yard setbacks by five feet. Is that a fair analysis or not?

MR. WHITE: I think the practical application of it is that is the case.

CHAIRMAN STRAIN: Okay. So setbacks in Vanderbilt Beach overlay will be greater than they are for the standards typical to which they were.

Again, I go back to the impacts that this would have. Has anybody done an impact analysis or understanding of what this means to the buildings in the RT district, both that are there or that may have to be rebuilt? Because in a rebuild process, if you've got a narrow lot and you've now taken additional space off the lot that you had been utilizing for decades, what does that mean to you? How much space you use, how much property rights have been consulted with them. How many of these people have sat in a room and had a stakeholders meeting where everybody talked about it?

MR. WHITE: I know that there have been meetings with various property owners who did have concerns that we're aware of.

The provisions of the LDC and the Code of Laws as to build-back and other provisions of nonconformities are ones that would have to be addressed on a case-by-case basis. I can't tell you what the outcome would be.

But generally speaking, in terms of build-back, if there's still the same yard that was there before all around in terms of the lot, we're talking about a circumstance where a lot of times you've eroded what would be the rear yard because it's on the Gulf, I think that what was there before as nonconforming may have the potential to be rebuilt. It depends upon the degree of damage.

So I understand your point, Mr. Chairman, and it's a valid one. Because what the code has done is create a set of design standards and then created exemptions and exclusions. We're simply saying those exemptions and exclusions, because of what the purpose and intent of this overlay district is, should not be permitted.

CHAIRMAN STRAIN: The last item on here is maximum height, 75 feet. I notice you struck out the reference to actual height. I just want to make sure that a building in the RT zoning district here still has the ability to utilize the definition of actual height. Meaning your zoned height is what it is. And that's the height you use for the measurement of your setbacks, or your yards. But if someone builds a building 75 feet high, by this language are you trying to eliminate their ability to include the normal appurtenances they use on the top of a building that are part of the actual height?

MR. WHITE: No, sir.

CHAIRMAN STRAIN: Okay. So a building -- this will then have no impact on any of the buildings up there at this point; is that fair to say?

MR. WHITE: So long as they're otherwise compliant with the zoned height, no.

CHAIRMAN STRAIN: Okay. So this is a clarification that the actual height isn't being eliminated, it's just being defined -- you're just making sure zoned height is what it says it is.

Go ahead, Ms. Caron.

COMMISSIONER CARON: I think it would probably be wise to label that as zoned height right from the beginning, as opposed to saying maximum height.

COMMISSIONER MURRAY: Yeah.

COMMISSIONER CARON: Because what we've done is we have created two different things. And one is a zoned height. And that's what petitioners get. The actual height comes after that, once they add appurtenances and whatever.

So I would think it would just be clearer if everybody realized it's not the maximum height, it's the zoned height. And then your actual or maximum height --

MR. BELLOWS: I agree with you --

COMMISSIONER CARON: -- is higher than that.

MR. BELLOWS: -- that is the correct definition of maximum zoned height. And then when you deal with actual height you're talking about those other things that the code allows you to be exempt from measuring building height.

COMMISSIONER CARON: So it will say maximum zoned height right there from the get-go. And then --

MR. WHITE: That's perfectly acceptable.

COMMISSIONER CARON: -- nobody will be --

MR. WHITE: That was the intent of the clarification.

CHAIRMAN STRAIN: Let's move to Page 38. Does anybody have any questions on Page 38?

(No response.)

COMMISSIONER MURRAY: Well, the issue on --

CHAIRMAN STRAIN: Go ahead, Mr. Murray.

COMMISSIONER MURRAY: Well, I was mumbling to myself. Unfortunately I start doing that. Apologize.

I guess we should probably talk about timeshare there again. You brought that up, Mr. White. You want to -- I think you indicated you might want to wait until the other issue was resolved? Looks like you might be coming back with this anyway.

MR. WHITE: We're certainly going to have to interplay with that applicant and petitioner to best understand how to handle what may be nonconforming as a result of the adoption of whatever that final form of that regulation is. And work with the association as well to find that proper balance.

But I think the thing here is that it says timeshare facilities. And that's where some of the confusion's come in.

COMMISSIONER MURRAY: Fine for me.

MR. WHITE: You're regulating a use based on what essentially is a structure.

CHAIRMAN STRAIN: Anybody else?

(No response.)

CHAIRMAN STRAIN: Am I understanding this right, that if you have a principal building and then let's say a pool house as an accessory building on your property, you're suggesting that the provisions of a -- as we discussed in the prior one for your setbacks are actually going to be increased because you can't have -- even internally to your site you can't have the sills and gutters and other things protruding into the separation between the structures?

MR. WHITE: Again, yes, we are looking to remove those exemptions and exclusions in 4.02.01.D, as enumerated. So what the effect on setbacks, I couldn't hazard a guess. It would depend upon what was anticipated to be put within the building cube, the area of -- or the space rather that allows you to build in.

CHAIRMAN STRAIN: Well, what is this aiming at? I mean, what brought this up? You guys specifically must have a problem that decided that the distance between structures internal to a site is a problem to you. What -- give me an example of what it is was your problem. I'm trying to understand this.

MR. WHITE: The notion that to some degree a parking ramp could be considered either accessory or principal.

CHAIRMAN STRAIN: Oh, so this goes back to the same parking ramp.

MR. WHITE: Parking garage, parking ramp. There are provisions in the code that talk about what happens if they're connected versus not.

CHAIRMAN STRAIN: Okay.

MR. KLATZKOW: Does this include balconies?

CHAIRMAN STRAIN: Yes. They're taking balconies out as an allowable protrusion into yards, right, so that means you're pushing the buildings --

MR. KLATZKOW: Just for clarity.

CHAIRMAN STRAIN: Yeah. Well, that's what section -- balconies fall under number seven of the area that's referenced as four through eight.

MR. WHITE: And 10.

CHAIRMAN STRAIN: Okay, anybody else have any questions on Page 38?

COMMISSIONER SCHIFFER: Well, I just again want to --

CHAIRMAN STRAIN: Go ahead.

COMMISSIONER SCHIFFER: -- say, this is definitely going to boost Bow House and International Style Design.

CHAIRMAN STRAIN: What does that mean?

COMMISSIONER SCHIFFER: That means flat walls with windows poked in it. No decoration whatsoever.

CHAIRMAN STRAIN: I'm just wondering why that's a positive for you all.

MR. WHITE: That is one potential design solution. And as I indicated earlier, an architect is free to have all of those embellishments, it just has to be a smaller overall area of the building so that it doesn't include into those spaces.

COMMISSIONER SCHIFFER: And Mark, the reason I'm not really protesting this like I should is that the -- when we get to the illustrations, which are lame, but we'll get to them, the buildings aren't supposed to go from setback to setback. So essentially the designer should have the ability to be positioning his building such that he has room for those options and they're not right up against the setback, they're not in the view corridors that were very important to this neighborhood. They'll exist because the buildings won't go setback to setback. They're not allowed to, according to the illustrations.

MR. WHITE: One of the things I think that may help in everyone's understanding of this is to recognize that it's intended to mostly operate from the point of view of Gulfshore Drive looking both east and west through what are the side yards. But because there is a desire to reduce the massing overall from the community's perspective, they are treated equally in this version of the amendment.

CHAIRMAN STRAIN: Okay. Susan and Ray, does this language in F change any of the way you would have been looking at things on -- I mean, I understand about the ramp. From your review analysis, do you see anything here that would be modified on an on-site attempt to do anything but address this ramp issue? I'm just trying to figure out all the variables that this could apply to, and it's kind of hard to do that.

COMMISSIONER MURRAY: It sure is.

MS. ISTENES: I did comment about that in my thing. Maybe this is another one where Patrick and I should probably discuss and make sure we're on the same page as to what the intent is and what's drafted here. Because I don't think it is. But I'm not -- it's just a feeling at this point. And I'm not sure I can answer. I think Ray has a little bit of input too.

CHAIRMAN STRAIN: Well, in the next month that transpires, could you have those conversations? That would be helpful. I certainly -- and it would be nice from the perspective of this board to understand how this works. I mean, it's fun -- it's interesting to see it in writing. But I can't -- everybody's got to have an objective as to why they changed this, and I'm just trying to figure out what it is -- how it's supposed to apply when it's in the field. And I can't picture that right now.

MS. ISTENES: Well, I think you're certainly asking Mr. White, which is totally appropriate for him to explain the intent and what he thinks the changes are going to do. But I did do a pretty thorough analysis of this. So if you get an opportunity just to rereview it, I know you've got a lot on your plates, that might help as well.

CHAIRMAN STRAIN: Okay. Anybody else on 38?

(No response.)

CHAIRMAN STRAIN: If not, we'll go to 39. Questions on -- one paragraph on the top under vested rights.

(No response.)

CHAIRMAN STRAIN: I just have a question. You took out a lengthy sentence about a date on the moratorium and all that. I think you probably took it out because you probably feel it doesn't apply anymore; is that right?

MR. WHITE: Legally it does not.

CHAIRMAN STRAIN: Well, there was one building that it did apply to on the north end of the -- or to the former Vanderbilt Inn or whatever that was up there, which is now Moraya Bay. If you take that out, does that change their ability to be considered a build-back of any type, or is there any negative to them in that manner?

MR. WHITE: This is not intended in any way to alter what rights that he would have had and may still have under the build-back provisions. It simply recognizes that the moratorium is moribund, it's dead, it's over. And what it does is essentially say that to the extent that there are nonconformities, it's drawing a line in the sand with whatever it is that these regulations are when they're adopted.

CHAIRMAN STRAIN: Well, what it does is --

MR. WHITE: Which is the general rule.

CHAIRMAN STRAIN: -- it seems to give that building -- and I'm not trying to defend that building at all, I'm simply trying to make sure that everything is fair. It seems to lock that building's zoning or rules in at a time certain, prior to the overlay. By taking that out, if they had to do a build-back, would they then come under the overlay or would they come under the prior to the overlay language that's being struck?

MR. WHITE: Well, I'm not familiar with all the facts, but if I understand what you're relating before about the prior building having essentially been removed, there are no rights with respect to that. The rights of the existing structure are the ones that's --

CHAIRMAN STRAIN: I don't care about the Vanderbilt Inn, it's down. I'm talking about Moraya Bay. That language came under a provision that was exempt basically from the current language of the Vanderbilt Beach --

MR. WHITE: Because that's the time that its application was deemed to be complete.

CHAIRMAN STRAIN: I know that.

MR. WHITE: Okay.

CHAIRMAN STRAIN: If you take that language out telling everybody that that's the case and they have to build back, under what rules do they build back by?

COMMISSIONER SCHIFFER: I could guess.

CHAIRMAN STRAIN: Go ahead.

COMMISSIONER SCHIFFER: Wouldn't they build back under the settlement from the Burt Harris? I mean, which were pretty specific. We -- they came before us, we all negotiated, the Commissioners negotiated, so they have their own little rules, and I'm sure that's what they would want to build back to.

CHAIRMAN STRAIN: Would that be your understanding, Mr. White?

MR. WHITE: Generally so. But please understand that much of how you apply build-back depends upon primarily two factors: How much of any of the lot was lost, and the degree to which the building itself was damaged. So --

CHAIRMAN STRAIN: I know --

MR. WHITE: -- without making certain assumptions, I really can't honestly and fully answer your question.

CHAIRMAN STRAIN: Okay. The building's completely gone, the lot's down to the level it was at when nature put it there 100 billion years ago. What does that mean for this property's rights? I mean, you can -- you know what I'm trying to get at. I want to make sure that we're not taking someone's rights away that were given to them by that sentence. Maybe they shouldn't have gotten it in the first place, I don't know. I just want to make sure we're not infringing on anything. Because the last thing we need is a lawsuit by saying we took something away we shouldn't have. That's the only reason I brought it up.

And if Mr. Klatzkow's not able to comment on it, because I know he hasn't been following all this, then --

MR. KLATZKOW: No, I've been following it. I --

MR. WHITE: I think the answer is, if I may, Jeff, just -- and feel free, just so I can respond to Mark -- Commissioner, I think the answer is they get to build back what they have.

CHAIRMAN STRAIN: Okay.

Jeff?

MR. KLATZKOW: Why do we need to make a change?

MR. WHITE: Quite honestly, as I said to the DSAC, if you don't want a change, that's okay with me. It was intended to help clarify and make it easier for staff to apply going forward. I'm glad that it's illuminated an issue or a series of issues that there's a dialogue about so that anybody who's out there as a property owner knows what may be in store for them.

MR. KLATZKOW: So that there's no substantive reason for the chan -- in other words, there's no substantive reason for the change? Is there any substantive reason for the change?

MR. WHITE: Not relative to my client's specific interest.

MR. KLATZKOW: Then don't change --

MR. WHITE: If you want to leave it as is --

CHAIRMAN STRAIN: Then I would suggest don't tamper with it. Why mess with something and cause trouble we don't know where it could go.

And that's kind of where I'm trying to understand some of the other ones that I've asked you and Susan to work out the language on, because I can't tell where they're going to go.

MR. WHITE: I can't tell you that there's any greater clarity or assuredness the way it exists today.

CHAIRMAN STRAIN: We'll move on to page -- and then we have -- let's do two of these pages, 40 and 41, does anybody -- nothing seems to appear to be changed.

COMMISSIONER SCHIFFER: No, I do.

CHAIRMAN STRAIN: Mr. Schiffer?

COMMISSIONER SCHIFFER: Sorry.

First of all, and I'd like Ray and Susan to focus on this. This was something that failed I think on the Moraya Bay. The intent of figure one on Page 40. And I'm not a big fan of these exhibits. First of all, they show two different kind of sites and then they say desirable and undesirable. So this is a pathetic document right here, and we really should fix it.

But the intent of it was is that the building wasn't supposed to go from setback to setback. Moraya Bay went from setback to setback. So what failed on this document to get that point across?

MS. ISTENES: Moraya Bay was regulated under a settlement agreement, Commissioner. So that -- those were the regulations that were applied.

COMMISSIONER SCHIFFER: And I've read it carefully. And setbacks were established. In other words, you had to be so far from a property line. But there was nothing in that settlement agreement that said you had to go from property line to property line. What was said, what should have governed, I think is this document that's -- essentially what the figure's trying to portray is that you don't go from property line to property line.

So the point is that's the reason for this document. The settlement agreement did establish a setback from a side property line, but it did not again state that you had to eat up both sides. So what kind of a graphic here would have staff interpret that?

MS. ISTENES: I'm not a fan of these graphics either. I mean, they're not -- they are desirable and undesirable, which says nothing to me. We'd like it to be that way, however you view it. I mean, there's no -- you know, I don't -- I could tell you I view it five different ways than you do.

My preference, you know, unless there's something that I'm missing -- Patrick, chime in, it's been a little while since I've looked at the diagrams -- that either take them out or don't mess with them. Are you changing them?

MR. WHITE: Not at all.

CHAIRMAN STRAIN: Are these diagrams supposed to be looked at as a restrictive issue? Because you're telling people in one case that they've got a setback envelope they've got to build within, and in this case you're saying they can't?

COMMISSIONER SCHIFFER: What this diagram was intended to do, if I recall from back in the hearings, and, you know, maybe these guys got ripped off and should get their money back for the involvement in the hearings, but was that they did not want a building to go from side to side. In other words, eat up the full setback width of the site. Obviously doing a drawing with two different shaped sites didn't help, you know. But the point is they wanted the mass of the building broken up so that it was not going to be one big monster, and they got one big monster. So how do we change this document to prevent them from getting that again?

MR. WHITE: Any change that you may consider, I think you have to make in light of what's stated in L.4,

which is the figure's language right underneath the kind of graphic demonstrating the bounds of the VBRTO.

That language we didn't propose any changes to. We didn't propose any changes to the figures. Because if you read this, it says variations from these figures which nonetheless adhere to the provisions of this section are permitted.

Now, I think my clients would argue that whatever those variations were, specifically including exemptions and exclusions that were allowed to penetrate into the yard, into the setback, that this wasn't followed. So it is probably not viewed as being mandatory from staff's perspective.

So there's two ways it obviously can go. My view is that to further the purpose and intent it should be something that is made more strongly as a requirement. I mean, it says it, you should adhere to the provisions of this section. And gives you the idea that you should look to the community character plan as a guide for future. Please don't yell at me for reading this quote, Mr. Chairman, but for future development and redevelopment in the overlay district.

COMMISSIONER SCHIFFER: Well, Patrick, what kind of drawing should be here to -- the intent was they wanted the view corridor protected. One way to do that was side setback, one way is to break up buildings and all. This document is failing to prevent that, as evidenced by a building built under it.

MR. WHITE: If it would have said at the bottom instead of undesirable, not permitted. I think there would have been a stronger case that staff would have applied it in a manner that settlement agreement or not there wasn't going to be a maxing of the buildable cube.

COMMISSIONER SCHIFFER: Has your client --

MR. WHITE: You wouldn't have filled the space.

COMMISSIONER SCHIFFER: Has your client expressed a concern over the fact that buildings are being built from setback to setback?

MR. WHITE: Absolutely. I mean, I think that's largely to the extent of looking to remove those exemptions and exclusions and deal with some of the separation distances is what it is that their concerns have been and why they in the first place sought to have the overlay enacted.

COMMISSIONER SCHIFFER: Then I think you have to do something to alter this drawing to make it achieve what it's supposed to achieve or do some verbiage in other areas to do that. Because, you know, as much as I -- you know, I could say to Susan it shouldn't have gone setback to setback, the drawing I'd have to show her is this drawing to prove it. And she wins.

MR. WHITE: You know, Mr. Schiffer, if you look at figure four, it again says undesirable. And if you look at where the view plains touch the tops of the various buildings that are illustrated there, you know, there's an argument that says that you could make some penetrations. So rather than try to use these figures that aren't being applied, we went to the specifics of the code in the design standards and sought to eliminate those exemptions. Because that was the thing that is offensive.

COMMISSIONER SCHIFFER: Then show me where in lieu of that illustration, which would be great. Because these illustrations are useless to them. In lieu of that illustration, where do you set up the situation where they can't go full width of the site?

MR. WHITE: One of the ways to do that is elimination of the exemptions and exclusions. The other is through the principal and accessory structures.

I think that my client's going to have to live with the notion that there may be one massive building, notwithstanding the fact that that's not desirable under these figures, so long as they're proposing it has to be shrunk back to take away those exclusions and exemptions, that addresses presently their concerns.

COMMISSIONER SCHIFFER: So what you're saying, by measuring to the edge of the balconies and any other goodies on a building, that's going to push the building back --

MR. WHITE: Yes.

COMMISSIONER SCHIFFER: -- or get rid of people using, you know, decorative elements. But that's going to push the building back enough that you feel will protect what the intent of that drawing was?

MR. WHITE: And I think they're willing to see how that plays out going forward.

COMMISSIONER SCHIFFER: Enough said.

CHAIRMAN STRAIN: Anybody else on Pages 40 and 41?

(No response.)

CHAIRMAN STRAIN: How about 42 and 43?

Go ahead, Mr. Vigliotti.

COMMISSIONER VIGLIOTTI: I have a comment about all the drawings. I don't even know why they're here, they make no sense. None of them are sized the same. And it's like desirable, undesirable. Is this a wish list?

MR. WHITE: Notwithstanding what L.4 says about the figures and how to apply them, they have essentially not been --

COMMISSIONER VIGLIOTTI: It doesn't say. It's just a wish list.

MR. WHITE: -- figured in, to make a bad pun, in the staff's analysis of site and building permit review.

COMMISSIONER VIGLIOTTI: I just can't see them being in there at all.

MR. WHITE: And as I had said to the DSAC, I have no problem if they're taken out. But on the other hand, if they're going to stay in, maybe it makes sense to have that policy discussion about whether they should be made mandatory in some fashion.

CHAIRMAN STRAIN: Interestingly enough, if you look at the view plain on Pages 42 and 43, none of the things that you're considering have changed to reduce the side yards or change in the side yards have any impact on the view plains they were desiring to have. So why are you asking for them?

MR. WHITE: If you look at the ones that are desirable, figure three -- I apologize, I again don't have the pagination you're referring to.

CHAIRMAN STRAIN: Oh, here, I'll put it on the overhead, if you'd like.

MR. WHITE: They are set back.

CHAIRMAN STRAIN: Here.

MR. WHITE: They don't max the cube.

CHAIRMAN STRAIN: They are set back, but you could easily put balconies much more than the code allows in any one of those buildings and still preserve that view plain.

COMMISSIONER SCHIFFER: Correct.

CHAIRMAN STRAIN: So that's --

MR. WHITE: You'll note that there is nowhere on this document anything that demonstrates where the yards are. So there was more work required to make these things have utility, so we just left them alone. There's nothing on there, Mr. Chairman, that tells you where the setback or the yard lines are, so --

CHAIRMAN STRAIN: It wouldn't matter. If you look at the bottom of the V to the top of the V, the concern for the view plain was from top to bottom expanding as it gets toward the top. Well, no matter what configuration you use, especially in a building like the one shown here, you're not going to impinge on that balcony or on the setback things you're concerned about. So I'm just -- I mean, I'm not -- I know these drawings aren't what we're hanging our hat on, but it's interesting the drawings with the intent of the buildings contradict what you're trying to do here today.

MR. WHITE: I don't believe that's the case, again because you cannot draw that conclusion because you don't have the setbacks.

CHAIRMAN STRAIN: Wouldn't matter.

MS. ISTENES: Exactly.

COMMISSIONER SCHIFFER: Well, Mark, the one thing, they do show buildings that would be considered international style, square little buildings with the --

CHAIRMAN STRAIN: There you go, international buildings is what we need.

COMMISSIONER SCHIFFER: This is what's coming.

CHAIRMAN STRAIN: Okay.

MR. WHITE: I understand your point, Mr. Chairman. I just don't know how to make it better with these regulations. We chose to leave them alone.

CHAIRMAN STRAIN: Okay. Well, with that, I guess we've exhausted our discussion at this point with the applicant.

COMMISSIONER SCHIFFER: Mark?

CHAIRMAN STRAIN: Yes.

COMMISSIONER SCHIFFER: I forgot one quick thing. And I'm sorry, I did this, I was having too much fun on the yard.

Back on 37 you discussed that you're excluding accessory buildings used for essential services such as utilities. Are you meaning government utilities or are you meaning I can put an electrical -- my meter room out in the middle of the yard?

MR. WHITE: It's more the latter. That was a concern that was raised at DSAC, the point being we weren't going to look to have those exemptions and exclusions removed. Fine for those. Most of them are smaller, they don't have much mass, and it's that type of essential service, utilities. Maybe somebody has a pool pump, those kind of things.

COMMISSIONER SCHIFFER: You know, the fire pump room, the meter room could be rather large. I mean -- but, you know, that's -- I don't think -- and I think again back to Moraya Bay there was a concern that there's elements of that building poking out into the yard that are, you know, utility buildings that are not meeting the setbacks.

But anyway, I think you're going to have to go back and really focus on that. I don't think that paragraph at all should be there with the ins and outs that are going to get you in trouble.

Thank you, Mr. Chairman.

MR. WHITE: Thank you.

CHAIRMAN STRAIN: Okay, why don't we get into public speakers. And Ray -- by the way, everybody that wants to speak, if you have not registered, I'm still going to give you the opportunity to come up anyway. So let's start with the registered speakers first.

MR. BELLOWS: Susan Snyder.

MR. ELINE: Bill Eline.

She assigned her time to me.

MR. BELLOWS: Okay. Bill Eline is the next one.

CHAIRMAN STRAIN: It means you get two minutes. Just kidding.

MR. ELINE: Thank you very much.

CHAIRMAN STRAIN: We don't -- we're not very formal with the time. We just ask just to be succinct is all.

MR. WHITE: Does that include travel time, Mr. Chairman?

CHAIRMAN STRAIN: Yeah.

MR. ELINE: My name is William Eline. I'm president of the Vanderbilt Beach Residents Association. And I've been in this overlay thing since they built the -- Mr. Allen built -- what's the name of that thing, Joe? The Bellagio. So we -- I want to go quickly on this. The first test of that was Moraya Bay. And I watched Moraya Bay from the bottom floor. And the bottom floor I immediately saw the setbacks were not registered with the Clerk of Courts.

I went to the County Commissioner, he told me to talk to the planning department. I said I wouldn't. I said, you talk to them and tell us what's happened.

We finally ended up -- and Donna Caron was nice enough to come, County Attorney, Mr. Halas and the County Manager, county planning department. We had a meeting. You couldn't believe the meeting, because nobody knew who approved all of the administrative variances. So we made a very simple request: First of all, give us the minutes of the public meeting that took the building to 35 feet. We have never received that. We asked for a copy of all the variances and who approved it. That was in May. This is almost first of February. I have not received them.

With that said, I love the candor of today's meeting. We've got to find a way to work together. We've got to get these land development things so we know what to expect and the people that work in the planning department know what they have to do.

Coming back to your point, Mark, we'd be very willing to pay a fee to go down and ask a question and get an answer. And I think we should do that. It has two purposes: If we really want to know, we should be willing to pay for it; and if the fee's high enough, we'll get rid of all these stupid questions.

Now, let me talk just a second and I'll be done about the Vanderbilt Residents Association. We're about 1,000 members. We have a board of directors. We have a manager of our zoning, many of you know, is Bruce Burkhard. When we get a notice, we put out our newsletters, or we put out flash information to all members on the computer. A reminder. And then we advise them that the zoning manager will go down to the county, will

investigate and will report to the people. And that's what we do. Our only hope is that we can get the planning department people to exercise our land development codes, our boat dock codes and the other things.

Up to today, since 1990 -- gosh, I'm getting old, this is 2010 -- we have never accomplished that. And to date our associations are all taxpayers, I believe we're in the top five zones in the county, we have spent $175,000 on lawyers trying to get answers. And I think that's ridiculous. We ought to be able to get together, get a clearer document. The fellow who wants to build this building, he knows what it says, builds his building and everybody's happy.

So I hope -- I'd like to tender this meeting today, and we'll have our counsel meet with the planning department and come back with the clearest words hopefully they both can find. And then I think we'll get out of a lot of trouble. And we thank you very much for all the time you've given us.

CHAIRMAN STRAIN: Thank you, sir.

Next speaker, Ray?

MR. BELLOWS: Next speaker, Joe Connolly.

MR. CONNOLLY: I'm Joe Connolly and I live at 10633 Gulfshore Drive, five buildings south of the Moraya Bay. And I have been on Gulfshore Drive now for about 12 or 14 years, I can't remember.

I have been through the Manatee Resort approved by the planning department saying it was a condo/hotel, and therefore they got hotel zoning. Put a coffee pot in the desk in the lobby they said and you got a hotel. So they got the hotel zoning.

Then they were found they were wrong. But the planning department approved it. Then they put an addition onto LaPlaya and they put a big tower out in front approved by the planning department. We called on that, that's not right. Finally the LaPlaya agreed to tear the damn tower down, and they did.

Then we went through the Bellagio thing and through a court case. In the court case we lost here, we appealed. They said you went about it the wrong way, but you were right in what you were getting and they reversed so that the zoning that the planning department approved for the Bellagio was not right.

We then go to do the overlay to try to protect ourselves and our neighborhood. And as Bill said, we spent a fortune. And we have yet to get anything.

And I want you to know that, you know, we have absolutely no faith in the credibility of the planning department. I heard Susan say they chip away and chip away and chip away. They do chip away and chip away and chip away. Not in favor of the taxpayer. You know, we're the ones that's paying for all this. They're taking care of somebody else. And we have no faith in them. And unless they can try to reestablish -- I mean, look, a balcony is a balcony. They say no, it's not. If it's -- it doesn't have a roof on it. Well, look at Moraya Bay and it's nothing but a balcony surrounding the whole damn building, which they approved. But they're not balconies.

The ramp, that's a joke. They knew exactly what they were approving, and they knew they shouldn't have been, or either they're not the professionals they claim to be.

So if in the future we can try to get back and have some credibility in a department that's supposed to be working for the taxpayers rather than somebody else, I think we'd all be better off. Thank you very much.

CHAIRMAN STRAIN: Thank you.

Next speaker, Ray?

MR. BELLOWS: Next speaker is Timothy Hall.

CHAIRMAN STRAIN: You're shuffling a lot of paper there. We got rid of all -- my goodness.

MR. BELLOWS: No, some of those were called already.

CHAIRMAN STRAIN: Oh, okay.

MR. HALL: Good afternoon, members of the Planning Commission. My name is Tim Hall. I'm with the firm of Turrell, Hall and Associates. We're a marine and environmental consulting firm here in Naples. And I am here speaking on behalf of my firm, but I'm not representing any clients specifically.

And I guess the easiest way to do this is just to go through the document like Mr. Strain said, page by page. I'm here really to speak specifically on the issues associated with the addition of the boat dock comments into this, not so much the building heights or whatever else has been discussed. And Nick -- Ms. Caron and you guys already went into the physical and operational impacts, so I won't go into that.

The purpose and intent on Page 34 of this original document was to prevent the canyon-like effect. And they are with this trying to change that purpose to also include reasonable use and access to Vanderbilt Lagoon. I think the

county already has standards in place with the boat dock extension requirements and the Manatee Protection Plan and section -- on marinas and boat docks, 5.03.06. All of those are also designed to do the same thing, and this seems to be a duplication of efforts there.

And then going to Page 36, number five, I think there's kind of a language thing with me, and that where it says shall apply the development and redevelopment of all uses within this overlay district. And it seems to me if you're going to put in the words development and redevelopment, then you need to take out of all uses. Because otherwise you're talking about development of uses and the uses are already established further down.

CHAIRMAN STRAIN: Which number are you on?

MR. HALL: I'm on number five.

CHAIRMAN STRAIN: Well, five's the whole page.

MR. HALL: I'm sorry, the very first sentence of number five.

CHAIRMAN STRAIN: Okay.

MR. HALL: It says the following standards shall apply to the development and redevelopment of all uses in this overlay district.

It seems to me like those uses are already established, so you're talking about the actual development, not the changes or anything of uses. It's just kind of a language thing. It goes back to high school stuff.

CHAIRMAN STRAIN: Boy, how many years back was that now?

MR. HALL: It was a while.

COMMISSIONER CARON: Come on, Tim, you can't remember that far back.

MR. HALL: Item b.three or b.iii, there's some language added, so long as notice is provided for as required in D below for all multi-slip docking facilities with or without a boathouse.

And when I go to Item D, that seems to apply to every site improvement or development plan. So I don't understand why you would specifically notice the multi-slip docking facilities too. Because unless I'm mistaken, even a single-family dock has to do a Site Improvement Plan or development plan for the dock, so that would already include -- be included in D. It doesn't seem like it needs to be addressed again there.

CHAIRMAN STRAIN: Okay. The fact that it's there, if D were to survive, it wouldn't hurt, it's just redundant.

MR. HALL: Right.

CHAIRMAN STRAIN: Okay.

MR. HALL: Yeah, and I just didn't understand why it was in there.

And then going back to the kind of that page overall where it talks about accessory uses and conditional uses, right now as a permitted accessory use you're allowed docks, private docks as allowed by the Manatee Protection Plan, which is kind of outlined in 5.05.02. And what this is doing is taking that allowed use, if you're -- if the Manatee Protection Plan allows your site to have 10 slips or 12 slips or 20 slips or whatever it is, you're taking that use that is right now allowed and making it now conditional. And to me that is a taking of what is currently allowed based on that.

And then you guys had some earlier discussions about the Manatee Protection Plan, why it was in -- or 5.05.02, why it's mentioned in b.iii under private docks and boathouses and why it was not mentioned in c.iii.

And the reason for that is because noncommercial boat launching facilities are basically dry storage facilities and boat ramps, and those are either allowed or not allowed in that Manatee Protection Plan, 5.05.02. They're not really subject to it in terms of the size or anything else. It's either they're allowed or not allowed, based on the ranking of the site, whether it's preferred, moderate or protected.

So I think that's why that wasn't included there. And if you bring down this multi-slip docking facility, then what that does, the 5.05.02 tells you how many of those slips would be allowed. So, you know, if -- that's why that wasn't in there previously, it's included under marinas and all.

And I guess my biggest issue is that moving the multi-slip docking facility down to a conditional use doesn't make sense to me, because all of these other uses, conditional uses, are relative to what's going on on the uplands.

And again, specific to the boat dock stuff, marinas require an upland support facilities, you know, specific to the marina. It's usually ship stores or fuel facilities, that kind of thing. Noncommercial bought-launching facilities, boat ramps, they require either buildings or parking lots associated with those.

The yacht clubs require the clubhouse and so forth. Whereas the multi-slip docking facilities are dependent

upon residential use. And if the residential use is already allowed, then those docking facilities associated with that are simply accessory, they're not conditional. You don't have to change the upland use to allow those docks to be there.

So I think the way that it is written currently, private docks and boathouses should apply to all slips, not to just nine and under.

CHAIRMAN STRAIN: Okay.

MR. HALL: Then my last comments were going to Page 39 where it was talking about vested rights. And this was a very -- I guess a lot of legalese in there and it didn't make a whole lot of sense to me.

But what I was concerned about there is if this does go through, you have changed a use. There are existing facilities out there that have more than 10 boat slips. And my concern is that the vesting doesn't address those. Currently they're an accessory use. If somebody goes in to try to modify their docks or something like that as an accessory use, it's allowed. But if that's not vested and somebody came in to try to modify their docking facility, it seems to me then it's possible an interpretation could be made that those are now conditional use for the new facility and they'd have to go through additional permitting and additional process to --

CHAIRMAN STRAIN: I notice --

MR. HALL: -- maintain the use that they already have.

CHAIRMAN STRAIN: I notice you weren't -- you may have missed part of the meeting. That was all -- all that's -- 13's not going to be changed.

MR. HALL: Okay. If that is not changed, then I think it is -- I think it's still an issue if you do change the -- if you do move the dock facilities down there, because most of this talks about -- it doesn't talk about existing uses, it talks about applications. And so it would still be a concern of mine that you've taken a use that was allowed as accessory and made it conditional and not vested the projects that are already in place.

CHAIRMAN STRAIN: Okay, I think that paragraph's going to go back like it was from the last discussion that we had.

MR. HALL: Okay. And then I think that's the majority of my comments. And I'd be happy to answer any questions if you didn't understand.

CHAIRMAN STRAIN: Mr. Schiffer?

COMMISSIONER SCHIFFER: Would a -- in your c.iii, would a resorts boating facilities, docking facilities, is that a commercial, or how would you treat that?

MR. HALL: A resort?

COMMISSIONER SCHIFFER: Yes.

MR. HALL: Like associated with a hotel, it's usually going to be a commercial use, because the -- it's associated with what the upland development use is. So if the hotel is commercial, then the docking facility from the state's standpoint will usually be viewed as commercial as well.

Or if it's set up as private ownership of the slips, then that would most likely be some kind of a club where on the hotel facilities there'd be a clubhouse or dockmasters building associated with it.

COMMISSIONER SCHIFFER: And again, more commercial then? Because you wanted to move the greater than 10 up to the private. So the private would only be for multi-family units?

MR. HALL: And that -- yeah, that -- correct, that goes with multi-family. If it's a commercial marina or a private yacht club, those are already included under the conditional use category. So it would just be really the private multi-family facilities that would stay in the accessory use.

COMMISSIONER SCHIFFER: Okay, thank you.

CHAIRMAN STRAIN: Thank you, Tim.

Next speaker, Ray?

MR. BELLOWS: Bruce Burkhard.

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

And I just really want to add a few comments to give you a little bit more background, I guess, according to some of the questions that I heard had come up. Unfortunately I wasn't here for part of the morning session.

Bill Eline has already alluded to the fact that the residents association, Vanderbilt Residents Association, represents roughly 1,000 households in the Vanderbilt Beach area. It was originally set up by Mr. Conners, the

developer. When he completed the development, he actually formed an association. So it's an association just like you would find in any gated community in the area. We represent everybody in the area and we try to do a good job in supporting the neighborhood in its appearance and also to try and protect the investments of everybody that lives in the area.

The VBRTO came about quite a few years ago because we had a problem with development that's already been alluded to by Joe Connolly in terms of the Manatee development and also the Bellagio. And then it looked like there was something else looming on the Horizon in redevelopment areas, which proved to be the case, and that was the Vanderbilt Inn site, which eventually became the Moraya Bay development.

And what we found was going on in the area and what prompted the establishment of the overlay was that development pressures were just trying to change the character of the neighborhood, the ambiance of the neighborhood that we lived in and potentially hurt residential values.

Essentially although this is considered a residential tourist area, and we recognize that, it's primarily residential and with a few spottings of commercial development in this overlay area, such as LaPlaya and now of course the Moraya Bay in a sense.

So what we ended up doing was saying that the Land Development Code isn't exactly working for us. And how can we go about tightening things up and making the Land Development Code and the county responsible to our needs, the needs that we perceived in our neighborhood? And we ended up actually getting into essentially a battle with the county who resisted most of what we were trying to do, it seemed.

We ended up having to hire a city planner, very well recognized city planner from the Fort Myers area. We had two attorneys working with us. And we even were forced to hire an economist to the counter an economist the county brought in to say that what we were proposing was too costly for the county. And we essentially proved that that wasn't the case, I think.

Eventually we did get the RTO passed. And the idea was that we wanted to cut down particularly on -- in Vanderbilt -- or on Gulfshore Drive, rather, on the canyonization effect that was developing with the high buildings that were coming up in redevelopment.

So one of the things we tried to do was limit the height of the building. We also tried to increase setbacks to the point where we would approve the view and light situation along that corridor so that again it didn't contribute to this canyonization effect.

And a lot of people think that that's all we were trying to achieve with this overlay, which really isn't the case. There was more that we were trying to achieve.

And mainly our thrust was to take back and gain some control over what happened in our neighborhood so that it wasn't just crammed down our throats by developers and then seconded by the planning department, which we felt had been the case.

So some of the other things that we tried to do was we tried to put things in like conditional uses for things like a beach club so that you can't just put a beach club, build a building and then also add a beach club. We needed a say in it. And marinas, we wanted to have a say so that somebody who at their present building site, their Site Development Plan showed two little docks, so somebody didn't turn that two little docks into a full-scale marina, which we ended up dealing with with the LaPlaya case.

And also we specifically put timeshares in as a restriction, a different use from hotels and motels. And again, that went back to the fact that what we were trying to do was preserve the residential character of the neighborhood. The timeshares that are there now are all residential timeshares, they're not commercial, they don't have any aspect of a hotel or motel. They for instance require a minimum of a week's stay and sometimes more than that. It's not a daily turnover like in a hotel and a motel. And we want to keep it that way so that we don't over-commercialize the beach and turn the beach into another Fort Myers Beach.

So those were some of the aims of the overlay that we were trying to establish, basically to get a little bit more control over our neighborhood.

Setbacks. Brad has talked about setbacks a little bit. And this building truly was at Moraya Bay built setback to setback.

One of the things in the settlement debate is our side was working with the developer. The developer was trying to get a taller building than what was permitted. And we -- our side came up with a concept that what if we lowered the building but -- or allowed you to have a couple more stories of building, gave you more height to the

building than the 75 feet and the overlay but in return we'd like to see the setbacks brought in to accommodate more view for air and light and perhaps a view of the water. And that's what we ended up doing. On the sides they brought the setbacks, increased the setbacks to 52 feet, which was desirable and very nice. But what happened was and why we're back here for amendments is that the systems continually gamed. And what happened was they built to the 52 feet and then they stuck balconies out overhanging into the side yard setback. Well, that's okay if it's just a true balcony. But it turns out that these balconies that they put on weren't -- did not meet the definition of balconies according to the LDC.

So we continually try to tweak the overlay and try to improve it. And the whole idea is not to make life more difficult for the developers, for the planning department. We're trying to just protect and preserve our neighborhood as we know it.

And that's basically my pitch.

CHAIRMAN STRAIN: Bruce, thank you.

MR. BURKHARD: Thank you.

CHAIRMAN STRAIN: Next speaker, Ray?

MR. BELLOWS: Kathleen Robbins.

MEMBER FROM THE AUDIENCE: She had to leave.

MR. BELLOWS: David Galloway?

MR. GALLOWAY: My comments --

CHAIRMAN STRAIN: Sir? Yeah, you have to come up to the mic if you're going to speak, otherwise we can't get it on transcript.

MR. GALLOWAY: David Galloway at 9051 Gulfshore Drive.

My comments are going to mirror those of some of the members of the VBRA, so I'd like to -- but thank you for the opportunity to speak.

CHAIRMAN STRAIN: Thank you, sir.

Next, Ray?

MR. BELLOWS: Mick Moore.

MR. MOORE: Good afternoon, members of the Commission. My name is Mick Moore and my family has owned and operated the Vanderbilt Beach Resort for over 40 years. We're a small hotel on Vanderbilt Beach. And as I learn every time I look at the VBRTO, we are the undesirable diagram on Page 41.

CHAIRMAN STRAIN: What kind of place do you run?

MR. MOORE: It's never nice to be undesirable. So today I'm speaking for all the other undesirables out there.

The original hotel was built in 1951 and at that time we were one of the only properties on the beach. Our family bought it in 1968, and I don't think it's an unfair statement to say that many people who now live on Vanderbilt Beach stayed at our place at one time or another or had guests stay there.

I'm here today to let you know that even though we are members of the VBRA, the VBRA does not represent us or speak for us today in advocating for these changes. We are opposed to these changes because we believe that these changes constitute over-regulation that's going to cause more harm than good to the community.

In essence what they are is an over-reaction to one developer's actions, the Moraya Bay project. And I can understand the problems that the other residents have had with that project. I understand their frustration and that they are upset. But the regulations that they are proposing are going to cause consequences for all of those other properties on the beach, including ours. They're going to cause us great difficulties if we have to repair or build back our properties in the event of a casualty event. And I don't believe that most of the property owners in this area understand exactly what these are going to do.

As Mr. Klatzkow said, as even Kathleen Robbins said, there are going to be unintended consequences. Are they worth it? No. In our view they're not. They're going to cause a lot of problems.

Now, even though we were members of the VBRA, we weren't notified of the proposed changes. We had to file a public records request with the county because we heard a rumor that the county was going to be proposing changes to the LDC and we wanted to find out what was going on.

Once we received the regulations from the county and we knew that they were being prepared by the VBRA, the VBRA did contact us and we had a meeting with members of the board. And they wanted to know what our

concerns were. And we told them what our concerns were. They're essentially the same concerns that we're expressing today.

Now, I'm not aware of whether the VBRA has had meetings similar to the ones they had with me with all of the other property owners up and down the beach that will be affected. Because what I'm about to say with our objections may be similar objections that those property owners have. I don't know, I can't speak for them.

In our view, the regulation is unnecessary and it's a second bite at the apple. We've already been through probably the most mind-numbing regulatory sessions that I've ever been in when the VBRA was established. Hours and hours of stakeholder meetings that make this meeting this morning look like nothing.

And after all that, with all of the involvement of the VBRA and then the whole lawsuit with Moraya Bay that thankfully we're not involved in -- I don't want to be involved in a fight between VBRA and the developer -- after all of that we're coming back to go over these things again.

Now, unnecessary changes, I could care less if they don't hurt anybody, but these changes have the capacity to hurt property owners, because they are going to significantly change the code. Not just clarify the code, significantly change it. And it will likely make numerous properties nonconforming all up and down the beach. In particular balconies. We have balconies on our property. Balconies along the beach, as every property owner know, require repair constantly. They spall, they start to fall apart, you have to repair them, you have to replace them. And that's going to be affected by this.

Has there been a study to see what all of the other property owners think of this, how that's going to affect their balconies? There are balconies up and down the whole beach. If we have a casualty event -- and we have a small property. If we have a casualty event and we have to rebuild, are we going to be able to rebuild our property?

Mr. White said I believe there is a strong potential. Well, that's not good enough for me, a strong potential. This puts us in a position where we may lose our business.

And we keep our mouth shut, we run our business, we're good neighbors, but when something like this comes up, we have to speak, and that's why we're here today. This is the first time I've ever been in front of the Planning Commission.

Balconies is an issue. This distance between principal structures and accessory structures, I'm not sure I completely understand it. But I know that we have a pool, we have a utility building, we have tennis courts, we have all of these things that may be affected. We may not be able to rebuild these things the way they are today. Our next door neighbors have a chickee hut, a pool, you know, things like that. I'm sure they do all up and down the beach. How is this going to affect that? I simply don't know.

The burden should be on the VBRA to establish that they're not going to negatively affect the property owners in their current state. I don't think they've done that today.

The benefits of these restrictions which are targeted towards a specific incident that happened with the ramp -- and again, that's not my fight, that's between the VBRA and the developer -- they're spilling over to the rest of the beach. And we're going to have to live with the consequences long after that fight is forgotten.

And I told the VBRA members when we met with them, that's what we're concerned about. We've got to live with this. My daughter, who might be the fourth generation running the hotel, she's going to have to live with it. And she's going to say, dad, how did you let this happen? Why do I have to deal with this? I'm going to say that's the way it is.

These restrictions are going to take away property rights that we currently have. It's hard enough to run a business in this economy right now. We need to be able to be flexible and adept to changing conditions. This is going to shackle us and prevent us from doing that.

So I urge you, please, we don't need more regulation, we've been through this. I understand the frustration, but there's got to be another way to handle issues of interpretation of code with the county staff other than passing broad-blanket regulations that are going to affect all sorts of people who don't know they're going to be affected, and they're going to have negative consequences for years and years and years that we can't even understand or comprehend today. Thank you.

CHAIRMAN STRAIN: Thank you.

Ray?

MR. BELLOWS: Last speak, Michael J. Moore.

MR. MICHAEL MOORE: Good afternoon. I'll be brief, as everybody looks like they're ready to get out of

here.

CHAIRMAN STRAIN: We're going to be here for hours, so don't worry.

MR. MICHAEL MOORE: My name is Michael Moore and I'm the second generation with the Vanderbilt Beach Resort. And there's really nothing new I'm going to add, I'm just going to reaffirm what my son said, that we've been property owners there for 42 years. The original hotel was the only thing on the beach in 1951. And I heard mention that it's mostly a residential area. Well, the first five structures on that beach were all hotels. You had Seaside, which was built in 1960; you have LaPlaya, 1969; you have Vanderbilt Inn and you have King's Crown. If you look back, there were very few residences on the beach, if none. I again do not see any need for further regulations.

We went through this process with the comprehensive review and establishment of the VBTR overlay. That lasted probably a year and a half. We had many stakeholders meeting. We were not in favor of the changes then. Some probably turned out to be okay. But this is just an over, overkill, and I vote that -- I just appeal to you that this is not necessary. And I'll keep it at that. Thank you.

CHAIRMAN STRAIN: Thank you.

Do you have more speakers?

MR. BELLOWS: Yeah, we just had a --

CHAIRMAN STRAIN: Because I'm going to call for general speakers. But if you have more listed.

MR. BELLOWS: Yeah, Georgia Hiller.

CHAIRMAN STRAIN: Okay.

MS. HILLER: Good afternoon, Commissioners. My name is Georgia Hiller, candidate for county commission, second district.

I came here today intending merely to listen. But after listening, what I heard shocked me. Patrick White made his presentation in a very mild manner, soft-spoken way, and he started off as follows. He said: Commissioners, what I'm speaking about here today are minor changes.

Nothing could be further from the truth. This is a regulatory sledgehammer. This will amount to not one, but potentially multiple Burt Harris actions. I'm very concerned.

Patrick White went on to say that the objective of this regulation is to avoid canyonization. And then he turns to discussion about taking of boat slips. He says this regulation will not drastically alter use allowances here. It does.

Then he goes on to say this is a mere clarification of vested rights. It isn't. It's the elimination of vested rights.

Following that there was a discussion about notice. And Ray Bellows made an excellent point. He said, what we're talking about are administrative actions, not rezones. We have procedural due process in place for the code. We have notice and hearing.

And I agree with the gentleman who's sitting over there with the glasses, Mr. Connolly, I believe it is, who made the point that we do have a code in place that does need to be respected by staff.

But the bottom line is this over-regulation, this overreaching, this law that will ultimately result in uncompensated takings does not achieve that.

About the notice issues, the requirement that's being proposed says notice should be given to the VBRA. It does not propose what the VBRA should do, nor does it recognize that the VBRA is not representative of all the residents. They do have a large membership, 1,000 is a large number, but it's not all the residents, nor is it all the potentially adversely affected residents.

You can't single out one association and include all the other affected citizens. You can't single out one neighborhood. With respect to due process, specifically procedural due process, this overlay is not unique and different from how procedural due process applies to all other communities, an excellent point made by Commissioner Murray.

And then there was discussion about setbacks. The setbacks are clearly stated in writing. Diagrams are not controlling. There are rules of interpretation. Having setbacks of setbacks means that we just are redefining the setbacks and making narrower -- we're allowing -- we are permitting less use of the property than was previously allowed. If that's what's intended, that will deprive people of their vested property rights.

But what concerns me the most are two issues that I heard here today. One was what I just heard Mick Moore say, that he only found out about this as a result of a rumor and then making a public records request.

There has been no public vetting among the adversely affected members of the community. That's the very issue where why we're here today, because we have a group who believes they did not have the right to information as it was being processed through the channels. And yet what's happening today is exactly the same thing to the people who would be adversely affected by these property owners.

I encourage you, Commissioners, to please insist that there be formal public vetting of this before any ruling is made by your board.

And then there's no fiscal impact analysis. Nick Casalanguida stood up here today and he told you that there has been no quantification of the impact of this regulation. It is absolutely essential -- I was delighted to hear what he said. We in fact have two new sheriffs in town. We have the big kahuna, Leo Oches, and we have Nick, who's the new head of CDES. And I hope that under their leadership we will not have the issues that Mr. Connolly has identified. Many of the staff are gone today. We have new leadership.

The bottom line is very simple. This is a perfect example of over-regulation. This is a perfect example of something that will lead to bigger government and more unnecessary spending. I encourage you to weigh the risks against the benefits very carefully and consider that our county cannot withstand the cost and the legal burden of multiple Burt Harris actions.

I thank you very much today for your time.

CHAIRMAN STRAIN: Thank you.

Ray, did you have anymore registered speakers?

MR. BELLOWS: None.

CHAIRMAN STRAIN: Is there anybody from the audience that would like to speak on this issue?

(No response.)

CHAIRMAN STRAIN: Okay. We cannot take a vote today on anything, but I did make notes as I went along as some suggestions to staff as to how we may proceed by the time we finally get to the conclusion of this, hopefully whenever that can happen.

And I think as Mr. Eline, who wanted desperately to try to find away to work things out. And I respect that. And I think through that process we ought to consider some of the following: That's that Patrick and Susan communicate on the couple of paragraphs that were unclear as to how their application was to unfold. I think that's critical.

I think from Nick's perspective the citizens from Vanderbilt Beach expressed a desire to pay for any costs that may result from the inclusion of their process through a notification of an SIP or SDP. If they're willing to pay for it, we may want to look and see what those costs are, to see if there can be an analysis made in some way to establish that, if that's at all possible.

And I'm not saying I agree with all these, I'm trying to find a space to compromise. And I'm thinking if we get more information, maybe a space will be there.

The idea of a stakeholder meeting, I brought that up in the very beginning. And to be honest with you, without a stakeholders meeting, as far as I'm concerned this is a fruitless attempt. Because we have -- and I'm not speaking for the whole board, but I can tell you, this board has provided itself on making sure that people were involved, that everybody got the word out. We sent the preserves standard back a year ago because there weren't stakeholder meetings.

So I feel personally I can't see this one go forward without the appropriate meetings to involve the people and notification of those people. And I don't mean by a newsletter. If there's a member and if they get it, I mean notification of those people who own properties in the RT district who are going to be affected by this. To me that's critical. And that's what I think was the process the original Vanderbilt Beach overlay that was vetted so thoroughly with the community. This one has the same impact in a lot of ways. It is going to change the regulations. And if it is, then it needs to be vetted in the same manner.

I think that the process needs to be looked at by our County Attorney's Office for any kind of Burt Harris impacts it may have because of the setbacks and because of going from a permitted use to a conditional use, and if those have any impacts from a potential Burt Harris claim.

And then last -- and these are all mine. And the Planning Commission, when I get done, feel free to jump in. We have this dock issue. Well, everybody that has a lot on the water up there right now has a dock or gets the right to have a dock. And I think that by a lineal footage is how we ought to look at those dock situations and see if 10 is the

magic number or it's a different number. But if someone owns a whole length of waterway then they got a right to so many docks equal to the people in those residential units that have rights. So I'm not sure if 10 is the right number even to restrict them on to begin with. So I think that needs to be looked at.

And those are my notes. And honestly, between now and the 26th, I don't know if all that can get done. But I don't have a level of comfort with this at all without some of those issues being addressed.

So as far as the rest of the Planning Commission, does anybody else?

Mr. Vigliotti?

COMMISSIONER VIGLIOTTI: Mark, I couldn't agree with you more. I think this whole thing is -- from start to finish doesn't make sense, too confusing, too many possible problems we can cause by this. I just can't make any sense of it.

CHAIRMAN STRAIN: Mr. Murray?

COMMISSIONER MURRAY: And I could agree with you more if you said more.

CHAIRMAN STRAIN: I'm sorry.

Mr. Kolflat?

COMMISSIONER KOLFLAT: Mark, your lack of comfort that you emphasize, is it enough in your mind that we could handle that action today, take a vote?

CHAIRMAN STRAIN: Well, today isn't a meeting that was advertised appropriately, so we couldn't take a vote today even if we were ready to.

But as Mr. Eline had expressed, he'd love to see us go to that effort to try to get a cooperative balance. And I'm willing to do that if we can bring everybody into the fold and the property owners out there and they -- they work out something where it works where some of this language may not be a problem and some of it might have to be scrapped. But I think if we're willing -- if we can go to that effort by next meeting or whenever, we ought to give it a try. So we can't vote this meeting, Tor.

COMMISSIONER KOLFLAT: Is the use of this effort worth all the effort to do it?

CHAIRMAN STRAIN: Well, we've still got to hear this issue at our next meeting anyway. And if the community -- the applicant wants to go to the effort to get it accomplished by then to secure those votes that such action would need, then that's up to them. We're still going to vote on it next meeting, regardless.

Mr. Schiffer?

COMMISSIONER SCHIFFER: Yeah, and I don't want to minimize what the intent of the neighbors here is. They really have a legitimate concern and they've gone through a lot of effort and expense to do that. And it appears to me what they're trying to do is design in safety factors because they don't have the trust with the staff. Joe Connolly said it perfectly. So the problem just isn't getting a bunch of neighbors together to make everybody happy or to do things that protect, you know, the dimensions of buildings. The problem is the neighbors have lost face with the staff. And how do you determine that? In other words, were these interpretations good? If Susan insists they're really good, then Patrick has to write code to back it off so that he doesn't get what's being built out there.

What if there was a problem with the decisions and all of this is totally unnecessary? So I think it's not just getting neighbors together, it's trying to really figure out what happened and give the neighbors the confidence. You know, you can say there's a new sheriff in town, but if the boss is the same as the old boss, then it may be still a problem. There was a problem. This is trying to patch a problem. If it turned out to be where it's denying people rights, then maybe that's a mistake. But there is something we have to check out and give confidence to the neighbors.

CHAIRMAN STRAIN: Does the direction that I've provided you provide some method to --

COMMISSIONER SCHIFFER: No.

CHAIRMAN STRAIN: -- give to --

COMMISSIONER SCHIFFER: Because getting all the neighbors together to talk about it, what are they going to do? They're going to say well, should that ramp have been there or not? If the ramp should never have been there, then we can all go home.

CHAIRMAN STRAIN: Brad, I wasn't speaking at all about -- I could care less about that ramp at this point.

COMMISSIONER SCHIFFER: I do, though.

CHAIRMAN STRAIN: That's fine. But this meeting is not about the ramp. This meeting is about the language that they want to put in place for whatever reasons. And the ramp may be the reason, but the language has

to be analyzed and accepted and understood by everybody in the community, including the property owners who are impacted by it. That's what I'm concerned about.

COMMISSIONER SCHIFFER: Yes, everybody has to understand what's going on. And I definitely think people shouldn't be in the blind.

CHAIRMAN STRAIN: Right.

COMMISSIONER SCHIFFER: But the point of the matter is that the issues, the ramp, the overhangs and the setbacks and stuff like that is what's offended the neighbors, which they thought they had in their overlay. So if something wasn't done right, then the neighbors shouldn't have to go through this.

And I don't know how that's going to be worked out with neighbor talking to neighbor. I think we have to, you know, maybe talk to the new sheriff and see if some of these things may not have been looked at properly, and then give them confidence that what the code says, it says.

CHAIRMAN STRAIN: Okay, Ms. Caron, did you have some comments?

COMMISSIONER CARON: Yeah, I think that as opposed to neighbors talking to neighbors just for the sake of conversation, I think there's a different level of involvement when you have a stakeholders meeting. And stakeholder meetings are always a good thing. Whether this puts these amendments back a cycle or into a later cycle, that may be.

The people at Vanderbilt Beach in the overlay have serious, serious issues, and they should not be ignored or made light of or be put down. They worked very hard and paid a lot of money to get their overlay in place to begin with. What they wanted all along was for people to pay attention to that overlay. If everything that's happened in the meantime is 100 percent correct, then they have to be able to correct those problems.

Let's all figure out a way for them to be able to do that.

CHAIRMAN STRAIN: Does anybody else have any comments?

MR. ELINE: Question from the floor.

COMMISSIONER SCHIFFER: Mr. Eline.

CHAIRMAN STRAIN: Mr. Eline, sure, come on up, sir.

MR. ELINE: A very simple question. Do we need to come back February 26th?

CHAIRMAN STRAIN: Only if you can resolve the -- and I think Ms. Caron kind of alluded to it. If you need more time than this cycle to get this work done, then you need to take the time to get it done or I think you'll have a hard time succeeding --

MR. ELINE: I agree.

CHAIRMAN STRAIN: -- in the process.

MR. ELINE: I agree. I just want to make sure we --

CHAIRMAN STRAIN: No, your representative or you guys can notify staff that you want to delay your --

MR. ELINE: We'll try to find the stakeholders. Two showed up. I met with them. They never came back with -- I don't mind that. We'll get that stakeholders meeting, we'll get the people together, and when we're prepared, we'll come back to you, and that will give us time with your staff. And I don't know if anybody's building a new condominium on Vanderbilt Beach right now, so I'd like to get this done right.

CHAIRMAN STRAIN: We would very much appreciate that. And please keep staff in the loop as to your timing and we'll be in --

MR. ELINE: Oh, you bet.

CHAIRMAN STRAIN: -- good shape.

Thank you.

MR. ELINE: Thank you very much.

CHAIRMAN STRAIN: Okay, with that, I think we are finished with this issue. We'll take a 15-minute break and come back at 2:35 to resume.

MR. WHITE: Thank you for your time, Commissioners.

(Recess.)

(At which time, Commissioner Vigliotti is absent.)

CHAIRMAN STRAIN: Okay, everybody, we're back in business. 2:35 and welcome everyone back from the break.

And Mr. Vigliotti had to leave and Paul's here somewhere. Okay.

This is the regulated wellfields. They start on Page 1, they go through Page 9.

I want to thank Ray and Paul for their presentation. Are there any questions from the Planning Commission on Pages 1 through I believe it's 9 -- or 10. Anybody have any questions?

Paul, do you have any? Anybody?

(No response.)

COMMISSIONER MURRAY: I'll try and work some up.

COMMISSIONER SCHIFFER: Other than Ave Maria has the prettiest shape.

MR. SMITH: I like the Mickey Mouse.

CHAIRMAN STRAIN: I have one question.

MR. SMITH: Sure.

CHAIRMAN STRAIN: What is the significance of where the well-field -- the new cones of influence, I guess for better words, the STW ones. What is the significance of mapping those out for property use?

MR. SMITH: The significance of mapping them out is it better designates it when it's overlayed on the zoning map. And then they could refer back to the land development code, section 3.06, pertaining to any land use regulations that they are planning on having.

THE COURT REPORTER: May I have your name?

MR. SMITH: I apologize.

For the record, Ray Smith, Director of the Collier County Pollution Control Department.

CHAIRMAN STRAIN: Okay. So these are basically all remodeled sites, with the exception of Ave Maria. That's a new one, right?

MR. SMITH: That's a brand new one.

CHAIRMAN STRAIN: Okay. And has that been coordinated with the people in Ave Maria?

MR. SMITH: What we do is we contact all the utilities that are responsible for their wellfields, we gather information to find out if there's been any updates. Those updates regarding number of wells, additional wells, wells coming off-line or pump rate changes are all factored into the model. Before we do that, we confirm with them that in fact the data we're putting into the model is accurate, they confirm back that it is, and then we move on.

CHAIRMAN STRAIN: Okay. Does anybody have any questions about Pages 1 through 9? Actually, 10.

COMMISSIONER MURRAY: Yeah, just one.

CHAIRMAN STRAIN: Mr. Murray?

COMMISSIONER MURRAY: I guess we haven't determined yet on the Ave Maria site where the well-field areas are yet, right? Blank relative to -- on the Ave Maria site there's no well-field.

COMMISSIONER CARON: Sure. It looks like an eagle.

MR. SMITH: Yes, it looks like --

CHAIRMAN STRAIN: Page 8.

MR. SMITH: -- number eight, if you look at Page 8, it will present the illustration --

COMMISSIONER MURRAY: Oh, that is the Ave Maria. Never mind.

MR. SMITH: Yes, sir. And I think you were looking at Page 10 --

COMMISSIONER MURRAY: I was, and that's where I was thinking it was.

MR. SMITH: -- where it's just simply a language change that adds the Ave Maria utility company well-field to the language of the LDC.

COMMISSIONER MURRAY: Thank you.

MR. SMITH: You're welcome.

COMMISSIONER MURRAY: It was oversight. I didn't see it up there at the top.

CHAIRMAN STRAIN: Okay, no other questions. I think next time we come we'll probably have a very intense debate about how to vote for these. But appreciate your time and you've sat here patiently all day. So we're done.

MR. SMITH: And thank you, sir.

CHAIRMAN STRAIN: Thank you.

***Next one is 10.02.06.i. It's to change the requirement for annual vehicle on the beach, VOB, permits to a one-time permit.

Steve Lenberger. Steve, are you coming up? Good.

MS. ISTENES: Yes.
CHAIRMAN STRAIN: Page 229.
MR. LENBERGER: Good afternoon. Steven Lenberger for the record.
We've had some reorganization in our department, so our -- several departments were combined recently. So I'm currently in the Department of Engineering, Environmental, Comprehensive Planning and Zoning Services.
The amendment here is the vehicle on the beach permits amendment. This was before you last year. You asked for a couple of changes. And I've included those changes. And I can briefly go through the major things you had asked for. They weren't very many.
If you'd like, I can do that line-by-line.
CHAIRMAN STRAIN: I'd rather we just take it page at a time and when those come up, go ahead and highlight them to us and we'll find out if we have any questions. That will just move two things forward at one time.
MR. LENBERGER: Okay.
CHAIRMAN STRAIN: So with that, does anybody have any question on Page 229?
(No response.)
CHAIRMAN STRAIN: 230?
(No response.)
CHAIRMAN STRAIN: And 231.
COMMISSIONER SCHIFFER: I do, Mark.
CHAIRMAN STRAIN: Okay, go ahead.
COMMISSIONER SCHIFFER: Steve, the only concern I have is the virtue of a year-to-year permit is that does give you the ability to control if somebody's not in compliance or something, you have the ability to take away that permit. Do you still have that ability and everything, no issue here?
MR. LENBERGER: I understand. In other words, as far as enforcement and taking away a permit. I'd have to look. There are -- there's a violation section in the back, and I believe it talks about the penalties.
COMMISSIONER SCHIFFER: So as long as you could -- you know, obviously they're not really doing anything every year to prove that they meet -- they comply. So you would catch them not complying and you would then --
MR. LENBERGER: I see.
COMMISSIONER SCHIFFER: -- take away the permit for that --
MR. LENBERGER: Let me double check that for next meeting. I'll take a look at that.
CHAIRMAN STRAIN: Anything else on Page 231?
Steve?
MR. LENBERGER: The changes you wanted were on line --
CHAIRMAN STRAIN: The ones highlighted, right?
MR. LENBERGER: Yes. I don't know if the highlight came out, but --
CHAIRMAN STRAIN: Well, it's gray, so I think --
MR. LENBERGER: Yeah.
CHAIRMAN STRAIN: -- we'll just -- if we have any questions about them, we'll just express them. Everything in gray is what was changed.
MR. LENBERGER: Yes.
CHAIRMAN STRAIN: 232?
(No response.)
CHAIRMAN STRAIN: 233?
(No response.)
CHAIRMAN STRAIN: Boy, Cherie', I bet you like this discussion, don't you?
234?
(No response.)
CHAIRMAN STRAIN: 235?
(No response.)
CHAIRMAN STRAIN: Which has no changes. And 236, again which has no changes.
(No response.)

CHAIRMAN STRAIN: Are there any questions on this issue remaining?
(No response.)
CHAIRMAN STRAIN: Okay, Steve, looks like just that one little cleanup question when you come back and we'll be ready to vote on that one.
MR. LENBERGER: Okay, thank you.
CHAIRMAN STRAIN: ***Okay, the next one that was scheduled was the 5.05.02 MPP shoreline calculations, but there's been numerous requests to extend that when other people can be here. So if you don't mind, Steve, we're going to just wait and hold that one till the 26th.
MR. LENBERGER: Okay. Thank you.
CHAIRMAN STRAIN: ***And then the next one would be Nick -- oh, Amy, I'm sorry. I thought the big kahuna was going to come up and talk to us.
MR. CASALANGUIDA: That's Leo.
CHAIRMAN STRAIN: No, no, he's the little kahuna. Talking about height.
Okay, Amy, it's all yours. We're on Page 11, everyone.
MS. PATTERSON: Good afternoon. For the record, Amy Patterson, Impact Fee and Economic Development Manager from Community Development.
The amendment that's before you is to bring the provisions of the Land Development Code into alignment with the changes to the impact fees that were made by the Board of County Commissioners last March. This is with respect to the up-front payments of transportation impact fees.
If you want me to go further into it, I can explain the old program and the new program, or if it's easier just to go with the amendment.
CHAIRMAN STRAIN: That's what I'm trying to figure out. Does everybody want an explanation or we just work by page by page? Does that --
COMMISSIONER MURRAY: Page by page.
COMMISSIONER SCHIFFER: Yeah.
CHAIRMAN STRAIN: -- work for everybody?
Okay. Amy, it's easier this way, so let's start on Page 11.
Any questions with the opening statements on Page 11?
(No response.)
CHAIRMAN STRAIN: If not, let's move to page 12.
COMMISSIONER SCHIFFER: I do.
CHAIRMAN STRAIN: Okay, Mr. Schiffer?
COMMISSIONER SCHIFFER: Amy, one thing is, as you're breaking these things up into different payments, if the impact fee increases along the line, what happens to that? You know, for example, I pay, you know, my percentage down and then my next lump there was a change in between.
MS. PATTERSON: Nothing happens to the timed payments, meaning the 20 percent down and the subsequent payments. The true up comes at building permit.
COMMISSIONER SCHIFFER: Okay.
MS. PATTERSON: So that's how we do that. Because there may be a number of rate changes up and down during the lifetime of one of these projects. So when the final building -- the building permit is issued, that's when we do the final calculation of their impact fees.
COMMISSIONER SCHIFFER: And that's also the final payment?
MS. PATTERSON: That's the final payment.
COMMISSIONER SCHIFFER: Okay. So you -- so any changes, part of that's done -- okay. So it's not like somebody could pay ahead and avoid an increase?
MS. PATTERSON: They can't lock down. The final lock-down for a rate on an individual building permit is building permit application. But we set these payments up so that they weren't having to estimate changes every year. So the payments related to the LDC are set payments, and the final true up coming then at building permit issuance for the individual units.
COMMISSIONER SCHIFFER: Okay. But there's no futures market. Okay, thanks.
CHAIRMAN STRAIN: Okay, any other questions on Page 12?

(No response.)

CHAIRMAN STRAIN: If not, we'll go to Page 13.

No questions on Page 13?

(No response.)

CHAIRMAN STRAIN: Amy, on the iii, the last part of it it says -- it's talking about the security.

MS. PATTERSON: Yes.

CHAIRMAN STRAIN: For a term of four years in an amount equal to the 20 percent payment.

Now, you're going to get 20 percent up front, the first 20 percent. Then they still owe 80 percent. But you're only asking for security for a 20 percent payment?

MS. PATTERSON: The way that the board agreed to do this with the input of the development community is they put 20 percent down, that's the first payment, plus 20 percent security that's carried to the last year.

CHAIRMAN STRAIN: Okay. But they have -- they're still 80 percent extended, meaning they're still 80 percent out there unpaid.

MS. PATTERSON: Uh-huh.

VICE-CHAIRMAN KELLY: How did -- why did we only accept 20 percent security?

MS. PATTERSON: That was what the board agreed on. We didn't request -- prior to this change we had 50 percent down and 50 percent in three years. There was no security requirement. So this was --

CHAIRMAN STRAIN: Right.

MS. PATTERSON: -- negotiated with the development community and the board agreed. As an acceptable -- they were trying to find ways to make this easier for the development community to get their up-front money -- to put their up-front money down. Because we had a lot of people that were unable -- a lot of developments that were unable to make their second payment in the three years, or people that couldn't come up with the 50 percent in the first year. So this was a way to try to spread those payments out.

CHAIRMAN STRAIN: So say they put in one or two payments. Say they put in two. They're 40 percent paid, 60 percent out. They have a 20 percent security. They stop at the 40 percent mark. Does that mean the security gives us the balance of the 20 percent? What happens to their abilities to use those COs that were not fully paid for then? Do they just lose everything, or how does that work?

MS. PATTERSON: They would -- we would bring them to the board and the board would decide if they want to revoke the COA. But again, they couldn't build more than we've collected money for, because they couldn't get their building permits issued.

CHAIRMAN STRAIN: So you'd apply the 40 percent as far as it could go as the 100 percent of those COAs that would be part of that. Say you had 10 COAs and with 40 percent of 10 of them paid, that's really four paid in full.

MS. PATTERSON: Well, it's one certificate for a certain number of units.

CHAIRMAN STRAIN: Right.

MS. PATTERSON: And then there's a credit mechanism that's applied. So there's a portion of the first year's money that's applied to those building permits as they come in. And then they pay the difference.

Once they've expired or spent the first year's money, they're paying 100 percent of the impact fees on -- so if they accelerated their development and built a whole bunch of things in the first year, they're paying impact fees. Once they reach that 20 percent, they're paying impact fees in full on units that they built outside of what they had anticipated building by this five-year payment plan.

CHAIRMAN STRAIN: Right, once they start building. I understand that.

MS. PATTERSON: If they didn't build enough, it's no loss to us because they -- we haven't issued building permits. So the thing that's in question here is that -- the available capacity on the roadways, which is why we would bring them back to the Board of County Commissioners and they could revoke their certificate.

CHAIRMAN STRAIN: That 20 percent security stays -- rides along all the way to the end.

MS. PATTERSON: Unless they were to default, and then we would --

CHAIRMAN STRAIN: Right.

MS. PATTERSON: -- come to the board and ask them what they wanted to do.

CHAIRMAN STRAIN: And that's where 5.B comes into play. The matter will be referred to the BCC for review. Absent the board finding exceptional circumstances, a temporary CO will be revoked, is that --

MS. PATTERSON: That's right.

CHAIRMAN STRAIN: Okay. Do we have a definition of what exceptional circumstances are so we don't get the board having -- being approached with all kind of exceptional circumstances? Because what a lot of people may think are exceptional may not be exceptional.

MR. KLATZKOW: It's board prerogative.

COMMISSIONER MURRAY: Yeah.

CHAIRMAN STRAIN: That means it's political.

COMMISSIONER MURRAY: No.

MR. KLATZKOW: It's a political board.

CHAIRMAN STRAIN: I know. But I was trying to be factual.

MR. KLATZKOW: I don't mean this in a -- it's board prerogative. If they find that there are exceptional circumstances, exceptional circumstances.

CHAIRMAN STRAIN: Okay. Boy.

Okay, and the last one I have is on vi about the middle of the sentence where the capital -- the bolded word developments. It says, that have secured a three-year certificate has expired in order to extend vesting -- Senate Bill 360, when it extended development orders, would these be considered extended as well under that Senate Bill?

MS. PATTERSON: That was not, no.

CHAIRMAN STRAIN: Okay.

Any other questions on Page 13?

(No response.)

CHAIRMAN STRAIN: If not, let's go to Page 14. Anybody?

(No response.)

CHAIRMAN STRAIN: Anybody on Page 15?

(No response.)

CHAIRMAN STRAIN: How about 16?

(No response.)

CHAIRMAN STRAIN: I have a question on number two, Amy. The added sentence COAs can expire. But the impact fees paid ride with the property; is that right?

MS. PATTERSON: They do.

CHAIRMAN STRAIN: Okay. So you pay up your impact fees to get your COA.

MS. PATTERSON: Uh-huh.

CHAIRMAN STRAIN: Your COA expires, but the property still gets the credit of all the paid impact fees.

MS. PATTERSON: They would still -- yes, they get -- the credit runs with the land, but they would still have to come in and reapply to make sure that there was adequate capacity to handle the traffic.

CHAIRMAN STRAIN: But if they already paid their impact fees, aren't we obligated to guarantee that they have adequate capacity? Otherwise, don't we have to refund the impact fees?

MS. PATTERSON: Well, they haven't paid 100 percent of their impact fees, they've paid a portion of their impact fees, so -- unless they've paid in perpetuity and they've secured their vest tipping. Which ones they've paid 100 percent of their transportation impact fees, then their certificate doesn't expire, it will run in perpetuity.

CHAIRMAN STRAIN: Okay. So if they pay 100 percent, it will always be there, no matter what.

MS. PATTERSON: Correct.

CHAIRMAN STRAIN: Okay. So that's the problem Nick has got there looming over all the foreclosed homes that have already paid up and all the lots that have already paid up that are going to come on-line one of these days, surprisingly.

MS. PATTERSON: That's right.

COMMISSIONER MURRAY: Yep.

CHAIRMAN STRAIN: Okay. Anything else on 16? If not, let's move to 17.

(No response.)

CHAIRMAN STRAIN: Anybody have any questions on Page 17?

(No response.)

CHAIRMAN STRAIN: How about 18? Well, 18's got no changes. How about 18 and 19?

(No response.)

CHAIRMAN STRAIN: And for that matter, how about the rest of the -- that takes us to the end of that particular item. Anybody have any questions on 10.02.07.C, any further?

(No response.)

CHAIRMAN STRAIN: Okay, Amy, looks like we're set to go on the 26th.

MS. PATTERSON: Okay, thank you very much.

CHAIRMAN STRAIN: Thank you.

***And this one -- the next one is definitions, dwelling, multi-family. It's 1.08.02. And the person presenting it is blank.

MS. ISTENES: That would be me.

CHAIRMAN STRAIN: That would be you, huh? Okay, we're on Page 77.

MS. ISTENES: Yes. This is essentially restoring the definitions, dwelling, multi-family, from the old Code 91-102. And there are changes. And Catherine did draft this, so I'm -- my recollection is the changes, and I hope that came out on yours -- were highlighted I think in gray.

CHAIRMAN STRAIN: I don't have anything in mine in gray, to be honest with you. Mine's just all black and white.

MS. ISTENES: What I will point out here is also if you look on Page 78, items C and D, you have discussion about timeshare, estate facilities and transient lodging. We would have to of course kind of evaluate that in light of our discussion this morning. So we'll -- my -- unless you have questions or comments, I would just submit to you that we would be looking at that for next time to make sure we're consistent with what we're doing in the private amendment and our discussions with Rich.

CHAIRMAN STRAIN: And I have -- I made some notes on that, but that's the second page.

Ray?

MR. BELLOWS: Yes, we had some discussion with the County Attorney's Office, and under -- on Page 77, change.

CHAIRMAN STRAIN: Yes.

MR. BELLOWS: He would like after 91-102, put a comma, as amended.

CHAIRMAN STRAIN: That's up in the change area up in the top, 91-102, as amended. Okay.

MS. ISTENES: Yes.

CHAIRMAN STRAIN: Okay.

MR. BELLOWS: That's it.

CHAIRMAN STRAIN: That was a thrilling change.

MR. BELLOWS: Well, we wanted to get it correct.

CHAIRMAN STRAIN: Okay. Any questions on Page 77?

COMMISSIONER SCHIFFER: I do.

CHAIRMAN STRAIN: Go ahead, Mr. Schiffer.

COMMISSIONER SCHIFFER: In the definition of dwelling, multi-family, you use a phrase within a single conventional building. What's a conventional building? And I wouldn't want to be accused of doing one.

CHAIRMAN STRAIN: That's the one without balconies you were talking about earlier.

MS. ISTENES: Actually, to answer your question, I was trying to think of a non-conventional building.

COMMISSIONER SCHIFFER: Those are the ones I do.

MS. ISTENES: So anything you worked on. No.

CHAIRMAN STRAIN: Yeah, but anyway, conventional, I don't think that helps. I mean, building code, everybody knows what building means. So that might get you in trouble.

CHAIRMAN STRAIN: Well, the problem where I think it would run into, and maybe the reason you were trying to look for something is the new hybrid that we heard about where you have a town home with a lot line the same as the common party wall. And so you -- I think they were done up in -- off of 951 where we have four units as a building, but they're each fee simple. And so by this definition if we don't put something in there, that would be a problem because it would be considered a multi-family dwelling, and I'm not sure -- they're not sold that way and they're not condominium. I don't even know if they're under condos.

COMMISSIONER SCHIFFER: Even if they were townhouses, a four-unit townhouse, by the state attorney,

we use this in the building code a lot, is the deemed at three or more is a multi-family. So the building code would certainly consider it. This thing looks like it would consider it, it's three or more.

MS. ISTENES: Correct, we would consider it that way as well.

COMMISSIONER SCHIFFER: And it would be.

MS. ISTENES: Yes, it is multi-family.

COMMISSIONER SCHIFFER: Now, had they, let's say, built a fire wall and split it in half, it would be essentially two units and two buildings that do touch each other.

CHAIRMAN STRAIN: Like a duplex?

COMMISSIONER SCHIFFER: Yeah, duplex would be fine all by itself. But in other words, there is ways -- the word building can be -- in other words, something larger could be separated with fire walls. But certainly nothing above each other or more than three. But the building code is clear, three or more is a multi-family.

CHAIRMAN STRAIN: So I think we're suggesting drop the word conventional.

COMMISSIONER SCHIFFER: Yeah.

MS. ISTENES: And that's fine. It's somewhat meaningless at this point.

COMMISSIONER SCHIFFER: And then the second sentence read kind of funny: For purposes of determining whether a lot is in multi-family dwelling use. Wouldn't it be a lot for multi-family use?

MS. ISTENES: That's fine.

COMMISSIONER SCHIFFER: Okay, thank you.

CHAIRMAN STRAIN: Okay, anything on 77? Anything else?

(No response.)

CHAIRMAN STRAIN: If not, 78?

COMMISSIONER MIDNEY: I have a question.

CHAIRMAN STRAIN: Go ahead, Paul.

COMMISSIONER MIDNEY: On the -- this phrase servants quarters, it sounds kind of antiquated. Aren't people employees now?

CHAIRMAN STRAIN: Good point.

MS. ISTENES: We can make that change.

COMMISSIONER SCHIFFER: Yeah, let's do that.

CHAIRMAN STRAIN: Employee quarters.

COMMISSIONER SCHIFFER: We have heard stories about Immokalee, Paul.

COMMISSIONER MIDNEY: Yeah, that's true.

CHAIRMAN STRAIN: While we're on that particular one, you know, if you've got a guesthouse and you have employee quarters and you have all the fixture units attached to the plumbing system and you've got the power attached to the unit and you've got air conditioning and you've got a parking space for someone who's going to use it, why don't we consider it a dwelling unit?

COMMISSIONER SCHIFFER: Because it's part of the dwelling unit.

MS. ISTENES: Yeah, I don't know if I have an answer for that off the top of my head, to be honest with you, in the case of multi-family.

MR. KLATZKOW: Because they're servant quarters.

CHAIRMAN STRAIN: And we don't count them.

COMMISSIONER MIDNEY: Because they're servants.

CHAIRMAN STRAIN: Well, what I'm concerned about is it has the same impact as -- because it's occupied.

MS. ISTENES: And that same theory carries forward with like guesthouses in the Estates, for example.

CHAIRMAN STRAIN: Right.

MS. ISTENES: So it is somewhat inconsistent here, yeah.

CHAIRMAN STRAIN: Well, but wouldn't we want to try to -- since we're writing the code, wouldn't we want to try to make it consistent? So --

COMMISSIONER SCHIFFER: Well, the commission's dealt with the issue of being able to count guesthouses, servants quarter and, quote, the Fonzie apartment which is, you know, above the garage as a dwelling unit for affordable housing, and they've never accepted that, and I know that from the Affordable Housing Commission, to allow to count that for affordable housing. So we might want to check and make sure it's not

contrary.

MS. ISTENES: Well, my only concern would be you have an awful lot of developments out there who possibly could have used this and not counted that as a dwelling unit and already developed their structure and then we run into the nonconforming issues again.

CHAIRMAN STRAIN: Well, okay, so I'm still trying to understand why if we have a house, I don't care if a guest is in it or an employee is in it, if they're living in it and they're occupying it, it has an impact on our systems, why don't we count it?

MS. ISTENES: It's intended to be temporary, not a permanent facility. And I think that's the distinction that's made between -- whether or not in reality it operates that way, I think there is definitely an impact. Whether it's 100 percent impact or 50 percent impact or whatever, you know, there is an impact, no doubt.

CHAIRMAN STRAIN: Okay, but we do have a minimum standard for what would be considered a dwelling unit. If it meets the standards of a dwelling unit, meaning it's got a kitchen and a bathroom and whatever else it has, I really think we ought to be calling them units and counting them in for level -- because we could have a whole pile of ghost density out there in a way that's not encountered then. I don't understand why we wouldn't want to do that, plus impact fees.

MR. BELLOWS: For the record, Ray Bellows.

I think some of that may fall under the definition of dwelling unit and family, where a dwelling unit talks about one family, and that's where the guesthouse is really for either a relative or a guest on a temporary basis, and that's why we haven't traditionally counted them as separate dwelling units.

COMMISSIONER SCHIFFER: A question.

CHAIRMAN STRAIN: Okay.

COMMISSIONER SCHIFFER: Ray, isn't a guesthouse limited to six-month occupancy?

MR. BELLOWS: I believe that's part of the definition. I can look it up again. But it is pretty restrictive as to not a rental unit, in other words.

COMMISSIONER SCHIFFER: Correct.

CHAIRMAN STRAIN: Ms. Caron?

COMMISSIONER CARON: Well, I mean, I think you could easily correct that by saying -- you know, doing guesthouses temporary quarters. But I don't know that that solves it for employees, because those are not temporary.

MR. BELLOWS: I agree, that is a little different situation. I don't think we've had a lot of research into how that might impact. But it's something to consider.

CHAIRMAN STRAIN: But we really ought to think about counting them. I mean, they have an impact on us. And if you start seeing guesthouses pop up as more of a common thing, we're going to have more impact. In Golden Gate Estates, for example, you build a guesthouse, you've got twice the amount of septic, you've got driveways to worry about, you've got wells to worry about, you've got everything to worry about. So I don't know why you wouldn't count them.

COMMISSIONER SCHIFFER: Well --

CHAIRMAN STRAIN: I mean, I'm sure there's a reason for it.

Go ahead, Ray.

COMMISSIONER SCHIFFER: And let's be careful, because on the Affordable Housing Commission one of the suggestions to increase our affordable housing units was to allow us to use those, and the commission turned that down. So we don't want to be contrary to their direction. In other words, those are not units to be counted.

CHAIRMAN STRAIN: What does that got to do with -- I'm sorry, I missed the point.

COMMISSIONER SCHIFFER: Well, I mean, a lot of people -- the reality is these people rent these things all year. Whether they take their -- pack their bags, walk around the house every six months, I don't know. But those are not allowable units to count as affordable housing. And most of them certainly are.

CHAIRMAN STRAIN: Yeah, but if they do just what you said, that's more reason why they should be counted.

COMMISSIONER SCHIFFER: Well, I'm not saying it's good or bad. I think it is good. But the point is the commissioners I don't -- haven't accepted that as being good. And I think we should just check the minutes of when the Affordable Housing presented that before them.

CHAIRMAN STRAIN: Well, I mean, what the commissioners do is political. What we do is more -- I'm -- Paul, and then -- or Jeff.

MR. KLATZKOW: My thought -- my understanding was all we were doing was putting back into the code what was inadvertently lost. Am I correct?

MS. ISTENES: You're correct. And Catherine did make a couple minor changes just to make it read better. And I apologize, I didn't study up on this one too much. And I know you're not voting today, so I'll be sure I'm studied up on it.

CHAIRMAN STRAIN: Okay, would you find out -- if there's a good reason not to count it, I'd sure like to know it. It doesn't make a lot of sense.

MS. ISTENES: Sure. Yeah, I was going to suggest that. And then even if you still feel that should be forwarded to the commission for their consideration, of course we'll do that. So I'll be happy to just provide you more info. next time.

COMMISSIONER SCHIFFER: But Mark, wouldn't you automatically be taking properties that are allowed to have a guesthouse to making them allowed to have two dwelling units on the site, I mean doubling the density? I mean, that will make some people happy, some people sad.

CHAIRMAN STRAIN: Well, I'm not saying allow guesthouses. I'm saying if someone has the right to put one in, it be counted, that's all.

COMMISSIONER SCHIFFER: Which is the Estates, all the homes in the Estates the size of those lots are allowed essentially, right? So that would mean all lots in the Estates are allowed two units.

MS. ISTENES: No, this is only for multiple family right now. You're discussing this multi-family, so --

COMMISSIONER SCHIFFER: Yeah, that's a good point.

CHAIRMAN STRAIN: The way they do these on the highrises, they have caretaker residences and stuff like that.

COMMISSIONER SCHIFFER: Yeah, okay, okay, that's a good point.

CHAIRMAN STRAIN: Paul?

COMMISSIONER MIDNEY: Would it be similar to the situation with migrant farmworkers in Immokalee that are only there maybe four to six months of the year? Are they counted as a separate dwelling unit, those migrant units?

CHAIRMAN STRAIN: I don't know.

MS. ISTENES: They've got their own regular --

CHAIRMAN STRAIN: As farmworker housing.

MS. ISTENES: Yeah, they've got their own set of standards.

CHAIRMAN STRAIN: They've got their own classification.

MR. BELLOWS: For the record, Ray Bellows.

The Land Development Code has a separate section dealing with migrant housing, so it's treated in a different manner.

COMMISSIONER MIDNEY: Is it less than one EDU, or --

MR. BELLOWS: I'd have to look that up.

COMMISSIONER MIDNEY: Sorry.

MS. ISTENES: I can look it up.

COMMISSIONER SCHIFFER: And Susan, one thing, I was confused, I was considering on single-family lots. So that stuff I was telling you about affordable housing, never mind.

MS. ISTENES: Okay, thank you. I'll scratch that.

CHAIRMAN STRAIN: Under C we talk about multi-family dwelling in which units are available for rental. Is that now with your review against the timeshare language? You're going to look at that and see how it fits with that?

MS. ISTENES: Yes.

CHAIRMAN STRAIN: Okay.

MS. ISTENES: C and D.

CHAIRMAN STRAIN: Okay. That's -- okay, that's what my next circling was.

Because that one actually talks about where the units can be permitted too. And that would factor into what

we talked about earlier this morning.

Okay, so that one's going to take some more research before it comes back.

MS. ISTENES: Yes.

CHAIRMAN STRAIN: And the next one is on page -- next page, 79. Any questions on -- that's just a one pager. Any questions on Page 79?

COMMISSIONER SCHIFFER: Just why is there no such thing as a minor subdivision, just out of curiosity. Just evolved out of the code, or --

MS. ISTENES: Let's see. John put this one together. Stan isn't here yet.

CHAIRMAN STRAIN: Oh, yeah, Stan's there, he just --

MS. ISTENES: Oh, he is?

CHAIRMAN STRAIN: Yeah, he's been quiet.

MS. ISTENES: Do you have an answer? I'm -- I can answer what I know, but maybe you know more. Okay.

CHAIRMAN STRAIN: So we don't have an answer?

MS. ISTENES: We just don't have -- it's no longer used, that's what --

MR. KLATZKOW: My understanding is we have a definition for a term that's nowhere else in the Land Development Code.

CHAIRMAN STRAIN: Then we don't need the definition.

MR. KLATZKOW: That's my understanding.

CHAIRMAN STRAIN: Well, if your understanding is different than that next time, let us know. Otherwise we'll just wait and vote on it next time around.

Okay, Page 80. I'm sure, Brad, you're going to have something to say about this.

COMMISSIONER MURRAY: This is going to be joyous.

CHAIRMAN STRAIN: This is one of Brad's long discussions. Hi, Stan.

COMMISSIONER SCHIFFER: Well, actually --

MR. CHRZANOWSKI: Good afternoon, Commissioners, Stan Chrzanowski with the Engineering Department.

This is a result of recent problems that we've had with how to define what is actually a corner lot based on the definition that appeared in the Land Development Code up to this point, which said that you had to take the line drawn from both side lot lines where they met the road and draw them to the point that is the farthest from the rear lot corner. And instead of using the center of the arc, by having it the point that's the farthest from the rear lot corner, if those two side lot lines are at different lengths it puts that point in a different location on the arc rather than the center of the arc.

Drawing that becomes a problem in coordinate geometry that's beyond many of the people enforcing this ordinance.

The last one that came in like this took me an evening just to write the Excel program and figure it out. I'm sure a licensed surveyor can do it a lot quicker, because they have the software. But our front desk doesn't. We've simplified the definition to include just the center line of the roads. It's how it started and that's what it is.

CHAIRMAN STRAIN: Brad?

COMMISSIONER SCHIFFER: Yeah. First of all, we don't see the old definition here. Is there one in the code?

MS. ISTENES: Well --

MR. CHRZANOWSKI: The old definition was in part of the code that didn't make it into the new code.

CHAIRMAN STRAIN: Right.

MR. CHRZANOWSKI: But according to the attorney, we have to use the old parts of the code that were not readopted.

COMMISSIONER SCHIFFER: Okay.

CHAIRMAN STRAIN: That's the first one really.

MS. ISTENES: Yeah, that's what I was going to say, you're really kind of talking about two amendments at once here, if you look at Page 80 and 81. And then if you go to 83, continuing Stan's kind of more in discussion about --

MR. CHRZANOWSKI: A little ahead of myself?

MS. ISTENES: Yeah, just the method upon which you measure front setback on a cul-de-sac lot.

COMMISSIONER SCHIFFER: Okay, so these are corner lots.

One question, and I guess it was taken out. Why do we need a definition of a corner lot, Stan? Because first of all, any lot that's on a street is considered a front setback and everything.

MR. CHRZANOWSKI: Because corner lots -- and I should let the zoning department handle this. Corner lots have different -- they have two side setbacks and two front setbacks. I should let them explain.

COMMISSIONER SCHIFFER: Okay.

MS. ISTENES: He's correct. They're regulated differently. And essentially it's two fronts and two sides, no rear when you're on a corner.

COMMISSIONER SCHIFFER: Okay.

MR. KLATZKOW: But they're on two separate streets, there's always going to be two front lots and two side lots.

MS. ISTENES: And there's regulations that -- right, there's regulations that address that too.

MR. KLATZKOW: So however it is, any residence on -- that borders two streets --

MS. ISTENES: Has two fronts.

MR. KLATZKOW: -- has two fronts.

COMMISSIONER SCHIFFER: Correct. No matter what.

MR. KLATZKOW: No matter what.

COMMISSIONER SCHIFFER: Whether it's -- you know, whether it's a through lot, whether it's a corner lot. Any lot line touching the street's got to have a front setback. Not all towns have that, we have that. But that's good. Okay. I mean, so I could see why they took it out. There's --

MS. ISTENES: Right, that doesn't meet the definition of a corner lot, obviously. But it still shares the same regulation as far as applying setbacks.

COMMISSIONER SCHIFFER: Yeah. I mean, these are good if they, you know, make it happy. And I think the illustration on Page 82 makes it clear that that 135 feet you are not a corner lot then, you're -- essentially you have a bent front.

CHAIRMAN STRAIN: Well, one thing that seems to be missing is a street -- a cul-de-sac street. This works for corner lots where you have two different streets.

MR. CHRZANOWSKI: The same would apply. It would be the 135-degree angle where the two -- center of road where the road center lines join. Whether it's a cul-de-sac coming off or --

MS. ISTENES: A true 90-degree.

MR. CHRZANOWSKI: -- or a true 90-degree, yeah.

CHAIRMAN STRAIN: Any lot situated at the junction of and abutting to form a corner lot on two or more intersecting streets. In order to have a corner lot, that's the first sentence. How do you do that on a --

MR. CHRZANOWSKI: You don't.

CHAIRMAN STRAIN: -- cul-de-sac?

MR. CHRZANOWSKI: You don't.

COMMISSIONER SCHIFFER: Why would you?

MR. CHRZANOWSKI: Because it's a continuous turn. It's not --

CHAIRMAN STRAIN: So then you can't have a corner lot on a cul-de-sac?

MR. CHRZANOWSKI: Not in the manner in which the code would allow it before.

COMMISSIONER SCHIFFER: Well, that --

CHAIRMAN STRAIN: Whoa, back up that --

MR. CHRZANOWSKI: No, the center line of the cul-de-sac, on a curved cul-de-sac or a straight cul-de-sac, the center line of it continues through the property line in front of the house. There is no 135-degree angle. At the very most you have a curved street.

CHAIRMAN STRAIN: Okay. So someone, if you were to call a lot on a cul-de-sac a corner lot, you really -- you're saying you can't do that.

MR. CHRZANOWSKI: Not anymore you won't be able to do that, right.

CHAIRMAN STRAIN: Not anymore, meaning --

MR. CHRZANOWSKI: Meaning under the old definition, based on the front property line, you could actually have a corner lot on a cul-de-sac. But under this new definition you will not be able to do that.

CHAIRMAN STRAIN: Okay. Then I think Brad's question is relevant, where's the old language that -- do you have a copy of that with you so we can compare it?

MS. ISTENES: I do not.

CHAIRMAN STRAIN: Okay.

MS. ISTENES: My impression was this was the old language --

CHAIRMAN STRAIN: I thought --

MS. ISTENES: I've got the old code downstairs, I can go get it.

CHAIRMAN STRAIN: Well, by the 26th I think it would be relevant to have it.

MS. ISTENES: I'll make sure you're -- yeah.

CHAIRMAN STRAIN: Just include it in the new handout that we've got that shows the two definitions.

I remember parts of the old definition. That's why I thought the one on top looked like that old definition, because it referenced the same degrees that I had recalled. But that's -- if it isn't the same one, then I sure would like to see what the different --

MR. CHRZANOWSKI: Well, it references the same degree, but the old definition was based on the front lot line of the lot.

CHAIRMAN STRAIN: Right.

MR. CHRZANOWSKI: And the new definition is based on the center line of the road in front of the lot.

COMMISSIONER SCHIFFER: Yeah.

MR. CHRZANOWSKI: And I can draw a very nice graphic for the next time, if you'd --

COMMISSIONER SCHIFFER: Yes.

MR. CHRZANOWSKI: -- like. It would make it very clear.

CHAIRMAN STRAIN: I think in order -- if a cul-de-sac is or is not going to be considered a corner lot, we need to make -- I think that statement would help in here. There's a lot of cul-de-sacs in this county.

MS. ISTENES: Yeah, I apologize, this is confusing. Because it implies we're putting back the old code but then we're changing it. So this --

CHAIRMAN STRAIN: Right.

MS. ISTENES: I'm sorry, this is very confusing. Let me clean that up a little bit and make sure it's clear.

COMMISSIONER SCHIFFER: And Mark?

CHAIRMAN STRAIN: Yes, sir.

COMMISSIONER SCHIFFER: And there's one major difference. This is essentially stating that it's two intersecting streets.

CHAIRMAN STRAIN: Right.

COMMISSIONER SCHIFFER: In other words, obviously you couldn't consider a cul-de-sac two intersecting streets.

CHAIRMAN STRAIN: Right.

MR. CHRZANOWSKI: Right.

CHAIRMAN STRAIN: That is one of the big differences. But that -- I don't have that written that way in the old code. I remember the degrees are right, because we did opine apparently somewhere down the road that corner lots can be on cul-de-sacs, and this would -- he's saying now this would not allow that. So --

COMMISSIONER SCHIFFER: Let me ask you a question, though. If it's a single road that makes a 90-degree turn, not two intersecting streets, wouldn't that then also be allowed to be a corner lot?

MR. CHRZANOWSKI: Yeah, that would be.

COMMISSIONER SCHIFFER: And where would -- but we have two streets. Maybe we could work that so -- if that's important. I'm not even -- I could see why you took it out, because I can't see why it's important to be a corner lot. Your setbacks are going to be the same.

MR. CHRZANOWSKI: If you have two roads, then it's the intersection of the center line of those two roads. And if those roads make a 90 or a 135 or a 150 or a 70, it's still -- you have two roads and you have the center line of the two roads and where they cross. The definition still applies, even if it's a single road making a bend.

CHAIRMAN STRAIN: Well, I think that's the def -- that's the concern. If it's a single road then it's not two

roads. Maybe we need to throw something in there that says a single road making a bend of so many degrees will establish a -- will create a corner lot.

COMMISSIONER SCHIFFER: Less than 135.

MR. CHRZANOWSKI: If it's a single road you have two center lines, two straight center lines.

CHAIRMAN STRAIN: Right, but you don't have two intersecting streets.

MR. CHRZANOWSKI: Not by Peggy Jerrold's definition of a street, if it has the same --

CHAIRMAN STRAIN: Now you know where I'm getting at.

MR. CHRZANOWSKI: Okay. I see your point. I'm trying not to see it, but I --

CHAIRMAN STRAIN: I know. But I can tell you, you don't want to go to that battle.

COMMISSIONER SCHIFFER: But here it is, you're going down Stan Way and you --

MR. CHRZANOWSKI: Making a left onto Stan Way.

COMMISSIONER SCHIFFER: -- make a greater than 135-degree turn, you're still on Stan Way and there's no other intersecting street.

MR. CHRZANOWSKI: That's right.

CHAIRMAN STRAIN: Well, I think you get the drift, we probably need a little bit of elaboration on the definition.

MR. CHRZANOWSKI: Yes, sir, I can bring back some graphics and we can work on the wording.

CHAIRMAN STRAIN: Okay, so that one's coming back on the 26th with some changes.

Everybody fine with that?

(No response.)

CHAIRMAN STRAIN: So we'll go on to 83. Page 83 is the definition for, boy, another Brad definition, cul-de-sac lots with arc method of measurement.

Stan, you want to say anything before Brad takes off?

MR. CHRZANOWSKI: Yeah, there are some lots in subdivisions, not residential but commercial subdivisions, where the lot actually takes up half of the cul-de-sac. By the cord definition you go from corner to corner. The cord goes right through the middle of 100 and something foot cul-de-sac. And the setback is based off the cord. And it would almost allow you to build a building out into the street if you went off the setback.

What this does is it makes every building in Collier County measure the distance from the arc, which is the circular part, rather than the cord, which is the straight line that connects two points on the arc.

COMMISSIONER MURRAY: Good.

COMMISSIONER SCHIFFER: I mean, here's one thing. First of all, setback has always been measured to the property line. So anyone trying to figure out the setback on any shape lot offsets that -- the dimension of the setback. So no one ever did -- by definition of the setback, we never were able to use the cord method. The -- I think one problem we have is we have setback and we have yard. And we're treating those -- we're interchanging those two words and they don't mean the same to me.

Ray, do they mean the same to you, setback and yard?

MR. BELLOWS: Well, the definition of setback refers to a build-out line from the property line. The definition of yard is a little bit different, it talks about acquired open space in front of the building line forward. I think they're related, but they're a little slightly different. I think they're meant to address two different things. And the LDC does have a definition of setbacks, and that's what we --

COMMISSIONER SCHIFFER: Right. And it is the minimum distance. So this is doing nothing more than what we always had. But, for example, like -- and I guess the best example is up north, I grew up in a town that had a lot of townhouses with little porches on the front. The setback of the building was measured from the property line to the face of the building. And you were allowed in front of the setback a bunch of items, steps, stoops, porches and things like that. And then the yard was the area you had to keep clear.

MR. BELLOWS: Yeah, the code has a provision or section of the code that deals with exceptions to yards where they allow for balconies or stairways to encroach into yards a certain amount of distance. I think stairways in the front yard can go five feet, balconies in the side yard three feet, roofs and overhangs, nothing can encroach into a side yard within a foot of another property line, things like that. It's all written out in that accessory -- exceptions to required yards.

COMMISSIONER SCHIFFER: But the point is that it looks like here what we're trying to do is set up with

the definition of yard the setbacks of the building. In other words, doesn't the definition of setback tell us the exact same thing? And actually, the experience I had like in the townhouse, it's what's allowed to come forward of the setback. And then the yard was an area that usually the fire department reserved that you could not put anything, hence the 30-foot above ground level in the yard -- 30 inches.

But if you look at setback, all's -- we're saying the same thing. I mean, the setback around a cul-de-sac has always been the same, it's the distance to the property line.

You know what I think maybe we should do is can't we -- and maybe not to slow this down, but can't we study what a yard is and what a setback is and either merge the two together so we don't hold up yards when we mean setback, and setback when we mean yard, or separate them and give them two clear definitions so we don't get into fights over ramps in the yard and stuff?

MS. ISTENES: They're interrelated. I'm not sure how much you can separate them.

But, you know, how about if we do this: How about if Ray and I have a discussion with you off-line to make sure we're understanding your concern. I'm not sure I am, and I don't know if I want to -- unless the rest of the board wants to try to have it here. But --

COMMISSIONER SCHIFFER: And I think in the planning, you know, and the resources you have for planning, see what the difference between a yard and setback is. Because there must be a difference. Why would we have two terms --

MS. ISTENES: Oh, there is, yeah, there is. I guess I'm just not understanding what you're not seeing, and I'm not seeing what you're not seeing, so --

COMMISSIONER SCHIFFER: Okay. But anyway, this is taking the yard front measurement and coming up with a way to determine the setback, which hence my on --

MS. ISTENES: I do understand that concern, and I will look at the difference between the two. But I think your concern is maybe a little bit deeper than I'm understanding.

COMMISSIONER SCHIFFER: Thank you.

CHAIRMAN STRAIN: We're on Page 83. Any other questions on Page 83?

(No response.)

CHAIRMAN STRAIN: Under your fiscal and operational impact, your last sentence is concerning. So there's plenty of lots out there that are going to be nonconforming if this goes through? I mean, how do we fix that? We just can't have everybody's title be screwed up forever and then their build-back be screwed up forever. That puts a real difficult situation -- can we do it for lots after a certain date or something like that?

MS. ISTENES: I think that was suggested in the yard. Now, I'm not sure if technically that means they're still not considered conforming. I mean, I'll look to the Attorney's Office. But I think what Catherine had intended was to apply this regulation to plats and other things submitted after a certain date. So I'm not sure how that would render previous --

MR. KLATZKOW: My understanding, everything that's been -- is in the ground now or been approved now is the old definition. From here on out, everything that gets platted or site development plans is under the new definition.

CHAIRMAN STRAIN: Can we put the date --

MR. CHRZANOWSKI: Or redevelopment.

MR. KLATZKOW: No, it can't be redevelopment. It's got to be new stuff. Otherwise you're going to be --

MR. CHRZANOWSKI: Well, if you tear a house down that was nonconforming and build another one --

MR. KLATZKOW: No, no, no, no. What I'm saying is the way you've got to do this, is because we've got like 50 years of history on this. Everything that's been built up to date, okay, old definition. All new development, okay, you can use your new definition. Otherwise you're going to have the entire county being, you know, nonconforming. That's --

MS. ISTENES: Jeff, would the correct way to write that be essentially to contain two different definitions within the code and just say all plats before this date --

MR. KLATZKOW: Yes.

MS. ISTENES: You measure this way, all plats after that --

CHAIRMAN STRAIN: Why don't you bring it back that way? Because I think it's important we plug the date in.

MS. ISTENES: Okay.

COMMISSIONER SCHIFFER: And Stan, so you're saying that there's buildings that meet the yard requirement but don't meet the setback requirement? How can that be?

MR. CHRZANOWSKI: No, I didn't say that. Did I?

COMMISSIONER SCHIFFER: Well, in other words, the setback requirement is to the property line. And essentially what you're doing now is changing yard requirement to match the setback requirement. Or you're inventing something here, this is a new one, front yard measurement on cul-de-sac never existed before.

So we were measuring front yard cul-de-sacs with some yard method that didn't meet the requirements of the setback method? Or what a setback is?

MR. CHRZANOWSKI: I think I'll let Susan answer that.

MS. ISTENES: I'm thinking.

COMMISSIONER SCHIFFER: Stan, another thing too --

MR. CHRZANOWSKI: I know we have other rules too like the length of the driveway has to be a certain distance from the back of the sidewalk to the front of the house, and that wasn't -- that automatically caused you to be so far back. And there's an 11 foot arc rule that --

MS. ISTENES: Essentially the cord methodology in certain cases was allowing you to incorporate portions of the street, the right-of-way, into the -- all of the yard and setback requirements. This now pushes that back onto the property so you arc around at the same angle as the lot is platted on its frontage and that is your setback yard.

COMMISSIONER SCHIFFER: But wouldn't if somebody followed the yard requirement then they would be violating the setback requirement, which is the distance of the property line to determine the buildable area? We're talking about determining the build able area of a site, correct?

MR. CHRZANOWSKI: Right. But you can't use one part of the code to violate another part. You have to go with whatever part's stricter.

COMMISSIONER SCHIFFER: Which would be setback. Which they're in violation now.

Stan, when you do plats, one of the requirements in the preliminary -- now, I know we've adjusted that lately -- is that they have to show on that the setbacks. They have to draft --

MR. CHRZANOWSKI: That the lot is buildable.

COMMISSIONER SCHIFFER: They have to draft the setbacks on the subdivision, correct?

MR. CHRZANOWSKI: No.

COMMISSIONER SCHIFFER: No?

MR. CHRZANOWSKI: No, we tried getting that passed, but it was -- it never made it through.

COMMISSIONER SCHIFFER: I thought -- because you know when I noticed is when we took out the preliminary plat. In other words, as you had -- you remember one time we had a requirement for preliminary, and reading the requirements for that, one of them was to show the setback on it. So --

MS. ISTENES: Yes.

COMMISSIONER SCHIFFER: -- on these subdivisions, all these preliminary setbacks were long shown, correct?

MS. ISTENES: Yes, they were -- you were required to show a typical of the lots that you were platting. So if you had a variety of lots and setbacks, they were all shown as typicals on your preliminary subdivision plat.

We were told when it came to final plats that that was not --

COMMISSIONER SCHIFFER: Taken off.

MS. ISTENES: -- acceptable and had to be taken off.

COMMISSIONER SCHIFFER: Right. So essentially you go back to those preliminaries and that would be what people could rely on to be the accepted setback. Even if it didn't verbally match, maybe, but --

MS. ISTENES: I mean, the preliminaries weren't recorded. They were really kind of what I would call a working document that was used for staff review. And then became part of the record but didn't become part of the -- you record your final plat, which didn't have that information on there.

COMMISSIONER SCHIFFER: And so the public essentially wouldn't have access to that to determine their setbacks?

MS. ISTENES: Unless they knew we had it on the preliminary subdivision plat file, correct, they couldn't go into the clerk's office.

COMMISSIONER SCHIFFER: So since you're saying this is a new way to do it, the old way didn't work, can you put in the old definition here too? This looks like a brand new, you know, yard front measurement of cul-de-sacs. I think this is -- isn't this a virgin definition, or is there an old one?

MR. CHRZANOWSKI: If it exists, I'll find it and bring it to the next meeting.

COMMISSIONER SCHIFFER: Well, you're saying this is the new way to do it. So show me the thing that gave you the old way to do it.

CHAIRMAN STRAIN: Go ahead. Ms. Caron?

COMMISSIONER CARON: And just when we were talking to Susan about rewriting to break it out in two separate statements, it's in the definition here now, because the last two lines take care of that. This definition shall apply only to new plats created after whatever date we give it. And applications deemed complete by the county may use the old front yard measuring if they're accepted prior to, and then there's a date. So I think --

MS. ISTENES: It refers to it. I think what I was suggesting, and Catherine may have done this and I'm not aware of it, is to just have two different definitions in the code with the different dates.

COMMISSIONER CARON: Separate them out.

MS. ISTENES: Yes, yes, rather than incorporating them into one so it could be easily -- more easily understood, hopefully.

MR. CHRZANOWSKI: Excuse me, if you'll look at the fiscal impacts, though, the middle sentence, once these structures/homes become nonconforming the redevelopment possibilities would be limited to less than 50 percent of the value of the improvement.

It talks about redevelopment. I'm not sure what the intent of that actually is, but I had assumed the intent of it was -- I didn't write all of this. I assumed that the intent of it was that redevelopment would fall under the new rules. But I guess we're going to have to clarify that it doesn't.

CHAIRMAN STRAIN: Well, I think it wouldn't.

MR. CHRZANOWSKI: And her rule about -- Susan's rule about a certain date would do that.

CHAIRMAN STRAIN: Right.

MS. ISTENES: Right.

CHAIRMAN STRAIN: Because some lots that are created and platted may not work under the new rule. I mean, you might plat them differently or create them currently based on the interpretation of the new rule.

MS. ISTENES: I'll make sure there's no conflict with the nonconformity section too. I think that's kind of what you're alluding to. And that's what that's referring to.

COMMISSIONER CARON: Because isn't that the general rule, that when you go to redevelop, if it's 50 percent or less, as opposed to 50 percent or more, if it's 50 percent or more you have to come up to new standards. If it's below 50 percent --

MS. ISTENES: Correct, the idea for nonconformities is eventually some day everybody will conform as the community changes and codes and regulations change.

This may not be a really great place to do that, only because you've just got approved and developed projects already, and it's so extensive. But, you know, that's really up to the board, you know, to ultimately decide. But I'm certainly happy to present it in two different formats and explain the consequences of the changes.

CHAIRMAN STRAIN: Okay, on Page 83, the third line from the bottom, it says SDPs created after -- and then the date of this ordinance. Could you make the word created I guess approved?

MS. ISTENES: Yes.

CHAIRMAN STRAIN: Wouldn't that be better?

COMMISSIONER MURRAY: Do we want to also see what the figure is, C figure?

CHAIRMAN STRAIN: It would be the next page.

COMMISSIONER MURRAY: Yeah, but they don't have it marked.

MS. ISTENES: I think the intent with created, back to that, is you've got people that have invested money into creating or drafting plats that may not be approved but may be in the review cycle.

CHAIRMAN STRAIN: Okay, well, then submitted. But I'm sorry, they're not created until they're approved, right? Until it's recorded you don't have a greater lot. So if you mean submitted, that's fine too. Let's just say whatever --

MS. ISTENES: Okay, understand.

CHAIRMAN STRAIN: I think it needs to be cleared.

Mr. Murray, did you want to --

COMMISSIONER MURRAY: Oh, no, I just call to your attention on Page 83 when it says see figure, it's blank there. I know you -- I'm assuming you're referencing the figure on the first side.

MS. ISTENES: Yes. I'd have to refer to John Kelly, because usually they don't put the figures in until they're ready to submit it.

COMMISSIONER MURRAY: That's the practice, fine, no problem.

CHAIRMAN STRAIN: And Page 54, does anybody have any questions?

(No response.)

CHAIRMAN STRAIN: When you -- in a lot of PUDs, the measurement of a pie-shaped lot for determining the lot width to meet the minimum standard is measured straight across, point to point, not on the arc. Does that have any -- does this have any bearing on how the lots width is determined on cul-de-sac lots?

COMMISSIONER SCHIFFER: No.

MS. ISTENES: No.

CHAIRMAN STRAIN: Okay.

COMMISSIONER SCHIFFER: But Susan, let me point out something. Here we're discussing yards, and here you're using the word setback. So we really do have to come to peace on which is which.

MS. ISTENES: Yes, they're both defined. And I'll tell you, they are commonly used interchangeably, but there are differences. I will get all of that information for you and we can have a long discussion about it, if you'd like.

CHAIRMAN STRAIN: Please do that with him before the next meeting.

MS. ISTENES: I will.

CHAIRMAN STRAIN: Okay, we're on to Page 85, Susan.

MS. ISTENES: Sorry, I was taking notes.

Yes, 85.

CHAIRMAN STRAIN: Thanks, Stan.

MR. CHRZANOWSKI: Thank you.

CHAIRMAN STRAIN: Deletion of recreational vehicle provision.

MS. ISTENES: Okay. This is as a result of the board adopting an ordinance, No. 08-64. And basically what it did was readopt some provisions in the Code of Laws and Ordinances, I believe, or let me just double check that. And consequently the LDC was not amended at that time, so that is what we are doing now is just removing this language that had already been readopted in another place.

CHAIRMAN STRAIN: Well, but it changed the language when it went into 08-64, I think substantially. And if you delete all of this section, you're going to delete sections that aren't included in 08-64. I pulled 08-64 up, and I've read it. And I'm not sure that it addresses, for example, on Page 86, this entire area that's strike through'd (sic) as number 3.A, B, C and D, which is your commercial vehicles and commercial equipment in residential areas. Is it addressed somewhere else?

MS. ISTENES: I'll be honest with you, we didn't do 08-64, and we're relying on direction from the County Attorney's Office on how to rectify the situation, and this was their direction, so I would ask that maybe you defer to them.

CHAIRMAN STRAIN: You said Gretchen from the County Attorney's Office?

MS. ISTENES: No, their direction.

CHAIRMAN STRAIN: Direction from the County Attorney.

MS. ASHTON-CICKO: Actually, this was an item that Mr. Submitted taken to the Board of County Commissioners for direction. And the board at that time had opted that it come out of the LDC and go into the Code of Laws. And so 08-64 accomplished that.

CHAIRMAN STRAIN: Well, but if you look on Page 86, number three, the parking of commercial vehicles and commercial equipment in residential areas, and it goes on. I've got 08-64 and I don't find that language in 08-64. So does that mean they don't care about the parking of commercial vehicles, they don't have any laws for that, or is it somewhere else and I've just missed it?

MS. ASHTON-CICKO: Actually, I have my backup materials in the back of the room. If I may have a

moment to go pull them.

CHAIRMAN STRAIN: Oh, no. Go ahead, Heidi.

Okay, you know what? We're going to have to take a break before we go home. Why don't we do that now? Because we plan to be out of here about 10 minutes to 5:00. So let's just take a 10-minute break. It's -- come back at 3:45.

Recess.

CHAIRMAN STRAIN: Okay, we're back on the record. We left off, and County Attorney was going to check, apparently some of the language in the definition suggestion to be struck may not have made it into Ordinance 08-64. And rather than belabor the point, County Attorney's Office is going to go back and check and see if it in fact didn't get put somewhere. And if it didn't, I'm sure they'll offer a recommendation by the time we come back. Is that fair, Heidi?

MS. ASHTON-CICKO: Yes, that's fine.

CHAIRMAN STRAIN: Okay. The other thing I noticed, that the language that did get moved over into 08-64, for that part of it in the top involving the recreational equipment, in this document that's being struck, the recreational equipment was a period not to exceed seven days. In the language that got replaced, I believe it's 48 hours.

So I'm a little concerned that if that's right, what are we doing with people who are out there parked now for seven days and all of a sudden we have another ordinance that says it can only be 48 hours? And that is Section B.1 and 2 of the old language that's suggested being struck, as it compared to section five of the Code of Laws, 08-64.

I'm not -- if the BCC was told that this was a straight transfer from one document to the other, then I think there needs to be some clarification to them that they change the restrictions from seven days to two days, if that in case is the -- if that is the fact, after you research it.

MS. ASHTON-CICKO: Yes, I will research it.

My understanding was that it was to be moved into the Code of Laws. If anything was omitted, we'll be back next month with the recommendation on whether that needs to be amended in the Code of Laws or whether there's any sections here that need to remain.

CHAIRMAN STRAIN: Okay. And it wasn't so much the omission, Heidi, as did they know there -- if there is in fact a significant change to this, which seven days to two days is significant for people with RV's. I mean, I got one. I don't know if they knew they were making that change. I think we ought to find out if that change was one that was authorized as well.

MS. ASHTON-CICKO: Certainly.

CHAIRMAN STRAIN: Okay. Anybody else have any questions on 85 and 86?

(No response.)

CHAIRMAN STRAIN: That will come back on whenever we get up to it.

The next page is Page 88. Oh, actually, that -- there's Page 87. This last one carried over to 87. And the top of 87, Item E is also not moved into the new code. So that whole -- items 3.A through E, when you check those, Heidi.

MS. ASHTON-CICKO: Okay.

CHAIRMAN STRAIN: So let's move on to Page 88. This one is the agricultural zoning district's temporary events.

MS. ISTENES: Yes, this one actually came about kind of by discovery. There was some direction given by the board and we realized that it never did get amended into the LDC. And we had been, and I think -- I think we had been offering temporary use permits in the interim until this was adopted in the LDC. And anyway, so we're now going as the board directed some, what, 1999? The and --

COMMISSIONER MURRAY: Catching up.

MS. ISTENES: We're getting there. And we're making this change. And this is essentially to allow the temporary raising of hogs for youth residing in the Estates for presentation at the Collier County Fair.

CHAIRMAN STRAIN: Okay. Are there any questions starting on Page 88?

(No response.)

MS. ISTENES: It's essentially memorializing the practice of issuing a temporary use permit, I think.

CHAIRMAN STRAIN: Okay, but you're charging -- and I think this is fine, you're charging five bucks for

the temporary use permit. But I like the explanation. This minimal fee will defray staff cost and allow the applicant -- this is now these kids -- to become familiar with the governmental regulation and controls inherent to business operations.

COMMISSIONER MURRAY: Yeah, that's helpful.

MS. ISTENES: That's Catherine.

CHAIRMAN STRAIN: For five bucks, look what they're going to buy into. Those poor kids.

COMMISSIONER MURRAY: And may I say that on behalf of the 4-H foundation, as I am a member, we thank you for this. We do. So that we're in good shape. Now the kids can put their hogs up.

MS. ISTENES: I was a former 4-H'er myself, so I can appreciate that.

COMMISSIONER MURRAY: It's a great organization.

MS. ISTENES: It is.

CHAIRMAN STRAIN: Page 89. Any questions?

(No response.)

CHAIRMAN STRAIN: Page 90?

(No response.)

CHAIRMAN STRAIN: On the top of Page 90, you refer to a bona fide 4-H youth development program. I'm not sure what you mean by that, but I'm sure it means somehow they've got to be real. And that's good, rather than a non bona fide 4-H program.

But in D.1 where it talks about 4-H youth development programs and similar youth development programs, if the word bona fide is defensible, after the word similar we ought to insert it so that we have bona fide youth development programs, whatever they may be.

MS. ISTENES: Okay.

CHAIRMAN STRAIN: Then under 1-C where it says once removed for showing and sale, wouldn't it be or sale?

COMMISSIONER MURRAY: No, that would be fine. Showing and sale is common language.

CHAIRMAN STRAIN: Okay, but what if they show it and don't sell it? Is that okay?

COMMISSIONER MURRAY: It still qualifies under common language, showing and sale.

CHAIRMAN STRAIN: Well, I read this as meaning you've got to show it and sell it or it can be there in perpetuity.

COMMISSIONER MURRAY: Under a bona fide 4-H program they would in fact be selling the hogs.

CHAIRMAN STRAIN: Okay, but how about under a bona fide youth development program?

COMMISSIONER MURRAY: Same.

CHAIRMAN STRAIN: How do you know that if you don't know what the program is?

COMMISSIONER MURRAY: You'd have to actually go in and find out whether the child was in a program and operating under that basis. Do we go that far? I don't know.

CHAIRMAN STRAIN: Well, I know. So what difference does it make --

COMMISSIONER MURRAY: I don't have a major problem to changing it to or, but in general language, show and sale and their actions are to sell the thing, so -- I don't care. It's fine.

CHAIRMAN STRAIN: Under D, the permit may be revoked for cause. I'm just curious, what kind of cause?

MS. ISTENES: I don't know.

CHAIRMAN STRAIN: Okay, well, I'm just -- I was just curious, what kind of cause can you have?

MS. ISTENES: I'm guessing it's a catchall phrase in case there's some issues with incompatibility or noise or --

COMMISSIONER MURRAY: You found out they were in a non bona fide program.

MS. ISTENES: -- waste problems or wild hogs or something, I don't know.

CHAIRMAN STRAIN: Okay.

COMMISSIONER CARON: That's pretty standard language, isn't it, for --

CHAIRMAN STRAIN: Oh, yeah.

MS. ISTENES: Yes.

COMMISSIONER CARON: -- this kind of thing?

MS. ISTENES: Yes.

CHAIRMAN STRAIN: I was just wondering what it meant.

The next one we have, I'm assuming everybody doesn't have any questions on the 4-H ordinance. So Page 99?

(No response.)

CHAIRMAN STRAIN: Page 99 is the early entry TDR program extension. Michelle Mosca isn't here. So do we want to discuss it or wait till the 26th of February?

MS. ISTENES: I see David Weeks, and I'm hoping he is here to discuss that.

CHAIRMAN STRAIN: I'm not sure how much he'll understand about what Michelle might have done.

MR. WEEKS: He will not comment on that.

COMMISSIONER MURRAY: You just did.

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

I'm actually the author of this, myself and a former staff member.

The short and simple of it is, the TDR bonus provision within the Future Land Use Element of the GMP was amended in 2008 to extend the time period for which the early entry bonus could be awarded. This amendment simply brings the LDC language into compliance, or conformance and consistent with that GMP provision.

CHAIRMAN STRAIN: Then basically the only change is the Page 100 with the new dating in there, and the strike-through.

MR. WEEKS: And also over on Page 101.

CHAIRMAN STRAIN: Oh, yeah, same thing.

Okay, anybody have any questions on any of this?

COMMISSIONER SCHIFFER: A small one.

CHAIRMAN STRAIN: Mr. Schiffer?

COMMISSIONER SCHIFFER: Dave, why did you bump the start date back? I understand why you bumped the finish date forward, but it just seemed strange. Is there a good reason?

MR. WEEKS: Yes. If I recall correctly, the -- there was a difference from when the -- I think the '05 to '04 might have been a correction of an error.

COMMISSIONER SCHIFFER: Okay, that's enough. That's good.

CHAIRMAN STRAIN: Yeah, but isn't there a question about the setback and yards involving that issue?

MR. WEEKS: I hope not.

COMMISSIONER SCHIFFER: It's the yardage.

CHAIRMAN STRAIN: It's a yard.

COMMISSIONER SCHIFFER: He only bumped it back a yard, so --

CHAIRMAN STRAIN: Okay, then it's -- nobody have any problems on this one? We're done with it, I guess. Sounds good.

Next item is agricultural excavations. Chris (sic) Wright.

COMMISSIONER SCHIFFER: Or lack of.

CHAIRMAN STRAIN: Oh, this will keep us busy for a little while.

COMMISSIONER KOLFLAT: What page is that, Mark?

CHAIRMAN STRAIN: That's Page 102.

COMMISSIONER KOLFLAT: Thank you.

MR. WRIGHT: Good morning, Mr. Chairman.

CHAIRMAN STRAIN: Good afternoon.

MR. WRIGHT: Commissioners. Jeff Wright, for the record, Assistant County Attorney.

And there's one thing that we wanted to point out on the front end, and maybe I can put this on the overhead. We've added a word. And it appears twice in this amendment. And it's the word new. Obviously we'll be bringing back an updated version. This is kind of a last minute thing.

In going over these amendments our goal here was to protect existing rights. We don't want to interfere with any hit that exists already but want to just going forward have this regulation apply to prohibit below ground aquaculture. So I wanted to point that out. It's not in your packet. The new one will be in your packet. And that's all I really have. Hopefully it's self-explanatory. If you have any questions, I'd be happy to answer them.

CHAIRMAN STRAIN: Anybody have any questions on Page 102?
(No response.)
CHAIRMAN STRAIN: Your fiscal and operational impacts, basically the fiscal impact on landowners would be difficult to pin down in such a way that covers all operations. But I think it would be obvious that an above ground without an excavation, which means you have nothing in which to hold the water available to you from the resources on-site. Basically have to bring in an embankment, or bring in a shell or bring in -- whatever you got to do is going to be more expensive. And part of the problem that we have with this is not the fact that people wanted an aquafarm, it was that they wanted to clear and excavate. But the clearing in the sensitive areas was the big issue.

This would still allow them to clear, they just wouldn't be excavating. I'm not sure if the excavation is a big problem if they can clear.

MR. WRIGHT: Well, this came up --
CHAIRMAN STRAIN: I remember.
MR. WRIGHT: -- in relation to Fozzi (phonetic). So it is focused on aquaculture. I realize the concern. And it does fall into the category of agricultural, but we're really not addressing clearing with this amendment, we're addressing specifically underground aquaculture, particularly the pits in the sending lands.
CHAIRMAN STRAIN: Right. But if you allow in the sending lands above-round aquaculture, in order to do so you've got to clear everything out anyway. What have we done to help the sending lands?
MR. WRIGHT: We've hopefully limited the ability to dig big holes that stay there forever. That's the aim.
CHAIRMAN STRAIN: Okay. You're saying those are bad compared to bulldozing all the trees down and putting something else there, even on an interim basis.
MR. WRIGHT: Oh, I'm not taking a position on good or bad. But it did come up in relation to Fozzi, and Nancy Payton in particular said could we do something about the pits in the sending lands, and the board said sure, and directed staff to come back with something that was intended to address pits in sending lands.
MS. ASHTON-CICKO: Mr. Chair, if I could interject, this one was board directed and we did narrowly limit the aquaculture per the board's direction.
CHAIRMAN STRAIN: Okay. Well, I mean, I've still got questions, though.

Does -- by putting this in the sending on -- this only applies to the sending lands, or is it all the RFMU district?

MR. WRIGHT: Just the sending lands.
CHAIRMAN STRAIN: And are the sending lands on -- the sending lands are sending lands because they're acknowledged to be environmentally sensitive.
MS. ASHTON-CICKO: Uh-huh.
CHAIRMAN STRAIN: So the object here is to prevent the digging of the ditch which would encourage destruction of the sending lands for the possibility of earning money off the excavation versus really trying to do aquaculture. That was the whole issue I think from the beginning.
MR. WRIGHT: Yes.
MS. ASHTON-CICKO: Uh-huh.
CHAIRMAN STRAIN: Okay.
COMMISSIONER SCHIFFER: Question.
CHAIRMAN STRAIN: Go ahead, sir.
COMMISSIONER SCHIFFER: Yeah, and I think that is it, Mark. I mean, we're just preventing burrow pits in the name of agriculture.

But what if somebody really did want to go into the ground a little bit with footings and stuff like that? Do you think they'd be trapped by the word above ground, or -- you know, if you're going to build it above ground, you're going to be building a wall, probably, or mounding earth up against the wall or somehow waterproofing mounds of earth or -- I mean --

MR. WRIGHT: I understand what you're saying. This thing went through several iterations in order to address the cattle pits and the amount of dirt that might be moved. We tried to put various limitations on it, and we came up with this simple solution.

Now, I think that an above-round facility probably would have to impact the earth a little bit. And I'd like to think, though, that a reasonable person could look at the operation and determine are we dealing with an

above-ground operation or a below-ground operation. Based on just a reasonable assessment of the operation itself, I think that more than nine times out of 10 you'll be able to put it in a category of above ground or below ground, based on the planned operation.

COMMISSIONER SCHIFFER: And I think the other issue is that again, I know the abuse of this agricultural -- aquaculture. But it would be wiser for these people to be somewhat in the ground when there's cold temperatures and everything. They could take advantage of the insulation of the earth. Where now we're sticking them up in the air.

So when you looked at this, did you look at like a minimal amount of excavation, like, you know, half in the ground and half out or something that they could actually start to create something where they could take advantage of the earth for insulation?

MR. WRIGHT: Well, we didn't address it specifically from that angle. I did talk with Stan Chrzanowski about the cone of depression for a typical cattle pit, but we didn't really get into thermal warmth of the earth or anything like that and how that might play in, just tried to keep it simple.

COMMISSIONER SCHIFFER: Did anybody -- any aquafarmers meet with you guys and make any suggestions?

MR. WRIGHT: No, although there has been one active stakeholder throughout this process, and I showed their representative this language this morning and they seemed to be comfortable with it. However, the particular stakeholder they have is an existing operation. So we would -- I'd be happy to -- I'm not really sure that the effort has been -- a thorough effort has been made to talk with all the property owners in the sending lands to determine what their input would be. But we could definitely put the lines out and try to get their input.

COMMISSIONER SCHIFFER: Okay. Because, I mean, if some of these -- if somewhere they're finding fill and they have to keep it above ground, they're actually going to be doing more damage to the ground around it to do that. Where if they put it half in, half out, they could balance out somewhere. And obviously the intent is to -- the deep burrow pit.

But anyway, I would like to see somebody who actually -- aquafarms to see -- because they may come in and say forget it, you can't do it because the temperature is going to kill everything. And it's not going to be worth it.

MR. WRIGHT: Mr. Chairman, if I may go back to your question about fiscal impacts, this is the kind of variables that you have to -- if you really wanted to determine what the fiscal impact of this proposed amendment would be, you would have to take into account a lot of different types of set-ups for the operations, and that's why those different animals are listed. But in addition to those species that are listed, there would be different configurations for the operations.

CHAIRMAN STRAIN: But in line with where Brad may be going on this, if you were to allow an excavation to the extent that the material used was needed for the facility that was being constructed, so that if you went partially in the ground and partially above, you would only be allowed to excavate enough to create the berm around the facility.

COMMISSIONER SCHIFFER: Right.

CHAIRMAN STRAIN: That would help shore up the sidelines. That I think would --

COMMISSIONER SCHIFFER: That's good, Mark.

CHAIRMAN STRAIN: -- would get it somewhere closer to a compromise on reality. And see, the reason that becomes important is I would think that it would seem like it's unfair for a local municipality to overburden the property rights afforded by Florida statute. And in essence that seems like what you're doing. The statute says you can do aquafarm, but we're going to make it so that -- how you can do it, but it's going to cost you so much you won't want to. I'm not sure that was the intent of the statute. So if we look for a compromise, it might be better and more defensible. That's just a suggestion.

Mr. Murray -- Brad?

COMMISSIONER SCHIFFER: And just to follow through on that, Mark, the wisdom of that is you have the fill to fill the hole in if the aquafarm fails on-site.

CHAIRMAN STRAIN: Push it back in.

COMMISSIONER MURRAY: Yeah, and you also don't destroy as many trees around in order to get the fill in the first place.

But do we know what acreage is really essentially minimum for an aquaculture of any of these items?

MR. WRIGHT: I have seen, for example, Ngala, they have what they call an aquaculture operation. And it's literally in a pond that could, you know, fit in this small area here. So I think there's quite a bit of variation in size.

COMMISSIONER MURRAY: Yeah, but I think that one is expositional. I don't believe that's a money-making intentional aquaculture. I remember his comment about that, and I thought that was expositional.

Because getting back to what Mark was saying, the amount of trees that you're going to take down here, first of all, we're in a sending land, we're going to take the trees down. To what -- you know, to what advantage are we really providing the sending lands security? I don't know if we've -- I don't know if we've achieved a result.

MR. WRIGHT: Well, we welcome the input -- the suggestion on -- I believe, I want to make sure I understood it, maybe have a quantity of excavation that would be allowed in relation to an above-ground operation.

CHAIRMAN STRAIN: Not to exceed what could possibly be used on-site above ground.

COMMISSIONER SCHIFFER: Right.

COMMISSIONER MURRAY: Yeah.

CHAIRMAN STRAIN: And then you got no incentive then left over excavate or excavate like everybody's concerned. Plus with the material left there, if it had to be restored the restoration of the material is there.

And I think too that that would protect us a little bit from someone saying wait a minute, the statute gives me the right, you're unfairly burdening me from exercising my rights as a property owner under Florida statutes.

MR. WRIGHT: I believe you're referring to the Right to Farm Act?

CHAIRMAN STRAIN: Yes.

MR. WRIGHT: Okay. I think during the previous discussion this came up. The position that was taken by the county was that that law applies to bona fide operations. And in the case of an empty field that has the perspective operations in mind, our position would be that that doesn't apply. In other words, the Right to Farm Act and the limitation on the local government's ability to interfere with farming activities, that applies to bona fide farms and not to future bona fide farms.

CHAIRMAN STRAIN: Okay. I mean, I'm not disagreeing. I don't know -- your statement's fine. Was there a point? I don't get what you're trying to get at.

MR. WRIGHT: The point is I think that you said that we're running afoul of the statutes by interfering with rights that people have.

CHAIRMAN STRAIN: I want to make sure someone couldn't claim that we are. That's why I was looking for a compromise, to make sure that we didn't breach that area where we're putting up so many roadblocks so they really can't exercise their rights that the Florida statutes provide to them.

MR. WRIGHT: I understand. The middle ground. And we'll come back next time with our effort to capture that.

CHAIRMAN STRAIN: Okay.

MS. ASHTON-CICKO: Initially we looked at a flat-out prohibition, and so the above ground was actually a compromise to not have a flat-out prohibition. But we'll evaluate what you've proposed today and be ready to discuss it at the next meeting.

CHAIRMAN STRAIN: Well, I mean, lacking a flat-out prohibition you're not really helping the sending lands that much, because if you're going to create it there and clear all the property anyway, whether it's above or below ground, you still got a problem. But if you disincentivize the excavation, that might limit the amount of occurrences this has, and you can disincentivize it by insisting the excavation can be no deeper than that to be used on-site.

MS. ASHTON-CICKO: Okay.

CHAIRMAN STRAIN: And that all fits together. And then no one's harm -- I don't see how anybody's harmed by that by promoting excavation under a false premise. So --

COMMISSIONER SCHIFFER: One thing. Jeff, could you call one of the farmers and see if there's a width that would make sense? I mean, every aquaculture think I've seen is on narrow long troughs. I mean, we don't want some guy to dig a 20-foot hole with two 10-foot mounds on each side of it either, you know.

MR. WRIGHT: Surface dimensions.

COMMISSIONER SCHIFFER: Just see if there's like a trench width that we could maximize it out. I mean, if they say eight feet, we'll give them 10, something like that.

CHAIRMAN STRAIN: The University of Florida has a site where you can pull all that information. Shows

you how to create an aquafarm and do all that stuff for each type of fish and everything.

MR. WRIGHT: Yes, okay.

CHAIRMAN STRAIN: So you might just want to pull that down and you might get the information right from there.

MR. WRIGHT: Okay, thank you.

CHAIRMAN STRAIN: Okay, that gets us past aquaculture excavations.

Now, Steve -- he's still here. Lucky fellow. It's 4:08, and we're going to proceed on with protection of endangered, threatened or listed species -- well, these all -- all this following conservation ones, I'm surprised there aren't certain individuals that I expected to see in the audience. I don't know if that's because they didn't think we'd get to these today.

Steve, these were -- you have a huge list of people you were constantly in touch with on these particular items. Were they all aware this was going on today?

MR. LENBERGER: For the record, Steven Lenberger.

Yes, I've been e-mailing the items on this meeting, as well as your other meetings for the LDC amendments on a continuous basis. So they should be aware of it.

CHAIRMAN STRAIN: Okay. Well, we haven't got time to waste, so we'll just keep plowing ahead.

You want to start off with any kind of presentation? We'd be starting on Page 125.

MR. LENBERGER: Well, the amendments here are all GMP related. The GMP was amended in 2007. And obviously we came to you last year and we went back to stakeholders. Worked very hard over the last year, actually more than a year, drafting these amendments, listened very carefully what they had to say. Had a lot of support from them, had a lot of support from management. I think we have amendments that will work. I hope so.

I'm here to answer any questions. I can go through them and just hit the highlights or we can just go page by page, or however you'd like to address it.

CHAIRMAN STRAIN: Oh, we'll go page by page. Then we'll probably have questions, and you can highlight them as we go along, if that works for you.

MR. LENBERGER: That's fine.

CHAIRMAN STRAIN: Okay. Let's start on Page 125. Does anybody have any questions on Page 125?

(No response.)

CHAIRMAN STRAIN: It's the preamble so it may not be a lot.

Page 126?

(No response.)

CHAIRMAN STRAIN: Anybody?

Okay, Steve, on Page 126 on the second sentence there's a -- talks about the number of endangered, threatened and commercially exploited plants in Florida, and there's what, 400, 500 -- just under 600, almost 550. That's a lot of plants. Of these, at least 124 have been documented to occur in Collier County, many of which are only found in the eastern parts of the county.

So then you go down to your two paragraphs below that on the last line, seems like in those parts of the county they are specifically exempt from the provisions. Is that meaning the provisions that this whole effort would apply to? They don't have to preserve the plant species out there if this were to go into effect.

MR. LENBERGER: This exemption, well, it's taken right from the code. I just put it there for your reference. But it says right there the regulations in this section are applicable to lands in the urban designated areas and areas within the rural fringe mixed use district, as identified on the FLUE for Collier County.

And then it gives these exemptions, and they're in the amendment. They were not changed, but they're there just for reference.

CHAIRMAN STRAIN: So the RLSA would be exempt from these provisions?

MR. LENBERGER: Exactly as stated there. I'll read them. Agricultural operations that fall within a scope of Sections 163.3162(4), or 823.14(6), Florida Statutes. All development within the Rural Land Stewardship Area district, except as specifically provided in Section 4.08.00. And all development within the North Belle Meade overlay, as specifically provided in 2.03.08 are exempt from the provisions of Section 3.04.00. And that citation -- well, I added the 3.04 because that's the plants. But is in 3.04.01. That's on -- I'll find the page for you.

CHAIRMAN STRAIN: That's okay. I think my question is --

MR. LENBERGER: Okay.

CHAIRMAN STRAIN: -- we have an urban area that's quite built out. We have a rural area that isn't quite so far built out. Seems that the most valuable lands would be in the areas that aren't quite so built out. But it seems by this paragraph that those areas are exempt from this action if it goes into effect. Is that right?

MR. LENBERGER: They're exempt, yes.

CHAIRMAN STRAIN: Okay. It just seems contrary to common sense is all. And I'm wondering, we're going to a huge effort to preserve plants in an urban area where there's very few of them, but in the rural areas where there's probably still viable communities they're not protected. I'm just -- I want to make sure that's what I'm understanding to be the case.

MR. LENBERGER: The rural lands have their own rules, as you know. And we went through the comprehensive plan when it was updated. And as far as the listed plants, they would -- in those rural areas, and you mentioned specifically the RLSA area, the habitats were mapped out according to sending, receiving. And if you would look at listed species, they most likely would be found in those sending areas.

CHAIRMAN STRAIN: And in reading the paragraphs you provided me here, the preservation and wetland areas within the urban area or not so urban area, just before the RLSA also are the areas where most of these plants would be automatically preserved and captured by the preservation of those areas; is that accurate?

MR. LENBERGER: Some of them would be. I went through each species that I included in the amendment and either included them or not included them. And some for that very reason, that the habitat would already be protected. Such as hand fern, I mentioned in there, that they would most likely be in hammocks or wetlands with good quality wetlands. So I did not include them in the amendment.

CHAIRMAN STRAIN: Every project has some kind of preservation requirement in today's processes. What percentage of these plants do you think are automatically caught in the current processes? And the reason this is important for -- at least to understand is it looks like we're creating a whole nother layer of regulation on a whole nother grouping of concerned species.

Nothing's wrong with that. But if we already got layers there that protect a huge percentage of them or enough of them so that we're not really causing that much of a problem, I'm wondering what we're going through all this for.

MR. LENBERGER: I guess the best way to look at that is probably for you to turn to Page 141, and let's take a look at the listed plants. It would be easiest to go through that.

CHAIRMAN STRAIN: Okay.

MR. LENBERGER: The plants are broken down into two categories: Rare plants and less rare plants, for lack of a better term. But they are just that. Plants listed as rare, they are rare. You're not going to find them very often. Plants listed as less rare, you're going to see, you know, in different areas of the county, depending on the habitat quality.

As far as your question would you normally see those in areas that would be preserved as part of the county rating system? I would say you would capture in a number of preserves plants listed as less rare on a regular basis. Plants listed as rare are going to be very spotty. They are truly rare. So getting those in a preserve is going to be very iffy, if they're even going to be on-site.

So that's kind of the breakdown.

As far as the less rare plants, I've included them here. And I was looking at the comp. plan, and we have a lot of amendment changes here. And one of those was preserve management plans. And the GMP was amended to try to -- and it has language talking about maintaining species diversity in preserves. And I kind of looked at that, okay, maintaining species diversity. I kind of looked at these epiphytes and said okay, if they're not in the preserve then and you have some in an area on your site within the heights -- distance from the ground, then just move some of them over. I capped it at 10. And that would give you a seed source. And that's kind of in keeping with the maintaining species diversity.

It's not like saying you have to preserve that area, it's just saying if they're not in a preserve you have them on-site, move some in the preserve, you're maintaining some biological diversity. That's kind of the thrust on the less rare plants. The rare plants are going to be really spotty, if you see them.

CHAIRMAN STRAIN: Well, just so you know, I think you did a really good job, especially in explaining it to us in the documentation and laying it all out. But that also then made it easier for some of us to ask questions. So

you're probably going to get a lot more questions --

MR. LENBERGER: That's okay.

CHAIRMAN STRAIN: -- because of the way you did it. And I'm glad the way you did it, because it's much better to understand it than it was previously.

So with that in mind, are there any other questions on Page 126?

(No response.)

CHAIRMAN STRAIN: If not, how about 127?

(No response.)

CHAIRMAN STRAIN: And then 128?

(No response.)

CHAIRMAN STRAIN: On 128 the fiscal and operational impacts, there's a cost involved with reviewing for the survey of the environmental firms you were talking about. And then the -- towards the bottom of that page talk about gopher tortoise preserves and working those over. And it's all based on quantity of acreage that's involved and things like that.

How many acres a day can these environmentalists review on a survey; do you have any idea? Is it something they move through pretty fast? Is the cost relatively minor?

MR. LENBERGER: The -- well, the survey, I did speak to several firms about this. They usually go out in teams, depending on how big the project is. A lot of times they like to do it in a certain amount of time, whether that's a day or two, depending on the size of the area they're surveying. So they'll either send out two biologists or three, if they need to get through it quicker. So it's usually how many they put on a site at a time.

CHAIRMAN STRAIN: Okay. Because that just kind of determines where the cost lies.

Anybody else on Page 128?

(No response.)

CHAIRMAN STRAIN: Page 129?

(No response.)

CHAIRMAN STRAIN: Page 129 actually begins the endangered species language. Under A.2, United States Fish & Wildlife Service and endangered or threatened, and as provided for by the Bald and Golden Eagle Protection Act.

On the page after that it talks about provisions and management plans by the FFWCC. Are they comparable? Is there no conflict between A.2 for the measures utilized there versus the management plans that would be utilized in C.2.A?

MR. LENBERGER: Provisions in A, both one and two, are the laws protecting these animals.

CHAIRMAN STRAIN: Right.

MR. LENBERGER: As far as the management on the next page, the Fish & Wildlife Service does not have a specific growth management plan they work in conjunction with the state agency. And the state agency has the Bald Eagle Management Plan which they've adopted.

CHAIRMAN STRAIN: Okay. Does --

MR. LENBERGER: That wouldn't prohibit the Fish & Wildlife Service from making additional comments, of course, in regards to the species. But generally they work together. And the management plan adopted by the state is coordinated with those agencies, being Fish & Wildlife Service, as well as stakeholders.

CHAIRMAN STRAIN: Okay. Well, then we'll move to Page 130. Does anybody have any questions on Page 130?

(No response.)

CHAIRMAN STRAIN: The middle of that paragraph under 2.A -- I shouldn't say the middle, third line down in the underlined big section at the bottom, it says recommendations of the FFWCC or the USFWS. Are they always both required or is it one or the other? And do they differ very much?

MR. LENBERGER: Well, generally for federal listed species one will defer to the other agency, or they work together. So it could be either/or. And the stakeholders wanted or in there.

CHAIRMAN STRAIN: Okay. And this would require listed plant and animal species. So this does kick in then the management plans that were now missing for plant species; is that correct?

MR. LENBERGER: That's new language, so I'm assuming that's the purpose of it.

Okay, I'm trying to find which line you're --

CHAIRMAN STRAIN: Right below the one I just referred to with the "or" question.

MR. LENBERGER: Right, listed plants and listed animals.

CHAIRMAN STRAIN: Okay, previously we didn't have that language, and it was just listed animals that we were concerned about.

MR. LENBERGER: That's correct.

CHAIRMAN STRAIN: Okay.

Under B, management guidelines contained in various agency publications. The word various is a little concerning. It's one of those ambiguous terms that someone could come in and say what does various mean? What agency are you talking about? We had them listed here for a while. What was the reasoning for not listing them and just using the word various? And how defensible is that if your department has to tell someone that the various agency they picked is not the one that you want them to use?

MR. LENBERGER: We'd have to look for a different term other than various, if you're concerned about that.

They were taken out from the discussions we had at this board last year and why we have all these references in here. And I worked through this with management and the stakeholders and basically saying okay, you know, there's different publications the agency use and require you to draft management plans and survey for listed species. And do we really have to list them here? Which is the reason we took them out. A term other than various agency publications? Sure, we can think of another word to put there.

But basically they're environmental professionals out there. They do this regulation all the time for the state and federal government, as well as the county and cities. You know, they know the publications out there, what's the most current. So --

CHAIRMAN STRAIN: Well, here's my concern. You have environmentalists of different caliber. Some are hired by developers to do a specific task. Task for the developer may be minimized by impacts from environment. The other ones may be non-profits that work for what they feel the general good of the public. And their mission is more or less I want to make sure that I'm going to protect everything to the max. One would probably go to a different agency than the area. And the two agencies -- the two different publications may be different in their management plans.

How would you then as a staff member with that language be able to tell them which one they have to use?

MR. LENBERGER: Generally speaking they would use the most updated plant plan, the current plan. If there was a discrepancy and we were concerned about it, we would ask for technical assistance from the agencies.

MR. LEFEBVRE: Ms. Caron?

MR. LENBERGER: Management guide is contained in agency publications. You know, we can write a publications recommended by the agencies. I mean, we could work on that a little bit.

CHAIRMAN STRAIN: Well, I think that's what I'm trying to ask. Because the word various is so ambiguous I think it could present a problem, and that's the only reason I suggested it.

Did you have a question, Donna?

COMMISSIONER CARON: Well, I was just going to ask if they ran into conflicting management guidelines. Does that happen now?

MR. LENBERGER: I haven't experienced that, no. They use the current publications and the guidance from the agencies. I haven't seen a problem with it. But we'll work on that language. We can --

COMMISSIONER MURRAY: Mark?

CHAIRMAN STRAIN: Yes, sir.

COMMISSIONER MURRAY: If you remove the word various, you still have the same problem contained in agency publications. Are we restricting -- are there only certain agencies that we relate to?

MR. LENBERGER: Well, it's the U.S. Fish & Wildlife Service and the Florida Fish & Wildlife Conservation Commission are the agencies charged by the state and federal government for regulating wildlife, so those are the two agencies.

COMMISSIONER MURRAY: And the agencies -- are the publications we're referring to here their publications?

MR. LENBERGER: Many of them are their publications. There are other publications out there that they reference. So they would be utilized as well.

COMMISSIONER MURRAY: So couldn't we say contained in agency reference publications?

CHAIRMAN STRAIN: Yeah, I mean, something like that.

COMMISSIONER MURRAY: Agency reference publications.

CHAIRMAN STRAIN: Well, you actually could say -- list two agencies and any referenced publications of theirs, something to that effect, and that would get everything that you're talking about.

COMMISSIONER MURRAY: And if they've changed their desire to go to "X" and go to "Y", then they'll reference that. You know, that's what you'll note.

CHAIRMAN STRAIN: Okay, I think that would help it.

Any other questions on 130?

(No response.)

CHAIRMAN STRAIN: If not, 131?

(No response.)

CHAIRMAN STRAIN: Page 132?

(No response.)

CHAIRMAN STRAIN: Anybody on Page 133?

(No response.)

CHAIRMAN STRAIN: 6.A up on top references a time frame for gopher tortoise surveys. No more than six months old.

I know when you go out to develop property you have to do an EIS in some cases and you do your survey so your EIS is accurate. But do you really feel that within six months of the writeup of the EIS the format of that document's issues into a site plan, the site plan formatted into by engineers, a manner in which it's acceptable to the county and submission to the county, all that's going to get done in six months?

MR. LENBERGER: The six-month time frame is actually what came from the Florida Fish & Wildlife Conservation Commission, which is the agency for the state which regulates gopher tortoises.

We also included language, or within a time frame recommended by the Florida Fish & Wildlife Conservation Commission, to give some flexibility there, in case they should say, okay, eight months is fine, a year is fine, whatever the case may be. That's why we added also within a time frame recommended by the agency.

CHAIRMAN STRAIN: They do have some flexibility in those time frames?

MR. LENBERGER: Well, the six months is what they have told us to use. But we wanted to add the flexibility in the code in case they decide maybe on a project-by-project basis, or whatever the case may be, that more time is fine or --

CHAIRMAN STRAIN: Okay, any other questions on Page 133?

(No response.)

CHAIRMAN STRAIN: Page 134?

(No response.)

CHAIRMAN STRAIN: Page 135?

(No response.)

CHAIRMAN STRAIN: Up on top, the last line of 135, the top paragraph, the location of thickets potentially used by hatcheling and juvenile gopher tortoises shall be identified in the Protection Management Plan, and any gopher tortoises within the areas shall also be relocated.

Okay. If it's identified in a Protection Management Plan, wouldn't it be protected and managed?

MR. LENBERGER: This is under new 8, starts on --

CHAIRMAN STRAIN: Yes.

MR. LENBERGER: -- 134. And it says, all gopher tortoises shall be captured and relocated within a development footprint prior to any site improvement in accordance with the Florida Fish & Wildlife Conservation Commission guidelines and the Protection Management Plan approved by the county manager or designee.

This is under the relocation section.

CHAIRMAN STRAIN: Right.

MR. LENBERGER: So the Protection Management Plan would include a relocation plan.

CHAIRMAN STRAIN: Understand.

MR. LENBERGER: So if you're concerned about that, we can -- shall be identified on the relocation plan

would work just fine. Because that's what's under this section.

CHAIRMAN STRAIN: Now, it's probably my reading of it that's wrong, but I just want to try to understand it.

COMMISSIONER MURRAY: It looks superfluous, actually. I don't know why you added the location of thickets potentially used by hatcheling. In other words, you're saying -- you're giving a second set of eyes on it, so to speak. That's what you're really mentioning here?

MR. LENBERGER: We're mentioning that, you know, we've identified these areas, it's in the literature that they're on-site. All the little baby tortoises are on these very low areas of grapevine. It's just a fact, that's where they are. And we're just flagging it out and saying hey, some consultants -- actually, most of the consultants were aware of this. Some found it on their own, some found out through the literature. There was one that wasn't aware of it. So it's more identify it because a significant population, if not most, if not all your babies are going to be in this area.

COMMISSIONER MURRAY: And I see it from that point of reference.

You made it a new sentence. Okay, I mean, it could -- I think it could be left in there. I would have put it in italic or something in order to make the point I guess that it's a second look at the issue. But --

CHAIRMAN STRAIN: The only concern I had is it said you'd identify the thickets. They're in the Protection Management Plan, and then you've got to remove the gopher tortoises from them. That's what I -- so why would you want to remove the gopher tortoises from places they should be?

COMMISSIONER MURRAY: Well, it says gopher tortoises shall be recaptured and relocated from a development footprint. So it's all referenced --

MR. LENBERGER: It's all under the relocation section.

COMMISSIONER MURRAY: It's all under the relocation aspect of it. In other words, the big guys you can find, pick up and move, but you've got to look for the little ones.

MR. LENBERGER: Little ones too. So it's under the relocation section. But I --

COMMISSIONER MURRAY: Yeah, I --

MR. LENBERGER: -- I could work on it.

CHAIRMAN STRAIN: So the Protection Management Plan is going to locate all the thickets, whether they're in the plan or not. Is that what this says then?

MR. LENBERGER: Well, this is mainly focused on the relocation. We want you to check those thickets so you don't just bulldoze them over, and relocate them. But I think Protection Management Plan seems to be the hangup here. That includes the relocation. So I can just identify it in the relocation plan.

COMMISSIONER MURRAY: Special care should be given to.

CHAIRMAN STRAIN: That would be helpful if you'd put it -- if you'd change that language, yeah.

MR. LENBERGER: I'll work on that.

CHAIRMAN STRAIN: 136, any issues?

(No response.)

CHAIRMAN STRAIN: 137?

(No response.)

CHAIRMAN STRAIN: 138?

(No response.)

CHAIRMAN STRAIN: Okay. Oh, Item 2.C. A survey by -- and then the gopher tortoise relocation. Locating any gopher tortoise burrows on-site within 50 feet of proposed construction. Relocation of gopher tortoise will be required when the burrows are in harm's way of the construction activity.

So if they're within 50 feet they're considered in harm's way. And if they're outside 50 feet, that means they're outside of harm's way?

MR. LENBERGER: Fifty feet is the distance given by the Florida Fish & Wildlife Conservation Commission as what you should stay away from.

CHAIRMAN STRAIN: Okay, that's what --

MR. LENBERGER: -- the gopher tortoise.

But, you know, if it was let's just say 45 feet and the game commissioner came out and said, well, I don't think it's going to hurt it and it stays, well, then they wouldn't have to move it. It says relocation of tortoise will be required when the burrows are in harm's way. We didn't want to put 50 feet. It says harm's way. And we have

flexibility with the agencies.

CHAIRMAN STRAIN: Okay.

Page 139?

(No response.)

CHAIRMAN STRAIN: Page 140?

(No response.)

CHAIRMAN STRAIN: I have a question. You took out for panther for projects located in priority one and priority two panther habitat areas, and you replaced it with primary and second area zones. This became a real big issue during the review of the RLSA.

COMMISSIONER MURRAY: Yes.

CHAIRMAN STRAIN: We had speakers there who wrote the panther studies and all this other stuff, and we try very carefully to determine what is considered primary and secondary. Because there was a lot of argument that secondary zones included farm fields. And to a point. We were trying to get that nailed down. We got it somewhat defined. But where is the definition that you're using so that if someone reading this knows where the primary and secondary zones are?

MR. LENBERGER: Well, they're established by the U.S. Fish & Wildlife Service.

CHAIRMAN STRAIN: Okay, then why do we have a concern with that?

MR. LENBERGER: Well, it's updating the language. It used to be called priority one and priority two. Now they're called primary and secondary zones. So it's updating the language.

CHAIRMAN STRAIN: Can you provide us with a definition of those zones when you come back?

MR. LENBERGER: Definition? Sure, I have the map. I guess you probably have all seen this.

CHAIRMAN STRAIN: No, I never saw that one before.

MR. LENBERGER: Is this working? Okay.

The primary, secondary zones are indicated by the crosshatching, which I'm pointing at. Can you see my finger here?

CHAIRMAN STRAIN: Yeah.

MR. LENBERGER: So the primary would be the red hatching, this direction. And the secondary would be here. It was my understanding that they no longer use the priority one and priority two, but they use primary and secondary zones. It was just updating it.

But I can get a definition.

COMMISSIONER MURRAY: You could also just reference --

THE COURT REPORTER: Mr. Murray, could I get you on the record?

COMMISSIONER MURRAY: I apologize.

Couldn't you also just reference or include the graphic that depicts, or are you going to say to me that this changes?

CHAIRMAN STRAIN: Well, let me follow up then. Because before you say that, that may lead to the concern that I have.

MR. LENBERGER: Okay. Well, this is just meant to be an update. You're looking at the issue of how it relates to previous discussions you've had.

CHAIRMAN STRAIN: Well, your -- it says for projects located in primary and secondary zones, the management plan shall discourage the destruction of undisturbed native habitats that are preferred by the Florida Panther. And then it goes on about intensive land uses.

The problem is the argument that the scientists gave us was that for a certain distance the farm field, even though they're disturbed, are considered secondary zones that they believe are essential to the panthers' value.

Well, that is the definition that I'm wondering how we're fitting in to the process here, if we are, by referencing primary and secondary zones. How much of that secondary zone is supposed to be protected versus the primary. Because if you can go right up to the primary with destruction, you've eliminated the secondary zone. Is that a necessity? Is that a concern or is that something that we should be looking at as far as a definition goes? It's going to come up in future issues we got to have before this Planning Commission, and if we're talking about it now, we ought to get a handle on it.

MR. LENBERGER: All right. Well, I'm just looking at it now. It just says the management plan shall

discourage the destruction of undisturbed native habitats.

CHAIRMAN STRAIN: Right.

MR. LENBERGER: All right, that are preferred by the Florida Panther by directing intensive land uses to currently disturbed areas.

CHAIRMAN STRAIN: And Steve, what that seems to be saying is that a secondary zone isn't a secondary zone unless it's undisturbed. But that's not the way the scientists were talking to us.

MR. LENBERGER: No, what it's saying here is projects within the primary and sec -- it says for projects located in primary and secondary zones.

CHAIRMAN STRAIN: Right.

MR. LENBERGER: The management plan shall discourage the destruction of undisturbed native habitats that are preferred by the Florida Panther by directing intensive land uses to currently disturbed areas.

So it's talking about undisturbed native habitats within the primary and secondary zones.

CHAIRMAN STRAIN: Right. And so if it's a -- if it's in the secondary zone but it's not undisturbed, meaning it's a farm field or something else, it doesn't have any impact then, right?

MR. LENBERGER: It doesn't apply. In that sentence anyway.

CHAIRMAN STRAIN: Okay. And that's kind of where my question's going. That is not the testimony provided by the scientists who wrote the panther issues that came up in their definition of primary and secondary. I'm not saying -- I'm not saying what to use, I'm trying to figure out how it correlates to this. Because the two now are inconsistent.

MR. LENBERGER: Well, this is just on -- okay, I see what you're saying. I guess the first thing I have to do is check the GMP language for the panther. I can do that right now.

CHAIRMAN STRAIN: Have you also read the report that came out from the scientists in regards to the property owners in the RLSA, the one that they had commissioned with those scientists that spent quite a bit of time trying to reevaluate panther priorities in that area?

COMMISSIONER MURRAY: That would be very helpful to --

MR. LENBERGER: No, I have not.

CHAIRMAN STRAIN: Okay, it's available on line. And I've -- I mean, I've downloaded a copy of it. But it might give you some insight as to what they're defining as primary and secondary. I haven't got that far in it myself. But maybe there's an answer there. I'm suggesting to take a look at it is all.

Mr. Murray?

COMMISSIONER MURRAY: Well, they were -- you're absolutely right. But they were also more talking I thought about corridors. And I'm --

CHAIRMAN STRAIN: Yeah, that's part of it.

COMMISSIONER MURRAY: And so that's why I asked the question whether or not the shifts -- I mean, this is an arbitrary determination, and it's done in part I'm sure with the collars. But still, it's a ranging issue. And if you get to that RLSA issue that he's brought up, which is excellent for you and help you, that if you superimpose corridors over that, you'll get a lot clearer picture and we'll understand it better when you come back.

MR. LENBERGER: Well, I'm just looking at the GMP policy. Actually, the language in the code is -- looks like it's identical to what's in the Policy 7.1.2 of the Conservation and Coastal Management Element. And under 2.G, as in girl, I'll read it. It's paragraph -- and I believe it's probably word for word. For projects located in priority one and priority two panther habitat areas, the management plan shall discourage the destruction of undisturbed native habitats that are preferred by the Florida Panther by directing intensive land uses to currently disturbed areas. Preferred habitats --

CHAIRMAN STRAIN: That's the part that we're --

MR. LENBERGER: Right. And so it's taking word for word out of the GMP.

CHAIRMAN STRAIN: Okay. Well, I'm just -- I'm concerned that we haven't resolved the issue that I think's going to continue to come up, especially when we do transmittal of the RLSA and the rest of it. Because that -- there were a lot of people involved in that panther primary and secondary discussion. They're not going to go away. And I'm just trying to make sure we don't build something in that causes a problem that he we don't anticipate. So --

MR. LENBERGER: I think the GMP will need to be amended.

CHAIRMAN STRAIN: To change that.

MR. LENBERGER: Yes.

CHAIRMAN STRAIN: So we can't change that without changing the GMP.

Thank you for finding that.

MR. LENBERGER: You're welcome.

CHAIRMAN STRAIN: Page 141 is the last page of this issue.

(No response.)

CHAIRMAN STRAIN: Up on top, Steve, it says when habitat containing the following listed plants as proposed to be impacted, plants listed as rare or less rare shall be relocated to on-site preserves if the on-site preserves are able to support the species of plants.

How do you make that decision that they're able to support the species?

MR. LENBERGER: Biologists make that determination. It's really not very hard. The epiphytes would require usually some sort of hardwood tree or cypress, and other ones, listed species here are either on barrier islands or scrub habitats. It's pretty easy to determine, if you have the habitat.

CHAIRMAN STRAIN: So you would rely on the biologist that's overseeing the preserve management, say, to provide that answer?

MR. LENBERGER: Staff or biologist could easily determine that. It's not difficult.

CHAIRMAN STRAIN: Okay. The couple sentences down, number -- line seven.

MR. LENBERGER: Okay.

CHAIRMAN STRAIN: Plants listed as less rare shall be relocated to the on-site preserves only if the reserves do not already contain these species.

So what if it has one specie on it?

COMMISSIONER MURRAY: Or if it has only one plant.

CHAIRMAN STRAIN: Right.

MR. LENBERGER: Well, it's to establish a seed source for the less rare plants. The idea of moving it is to maintain species diversity for the preserve and to establish a seed source. Just because you only see one, you know, a lot of these less rare plants are going to be high in the canopy. Pretty much guarantee you, there's going to be more than one. So I wasn't really concerned about it. If you see one, I'm sure there's going to be others, you're just not going to be able to see them all.

CHAIRMAN STRAIN: They're not grown up yet, right?

MR. LENBERGER: Could be. Could be smaller. Could be out of sight, you know. You're not going to survey every square inch of every tree so --

CHAIRMAN STRAIN: Okay.

MR. LENBERGER: I'm just trying to use a common sense approach here.

COMMISSIONER MURRAY: And I understand that. But you made a comment that's interesting, because you say, you know, if you see one there's bound to be more up in the canopy.

Can we rely upon a 360-degree eyeball look at these things to be sure that if they don't see them here that they may still be up there? In other words, is the point of decision the absence of any plant on the ground in the preserve? Is that the point in decision?

MR. LENBERGER: I'm not sure the way you worded it. But let me just try to answer that question.

COMMISSIONER MURRAY: I'll restate it if --

MR. LENBERGER: That's okay. When we go out there, we just want some sort of reasonable assurance that if you go out there, you know, biologists, it's not very difficult to take a look to see if you have these species. They're pretty easy to identify.

And granted, you can't see them all, but it's pretty easy to spot them. You're going to look, you're going to identify them. You know, just some reasonable effort. If they're there, fine. You know, the seed sources there, we're comfortable with it. If you don't see one there, you're going to look a little harder, and maybe you still don't find one. There could be one hidden somewhere. Well, yes, there could be, I'm not going to argue that. But just some reasonable assurance.

You know, if you don't see one, look even harder. You don't see, then just move 10 plants in the preserve, start a seed source and just kind of a common sense approach to the whole thing. Not something burdensome.

COMMISSIONER MURRAY: And I thought the commonsense issues that were raised here between Mark

and myself were if you're going to try to preserve rare plants, and so you've got a bunch over here, are you going to put too many in there? Is that a problem?

MR. LENBERGER: Well, again, you're only relocating them if you don't have them in the preserve.

COMMISSIONER MURRAY: Well, if you don't have them, you need to relocate them, if you can.

MR. LENBERGER: Right.

COMMISSIONER MURRAY: But if you have them and you have these plants here, wouldn't you want to try to preserve them, or no?

MR. LENBERGER: We didn't do that, we just -- the idea, I mean, less rare plants is just to establish a seed source to maintain diversity.

COMMISSIONER MURRAY: All right.

CHAIRMAN STRAIN: Steve, that wraps up this particular item. We've left you with some changes. And with that I would like to look for a motion to continue this meeting to --

COMMISSIONER MURRAY: So moved.

CHAIRMAN STRAIN: -- February 26th.

Mr. Murray made the motion. Is there a second?

COMMISSIONER SCHIFFER: The workshop into a meeting.

CHAIRMAN STRAIN: No, this is a special meeting into a regular meeting.

COMMISSIONER SCHIFFER: Okay.

CHAIRMAN STRAIN: With all that, all in favor, signify by saying aye.

COMMISSIONER SCHIFFER: Aye.

COMMISSIONER HOMIAK: Aye.

COMMISSIONER MURRAY: Aye.

COMMISSIONER MIDNEY: Aye.

COMMISSIONER CARON: Aye.

CHAIRMAN STRAIN: Aye.

Any opposed?

(No response.)

CHAIRMAN STRAIN: Motion carries, what is it seven of us? No, six of us to zero.

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There being no further business for the good of the County, the meeting was adjourned by order of the Chair at 4:34 p.m.

COLLIER COUNTY
PLANNING COMMISSION

MARK STRAIN, Chairman

These minutes approved by the board on 3-4-10 as presented ✓ or as corrected _____.

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