

TRANSCRIPT OF THE MEETING OF THE
COLLIER COUNTY PLANNING COMMISSION
Naples, Florida, May 3, 2012

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 9:00 a.m., in REGULAR SESSION in Building "F" of the Government Complex, East Naples, Florida, with the following members present:

CHAIRMAN: Mark P. Strain
William Vonier
Brad Schiffer
Paul Midney
Melissa Ahern
Karen Homiak
Diane Ebert
Barry Klein
Phillip Brougham

ALSO PRESENT:

Raymond V. Bellows, Zoning Manager
Caroline Cilek, Planning & Regulation
Heidi Ashton-Cicko, County Attorney's Office
Tom Eastman, School Board Representative

CHAIRMAN STRAIN: Good morning, everyone. Welcome to the May 3rd meeting of the Collier County Planning Commission. If you'll all please rise for the Pledge of Allegiance.

(The Pledge of Allegiance was recited in unison.)

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

COMMISSIONER HOMIAK: Mr. Eastman?

MR. EASTMAN: Here.

COMMISSIONER HOMIAK: Mr. Vonier?

COMMISSIONER VONIER: Here.

COMMISSIONER HOMIAK: Mr. Schiffer?

COMMISSIONER SCHIFFER: Here.

COMMISSIONER HOMIAK: Mr. Midney?

COMMISSIONER MIDNEY: Here.

COMMISSIONER HOMIAK: Ms. Ahern?

COMMISSIONER AHERN: Here.

COMMISSIONER HOMIAK: Mr. Strain?

CHAIRMAN STRAIN: Here.

COMMISSIONER HOMIAK: Ms. Homiak is here.

Ms. Ebert?

COMMISSIONER EBERT: Present.

COMMISSIONER HOMIAK: Mr. Klein?

COMMISSIONER KLEIN: Here.

COMMISSIONER HOMIAK: And Mr. Brougham?

COMMISSIONER BROUGHAM: Present.

CHAIRMAN STRAIN: Thank you.

Addenda to the agenda. We do have some changes today. First of all, the Agave item for the variance for the sign, which was 9D, has been requested to be continued by the applicant to 5/17/12.

Anybody have any comments? If not, is there a motion to approve that continuance?

COMMISSIONER KLEIN: So moved.

COMMISSIONER EBERT: I'll second.

CHAIRMAN STRAIN: Made by Barry, seconded by Diane.

All in favor, signify by saying aye.

COMMISSIONER VONIER: Aye.

COMMISSIONER SCHIFFER: Aye.

COMMISSIONER MIDNEY: Aye.

COMMISSIONER AHERN: Aye.

CHAIRMAN STRAIN: Aye.

COMMISSIONER HOMIAK: Aye.

COMMISSIONER EBERT: Aye.

COMMISSIONER KLEIN: Aye.

COMMISSIONER BROUGHAM: Aye.

CHAIRMAN STRAIN: Anybody opposed?

(No response.)

CHAIRMAN STRAIN: Motion carries 9-0.

The Jaffe boat dock extension and the Jaffe variance, which is 9B and C, Mr. Jaffe would like to be here for that hearing. He hadn't originally planned to be. He's in, I believe, surgery this morning, so he asked if he could hear that last today. I didn't have a problem with it, so I told him that would be okay.

Does anybody have any concern?

COMMISSIONER EBERT: Not a problem.

CHAIRMAN STRAIN: So we will hear it after 12 o'clock. And if we're still into LDC issues at the time, we'll interrupt them to come back to this.

And, Heidi, I'm assuming we'll have to continue this meeting if we finish it before we go into LDC, and then

open the LDC up as a separate meeting, or is -- it can be part of this meeting's old business? It's listed as old business under this meeting. Is that okay to continue it with this meeting?

MS. ASHTON-CICKO: Yeah, I don't think you need to close it.

CHAIRMAN STRAIN: Okay. Then the last item, Item 9E, is the ST for the Marco Island Executive Airport. That's going to be moved to new business. As an ST permit, it didn't need to be advertised under the advertised public hearings, so it will be going to 11A.

Anything else, Ray, that you know of?

MR. BELLOWS: I have no other changes.

COMMISSIONER SCHIFFER: Mark, I have.

CHAIRMAN STRAIN: Go ahead, Brad.

COMMISSIONER SCHIFFER: I'd like to add one item to new business, and that's how the CCPC is represented at the BCC meetings.

CHAIRMAN STRAIN: Okay. Planning Commission absences. Our next meeting is May 17th. Does anybody know if they're not going to be here?

(No response.)

CHAIRMAN STRAIN: Okay. Approval of minutes. We had electronically been sent the April 5th meeting minutes. Does anybody have any changes or corrections?

COMMISSIONER VONIER: I'd like my name corrected, please, the spelling.

CHAIRMAN STRAIN: Okay. And why don't you spell it for the record.

COMMISSIONER VONIER: V-o-n-i-e-r.

CHAIRMAN STRAIN: Thank you. Anything else?

(No response.)

CHAIRMAN STRAIN: If not, subject to that, is there a motion to approve?

COMMISSIONER KLEIN: (Raises hand.)

CHAIRMAN STRAIN: By Barry. Seconded by?

COMMISSIONER HOMIAK: Second.

CHAIRMAN STRAIN: Karen.

All those in favor, signify by saying aye.

COMMISSIONER VONIER: Aye.

COMMISSIONER SCHIFFER: Aye.

COMMISSIONER MIDNEY: Aye.

COMMISSIONER AHERN: Aye.

CHAIRMAN STRAIN: Aye.

COMMISSIONER HOMIAK: Aye.

COMMISSIONER EBERT: Aye.

COMMISSIONER KLEIN: Aye.

COMMISSIONER BROUGHAM: Aye.

CHAIRMAN STRAIN: Motion carries, 9-0.

BCC report, Ray?

MR. BELLOWS: Yes. At the last Board of County Commissioners' meeting, they heard the variance for Plantation Island on the summary agenda. That was approved on this summary agenda.

They also heard the variance for the Wahl boat dock extension that had the companion variance for the encroachment into the riparian setback. The Board of County Commissioners approved that by a vote of 4-1. I believe there -- found that there was some type of land-related -- or related hardship, and the dock could not be moved.

CHAIRMAN STRAIN: Okay. Anything else?

MR. BELLOWS: That was it.

CHAIRMAN STRAIN: Okay. Chairman's report. There's none.

***We'll move right into consent agenda items. The first item up, or the only item on the consent agenda is 8A, PUDZ-PL2010-592. It's the Cultural Arts Village at Bayshore MPUD. We have that in our packet. Does anybody have any concerns, questions, changes, comments?

COMMISSIONER EBERT: Yep.

CHAIRMAN STRAIN: Go ahead, Diane.

COMMISSIONER EBERT: Mark, on the back page, Page 2 of 2, it says no monitoring report required, and yet on Page 19, the CRA is supposed to be monitoring this.

CHAIRMAN STRAIN: Right. That's a different entity than the Collier County staff who normally receives the monitoring. Is that what you're referring to?

COMMISSIONER EBERT: But they will have to send them to the county, correct?

CHAIRMAN STRAIN: Ray, how does that work?

MR. BELLOWS: I need to check into that. Maybe Nancy knows.

MS. GUNDLACH: Commissioner, are you talking about the item that the CCPC had requested -- not the CC -- the EAC, the Environmental Advisory Committee?

COMMISSIONER EBERT: No.

MS. GUNDLACH: Okay.

COMMISSIONER EBERT: I was just reading your breakdown of, you know --

MS. GUNDLACH: Okay.

COMMISSIONER EBERT: -- of this, and I noticed that it said in the back on Page 2, on the executive summary it says no monitoring report is required and that you were going to put something in the executive summary about it. But on Page 19, the managing entity, which is the CRA at this point, it says will monitor it.

CHAIRMAN STRAIN: But I think they've got to monitor it pursuant to Page 20, which says when the PUD closed out, then the managing entity is no longer responsible.

COMMISSIONER EBERT: Right.

CHAIRMAN STRAIN: So up until that point they do have to monitor it, right?

COMMISSIONER EBERT: That's correct, they do. I want to make sure, because one says no monitoring report required, and the other ones says that they will monitor.

CHAIRMAN STRAIN: But I think the requirement is up until they're closed out.

MS. GUNDLACH: Correct.

CHAIRMAN STRAIN: Which is typical.

COMMISSIONER EBERT: Yeah.

CHAIRMAN STRAIN: Okay. Anybody else have any comments or changes?

COMMISSIONER HOMIAK: It says just --

CHAIRMAN STRAIN: Go ahead.

COMMISSIONER HOMIAK: On Exhibit A --

CHAIRMAN STRAIN: Page?

COMMISSIONER HOMIAK: Page 3 of 20, No. 41, is just to change the shop -- says tattoo shop -- to parlor. So it's just one or the other.

MS. GUNDLACH: Could you speak into your microphone, please.

COMMISSIONER HOMIAK: Oh, I'm sorry. On Exhibit A, Page 3 of 20, No. 41, where it says "tattoo shop," it should say "tattoo parlor" so it's consistent with the other.

MS. GUNDLACH: You'd like for it to say tattoo parlor instead of shop?

COMMISSIONER HOMIAK: That's how it -- that's how it says -- it's listed on another --

MS. GUNDLACH: Okay.

COMMISSIONER HOMIAK: In another number here, too, as tattoo parlor, and that is how it's written in the SIC code, so --

MS. GUNDLACH: Okay. We can change that.

CHAIRMAN STRAIN: Anybody else?

(No response.)

CHAIRMAN STRAIN: Okay. Is there a motion to approve the consent-agenda item?

COMMISSIONER AHERN: So moved.

COMMISSIONER VONIER: Second.

CHAIRMAN STRAIN: Made by Melissa, seconded by Bill.

Discussion?

(No response.)

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

COMMISSIONER VONIER: Aye.

COMMISSIONER SCHIFFER: Aye.

COMMISSIONER MIDNEY: Aye.

COMMISSIONER AHERN: Aye.

CHAIRMAN STRAIN: Aye.

COMMISSIONER HOMIAK: Aye.

COMMISSIONER EBERT: Aye.

COMMISSIONER KLEIN: Aye.

COMMISSIONER BROUGHAM: Aye.

CHAIRMAN STRAIN: Anybody opposed?

(No response.)

CHAIRMAN STRAIN: Motion carries 9-0.

Thank you.

***Next item up is our first advertised public hearing. It's Item 9A, PUDZ-PL20110001519, the Naples View RPUD, located at 6900 Airport Road North.

All those wishing to testify on behalf of this item, please rise to be sworn in by the court reporter.

(The speakers were duly sworn and indicated in the affirmative.)

CHAIRMAN STRAIN: Disclosures on the part of the Planning Commission? I had been contacted a couple of times by Ms. Crespo trying to get together. Since I was out of town, it was -- didn't work out. So at least I had two emails from her.

Other than that, we're good to go. Whoever the presenter is.

MS. CRESPO: Good morning, Commissioners. For the record, Alexis Crespo with Waldrop Engineering representing the applicant, Naples View, LLC. Here with me today is Steve Hagenbuckle, who is the property owner and managing member of Naples View, LLC, as well as Ron Waldrop, who is the principal in charge of Waldrop Engineering and also the engineer of record for the project.

We also have David Wheeler with TR transportation who prepared the Traffic Impact Statement, which was submitted as part of this application.

The request before you today is for recommendation of approval to rezone the 11.3-acre subject property from rural agricultural to a residential planned unit development to allow for a maximum of 66 dwelling unit as well as accessory uses.

The subject property is located in the northwestern portion of Collier County south of Orange Blossom Drive and just east of Airport-Pulling Road, which is a six-laned arterial roadway.

As you can see on that aerial location map, the site does have direct access via a right-in, right-out, which is serviced by a 175-foot northbound turn lane.

The property within the urban residential subdistrict per your Future Land Use Map and is the former Wizard Lake Nursery property. They did vacate that site in 2008. And as you can see on that aerial, it has reached a state of somewhat disrepair over the years.

The existing site conditions are abandoned tree nursery as well as about a 2.5-acre stormwater management pond.

Looking at our surrounding uses, to the north we have the Naples Botanical Nursery, which is an active retail landscape operation. That property is within the Orange Blossom mixed-use subdistrict, per your Future Land Use Map, and is zoned planned unit development as part of the Long View PUD.

That PUD is sunsetted, however, did approve 143,000 square feet of commercial and office uses as well as a residential component to be integrated in a mixed-use format.

Also to the north, east, and south of the property is the Walden Oaks community, which is also zoned planned unit development. This has been built out, as it was approved in the late '80s, with a mix of residential product types ranging from single family detached to multifamily condominium products. When you look at those uses that directly abut the Naples View project, we have single-family detached units to the north, as well as their private internal right-of-way, Lone Oak Boulevard.

To the east we have their multifamily component, which is the Barrington condo complex, and to the south is their private on-site recreational facility. And then as you move closer to Airport Road, they have a 24,000-square-foot professional office center approved as part of that PUD.

Moving west of Airport Road is the Carlisle of Naples, which is zoned agricultural and is a permitted ALF use, and to the south of that is agriculturally zoned lands within the urban residential subdistrict.

Getting into the specifics of the rezoning request before you today, the applicant is seeking approval of an infill redevelopment program with a fairly limited schedule of uses to be compatible and consistent with the surrounding development pattern. The applicant is seeking single-family detached, two-family duplex, as well as townhouse dwelling units. And to be clear, the applicant has limited the multifamily use to simply a townhouse product type to prohibit a situation where you'd have units stacked upon units, and that change was done in accordance with suggestions and recommendations from the Walden Oaks community.

The applicant is requesting a maximum of 66 units per the bonus density provisions in your Growth Management Plan, which I'll address in more detail later in the presentation.

And in addition to the residential units, the applicant is seeking the standard recreational and accessory uses, which are typical to most residential planned unit developments. They are also seeking approval of an interconnection to the future mixed-use subdistrict to the north.

This next slide depicts the proposed master -- or proposed master plan associated with the PUD. Access from Airport Road is proposed via that existing ingress/egress. There's an optional gate shown on the master concept plan, as well as the two arrows to the north depict the location of that multimodal interconnection to the mixed-use subdistrict, which would provide vehicular bicycle and pedestrian access.

The residential tracts are labeled R2 or R1. The R2 tracts are located closest to Airport Road and would allow the full gamut of proposed residential uses which are, again, single-family detached, two-family, and townhouse.

The intent there is to cluster the denser product types towards Airport Road which is, again, a six-lane arterial roadway and then transition to a lower-density product in the R1 tract, which would be limited to single-family detached and two-family.

You'll notice that the applicant is intending to preserve the on-site lake to the extent possible, as it serves as a nice amenity for future residents, also provides stormwater management on site, and provides substantial separation between the Walden Oaks amenity center and the proposed residential uses within the Naples View project.

You'll also notice several operational recreational centers noted on the PUD master plan, which were sensitively located to avoid any impacts with the Walden Oaks community and direct those uses away from their established residential areas.

The applicant has requested five deviations as outlined in your staff report. The first deviation is for a reduction in buffer width, as shown on this slide. It's for a small portion of the northern property line. The applicant is requesting a 10-foot-wide Type B buffer with the Type B plantings required by your code in lieu of a 15-foot Type B buffer; therefore, the same amount of plantings will be provided, and the opacity intended by the code will be achieved to screen those uses; however, due to the infill nature of the site as well as the relative narrowness of this property, it's certainly important to be able to create a narrow buffer in that situation and able to accommodate the rights-of-way, residential tracts, and usable open-space areas. And staff has recommended approval of the deviation as proposed.

The second deviation is to allow for larger temporary signage along the Airport-Pulling frontage. The code allows for signage of 4 square feet in area and up to 3 feet in height. The applicant is seeking 32 square feet in area and 8 feet in height. And we did work with Diana on this deviation to get it to a point where staff was comfortable with its approval.

The intent in this area is not necessarily an emerging area of the county with a lot of new residential development. That's largely occurring east of the interstate along Immokalee and down south in Lely. So in order to attract attention to the property and hopefully boost interest in the future sales, the applicant is seeking that additional signage.

The staff has conditioned this deviation to be a maximum of 28 days per year, and the applicant is in agreement with that condition.

The third deviation is a fairly typical deviation within most PUDs and certainly within most your infill PUDs where the applicant is seeking a 45-foot right-of-way for those private roads internal to the development. This slide

shows the proposed 45-foot right-of-way cross-section.

As you can see, the applicant is proposing 10-foot-wide drive lanes, which is in accordance with the drive lane width within your LDC cross-section. Additionally, the 5-foot-wide sidewalks are also consistent with the LDC.

The applicant, again, is requesting this deviation in light of the infill nature of the product, the narrowness of the site, and the desire to maintain that non-stormwater management pond to the furthest extent possible.

And, additionally, as noted in your staff report, the narrower right-of-way widths have been proven to provide a traffic-calming effect and not negatively impact public health, safety, and welfare. And staff has recommended approval of this deviation as proposed.

Deviation 4 is to allow for a dead-end street as shown on the PUD master plan denoted by this arrow. This dead-end street is 140 feet in length. The local fire code provides that dead-end streets can be up to 150 feet in length. In order to ensure that adequate public safety is served, staff has recommended approval of the deviation as proposed as well. And this stub-out would serve between two to four units at most and, therefore, will not impact public health, safety, and welfare.

The last deviation is to provide additional wall height. The code allows for a maximum 6-foot wall in residentially zoned districts. The applicant is seeking a slight increase to that to allow for an 8-foot-tall wall or combination wall/berm. The deviation is intended to help to screen the surrounding established residential areas to ensure compatibility there and also to help to screen Airport Road which is, again, an arterial roadway, and to buffer the light and noise generated from that roadway.

Touching briefly on the environmental aspects of the site, the applicant did engage Passarella & Associates prior to submittal of the application. Passarella did perform a site visit and found that there are no listed species within the project or in the project's vicinity. They also noted that there are no listed plant species within the site.

The FLUCCS codes here are limited to exotic ornamental trees as well as the stormwater management pond on site. So there are no environmental constraints within this property. And, again, it's an ideal infill location with its limited site constraints.

Based on those various items, staff did waive the review of the Environmental Advisory Committee, which I'd like to note.

In terms of infrastructure, the applicant did secure water and sewer availability letters from Collier County Utilities, which does indicate there is adequate capacity to service the proposed density at the six units per acre through the bonus density provision.

The TR Transportation did provide a Traffic Impact Statement based on methodology agreed upon by county staff. That impact statement did note that there is adequate capacity and an adequate level of service along Airport-Pulling through the projected year of 2016.

There are also no turn lane or site intersection improvements warranted by the proposed density, and the applicant has committed to provide their proportionate fair share to improve the Orange Blossom and Airport Road intersection.

And that would -- per the commitments, that would be done 90 days within the -- within 90 days of the county's request.

Getting into the bonus density, which really is one of the central items of this request, your Growth Management Plan, through Policy 6.3, does provide provisions to provide transportation demand management criteria into a project in order to allow for increased density.

We certainly feel, due to this project's location within the urban core of Naples with adequate infrastructure and minimal site constraints, that it is an ideal location for implementation of the bonus density provisions.

As noted, we're adjacent to the Orange Blossom mixed-use district to the north, as well as the commercial component of Walden Oaks to the south.

And in order to just demonstrate your surrounding densities and intensities, we have put together the slide. Walden Oaks was originally approved for 6.32 units per acre. They did build out at less than that, at 3.2, however, did develop 24,000 square feet for commercial uses as part of that.

I've noted the intensive mixed-use district to the north. Going west of Airport Road, we had the Bear Creek PUD, which is a built-out planned development approved at 14 units per acre, and then south of that is the Arbour Walk PUD, which is built out at just under 12 units per acre. And then, lastly, we have Laguna Bay, which is just over a quarter mile south of the property, which is conventionally zoned and built out 12 units per acre.

So, clearly, this is an area of density and intensity that warrants the proposed density being proposed through the application, and it would create a logical transition of densities from the Walden Oaks community as you get closer to the Airport Road arterial roadway.

It's important to address compatibility in any case where you're proposing an infill development where there's an established residential community near by. The applicant has worked extensively with the Walden Oaks community in addition to the requisite neighborhood information meeting that was held in January. We did meet again at their clubhouse in February, and then held a third meeting with some liaisons and HOA members at that time to work through some of their concerns.

And the main changes that stem from these meetings was the limitation on multifamily uses to ensure they were limited to the townhouse dwelling type, also the limitations on the R2 rear tract to ensure that would be limited to single-family detached and two-family and that the more dense product type would be clustered along the Airport Road frontage.

The applicant also elected to reduce the maximum zoned height down from 50 feet to 35 feet to be more compatible with their maximum heights, and we certainly feel that the proposed residential community will be complimentary and compatible with their community and would certainly be an improvement over the site conditions, which is a very dilapidated site that's very overgrown with exotic vegetation.

And just to give you a sense of the variety of product types in Walden Oaks, if you haven't been able to visit that community, just east of the Naples View project, we have there Barrington condominium use, which is done in 8-unit buildings where units are stacked upon units in a fairly dense product type.

There are single-family detached along the northern property line. This is one of those units. And we do have a gentleman here today that is one of those single-family homeowners, and I believe you'll hear from him that he's certainly supportive of the proposed rezoning and that we'll enhance his views and redevelop a site that's in desperate need of redevelopment.

And then, lastly, I'd like to point out there are the two-family, twin villa type -- product types that are being proposed through this application throughout the community.

So that community does have a variety of different product types and densities that are compatible with what is being proposed here today.

Touching on compliance with your Growth Management Plan. We are in the urban residential subdistrict. The property's in a location with the existing infrastructure to support the proposed density with limited site constraints, which is in direct compliance with this policy.

Similarly, Policy 5.3 addresses urban sprawl. This rezoning would direct new development into the county's urban core and prevent development in green-filled areas outside of your planned infrastructure.

In terms of compatibility, Policy 5.4, we've addressed this thoroughly with the community in terms of limiting the product types, reducing the zoned height, and also providing buffer yards to ensure compatibility there.

Policy 6.3 addresses the bonus density. The applicant is proposing two of the five criteria, as is required by your Growth Management Plan in the terms of a vehicular bicycle and pedestrian interconnection which will not only allow future residents to directly access goods and services within that mixed-use subdistrict but provide an opportunity to go directly to Orange Blossom and redirect some of the traffic that would normally exit the site on Airport-Pulling Road.

In compliance with the Transportation Element, the applicant has provided evidence that level of service will not be impacted upon Airport Road or surrounding roadways and that, in terms of the Conservation and Coastal Element, we are in compliance with that section of your Growth Management Plan in terms of the lack of environmental constraints on the site.

Before I conclude, I'll just touch on the staff report. Staff has indicated that this rezoning is consistent with the Growth Management Plan, that it meets the intent of the planned unit development zoning district, the proposed uses and densities are compatible with the surrounding area, and that the potential traffic impacts will be adequately mitigated by the PUD commitments as well as the interconnection and bicycle/pedestrian access. And they have recommended approval of the rezoning with the bonus density and all five deviations as conditioned.

And the applicant is in agreement with all the findings of fact in the staff report as well as their conclusions.

Therefore, to conclude, we feel the Naples View rezoning is an ideal location for infill redevelopment as a prime example of how to take advantage of the bonus density provisions in your Growth Management Plan. As

demonstrated in the presentation, the uses and density are consistent and compatible with the surrounding development pattern and will provide a logical transition of density as you near the arterial roadway.

We have demonstrated that there is adequate public infrastructure available to service the site and that there are no environmental issues.

Based on compliance with your Land Development Code and Growth Management Plan, we would respectfully request your recommendation of approval of the request as presented.

Thank you.

CHAIRMAN STRAIN: Thank you. That's a very thorough presentation.

MS. CRESPO: Thank you.

CHAIRMAN STRAIN: Much appreciated.

Phil?

COMMISSIONER BROUGHAM: A couple clarifications, please.

MS. CRESPO: Yes, sir.

COMMISSIONER BROUGHAM: I need a bit more explanation of the proposed interconnection to Orange Blossom that's shown on your site plan. And I'm reading on Page 8. I think this may be in the staff report.

Pedestrian/bicycle and vehicular interconnection has been provided on the site plan to the north. Because the PUD to the north is sunsetted, an amendment would be required to allow additional development on that site. At that time the interconnection could be made if it remains warranted.

I guess -- who's got the ball in this case? I mean, yes, you're going to provide a potential access to the north, but that requires both parties to participate; does it not?

MS. CRESPO: Yes, sir. And the previously-approved Long View Center PUD did provide the interconnection on their original master plan approved in 2001 so, certainly, the interconnection we're proposing, as well as -- we've gone a step further and we're proposing it in a non-exclusive access agreement with that property owner.

So I believe this gives staff the authority and ability to really push forward when they come back for their PUD amendment or rezoning at that time to ensure that they have to utilize that interconnection and have it working.

COMMISSIONER BROUGHAM: So you're going to be doing your part in the future; that development to the north will be connected in?

MS. CRESPO: Yes.

COMMISSIONER BROUGHAM: I'm seeing heads shaking in the back there. Okay, thanks.

MR. BELLOWS: Yes.

COMMISSIONER BROUGHAM: One other question on Page 17 of 20 here, in my book anyway -- and references the question at the neighborhood information meeting, a question, Comment 5, there is a concern with the ability of Walden Oaks residents to make a right turn onto Airport Road to head northbound. Response is, so noted.

Could you put some background as to why that comment was made or what the issue was there?

MS. CRESPO: There is a northbound turn lane to access the Carlisle of Naples, which is directly across from the project's entrance. And I believe the concern is that future residents -- and perhaps I can go back to the aerial.

There is a concern that they will -- people exiting, future residents of Naples View, will cut across three lanes of traffic and get into the Carlisle turn lane, which many Walden Oaks residents use as a U-turn spot.

This would certainly be an illegal weaving movement, which --

COMMISSIONER BROUGHAM: You have to go in and --

MS. CRESPO: -- could be satisfied by signage and police enforcement. So that was the concern expressed there.

We did work with staff on some various options to prohibit that type of movement. And when it comes down to it, it is illegal. It will be enforced by the police.

COMMISSIONER BROUGHAM: Okay. And then the following question at the same meeting, what is the status of staff's comment to provide a hardened separator to prevent future Naples View residents from accessing the southbound turn lane in front of the property? The applicant is working on addressing the comment with staff.

MS. CRESPO: Our first comment letter requested a hardened separator be provided, which the applicant was amenable to providing; however, based upon further discussions internally with staff -- and he may want to jump in here -- but it was determined that that could potentially create greater safety issues due to the length of that turn lane

and having -- that could create a tunnel effect and really negatively impact Walden Oaks folks trying to get in that lane.

And due to the travel speeds along Airport Road, I think the fear is that people are traveling at a quick pace, they need to get in that turn lane, and because there's a separator in place, it's going to create a lot of safety issues that could, perhaps, be better dealt with by signage. The interconnection is certainly going to help when residents of Naples View can go up to Orange Blossom, and really police enforcement to prevent illegal U-turns and erratic driving, really.

COMMISSIONER BROUGHAM: Okay, thank you. That's all I had, Mark.

CHAIRMAN STRAIN: Anybody else? Brad?

COMMISSIONER SCHIFFER: Yeah. Was the wizard, the Tree Wizard thing, was the property to the north part of that same nursery?

MS. CRESPO: No, sir. The property to the north is owned by Mr. Pulling. I believe the Tree Wizard site was owned independently of that and were never working in concert.

COMMISSIONER SCHIFFER: And the lake was never part of the stormwater for that site to the north?

MS. CRESPO: No, sir.

COMMISSIONER SCHIFFER: Okay.

MS. CRESPO: I believe that -- I believe the pond was constructed prior to water management permitting in the early '80s. It was constructed to service that site.

COMMISSIONER SCHIFFER: Okay. Have you laid out the units yet on this site?

MS. CRESPO: No, sir. We've worked on various site plans. There are interested builders in the property certainly; however, we are requesting a flexibility in the types of product types that are similar to what has been built in surrounding communities in order to provide the flexibility. This is still a very volatile market where product types are constantly changing. So we have not gotten into detailed site planning at this time.

COMMISSIONER SCHIFFER: Okay. Because I do have a little concern that if you push too much of the density up to Airport, that's not a nice place to live. Those roads are loud. You can see Walden Oaks pulled everything back.

So, I mean, I would be in favor of taking some of R1 that's up on the east side of that lake and adding that to R2, because I don't think it would be a good idea to put a lot of people on the street. And I know what you're trying to do by density blending, but, you know, the Walden Oaks is nowhere in that area either so, I mean, it would be a good place to further bring that across the street there just to keep some people off the highway.

But I'm done, thanks.

CHAIRMAN STRAIN: Anybody else have any questions of the applicant at this time?

COMMISSIONER EBERT: Yes, I do.

CHAIRMAN STRAIN: Okay.

COMMISSIONER EBERT: Good morning.

MS. CRESPO: Good morning.

COMMISSIONER EBERT: I noticed -- so it's different owners; who has the corner piece is Mr. Pulling. This is a different owner, but you are really talking about people going to the north that can -- you're talking about Orange Blossom. How -- apparently that's going to be pretty much commercial. I assume the driveway getting in there will be at least 600 feet from the corner on Orange Blossom, on Orange Blossom Road?

CHAIRMAN STRAIN: That's up -- that would be more a responsibility of the PUD to the north, not hers, so I'm not sure she would be able to answer that question accurately, Diane.

COMMISSIONER EBERT: Well, they want to exit, she said, Orange Blossom Road, so that was a question that I had.

MS. CRESPO: I believe that property has access to Orange Blossom, which could foreseeably be utilized when it's redeveloped.

COMMISSIONER EBERT: Okay.

MS. CRESPO: And it would have to meet connection separation standards per the code.

COMMISSIONER EBERT: Okay. And then also on your plan, you say you're having sidewalks on both sides.

MS. CRESPO: Yes, ma'am.

COMMISSIONER EBERT: On your right-of-way, is there not going to be a wall to the north of this on the property?

MS. CRESPO: There is shown as an optional wall --

COMMISSIONER EBERT: Optional fence or wall buffer?

MS. CRESPO: Yes, ma'am.

COMMISSIONER EBERT: All that's all road right up to that fence or wall; is that correct?

MS. CRESPO: Yes. Well, there's a buffer yard in between the right-of-way and the northern property line.

COMMISSIONER EBERT: Yes, I see that, but other than that, that's all roadway. Is it necessary to put the sidewalk on that side also?

MS. CRESPO: The code allows, when there's 15 units or less on a cul-de-sac, that the sidewalk is only required on one side of the roadway. So we're proposing sidewalks in accordance with the LDC. And when there is the ability to have relief for a single-loaded road or a cul-de-sac roadway, we don't believe we will exceed the 15 units on that rear tract and would likely end up with a sidewalk on one side in accordance with the LDC. We do not need a deviation, though, to achieve that site design.

COMMISSIONER EBERT: Okay. Because I really -- we have 55 on ours, so -- and only one sidewalk.

Are you saying that the pond on the property was never used for retention?

MS. CRESPO: Retention for the nursery?

COMMISSIONER EBERT: For water management.

MS. CRESPO: I believe it is a -- it is a retention pond for the former Wizard Lake Nursery site.

COMMISSIONER EBERT: Okay. Because you are saying on Deviation 3 the rationale was the proposed deviation will allow for design flexibility. The proposed project is true infill, but the site constraints, including a large stormwater management pond. Everyone has to keep their own water on their own property, so you will be using this?

MS. CRESPO: Yes, ma'am. The intent was, whereas certainly a future developer of the property, Mr. Hagenbuckle could elect to fill in some of that pond. He is proposing to maintain it to the maximum degree in order to use it as a site amenity. Certainly, stormwater management has to be provided on site, but it could be provided in a variety of forms, and he is proposing to maintain that lake, not only for its amenity, but to separate the residential from the Walden Oaks recreational facility.

COMMISSIONER EBERT: Okay. I notice there is no preserve on this at all, and environmental said that it did not need -- because it's all exotics.

MS. CRESPO: Yes, ma'am.

COMMISSIONER EBERT: So they don't have to have their proportionate share. But when I -- reading through this, I noticed on Page -- let me see -- 18, some of your residents from Walden Oaks were concerned about the birds and everything else in there. And according to you on one side, everything is exotics or you're removing everything and yet you're saying in response to Question 15 that existing vegetation will be utilized to create the required buffers.

If it's all exotic, meaning you have to take it down, you are going to replant some of these trees and everything then?

MS. CRESPO: I believe some of the ornamentals -- these aren't necessarily -- it's not all Melaleuca or Brazilian pepper on the site. There's a lot of attractive exotic trees that may be able to be incorporated into the landscape buffers.

COMMISSIONER EBERT: Okay. All right. Thank you.

CHAIRMAN STRAIN: Okay. Anybody else?

(No response.)

CHAIRMAN STRAIN: I've got a couple.

Let's go to your PUD on Page 1 of 7. Under your permitted uses, you list various uses, R1 and R2. Are you intending this project or this product to be fee-simple or condominium?

MS. CRESPO: Typically, the townhome product is a fee-simple product type. It differs from the others in that it would be more than three units.

CHAIRMAN STRAIN: Well, I'm familiar with the kind of product. I just want to know how you're going to sell it off. You're going to sell it off under a fee-simple basis or as a --

MS. CRESPO: Fee-simple, yes, sir.

CHAIRMAN STRAIN: So that means you're going to plat the tracts?

MS. CRESPO: Yes, sir.

CHAIRMAN STRAIN: So that means you're going to have to plat your recreational facilities, right?

MS. CRESPO: Yes, sir, if the developer elects to move forward with those.

CHAIRMAN STRAIN: Right. And if he wants to use -- move forward with it and he separately plats each tract for the different residential units as well as the recreational facilities if he decides to put those in, they then are principal uses on that tract. So you're only listing them under B as accessory use. So I think you'd want to be safe so that you can, in the future, put a recreational facility on a tract and have it as a principal use; otherwise, you might have a problem putting it there as an accessory use.

So I would think that under your accessory uses, where you have No. 2, you may want to consider how it's to incorporate those into your principal uses under the tracts. And I'll confirm this with staff when they come up, because I would hate to see you come in and have them say you cannot have the accessory use without a principal use on the tract, and that would be dictated by your -- whether it's fee-simple or not, so --

On Page 2 of your document, you do list the recreation in with the principal uses, so I think that's appropriate. I think you just need to follow it through on Page 1.

On your master plan, there are two questions. Up in the upper right-hand corner of the master plan you have a box. It says Type A buffer for single-family units or as allowed by LDC Type B buffer for multifamily units or as allowed by LDC.

The deviation you requested, you had a red arrow pointing to the 10-foot Type B buffer over to the west side of the parcel. You didn't have that arrow pointing on the ones on the right side.

So are you saying that the Type A buffer and the Type B buffer that you may put there will be a deviation to the LDC by the way you've worded it in that box?

MS. CRESPO: No, sir. Should residential R1 tract be developed with a single-family product type, that would be the Type A buffer.

CHAIRMAN STRAIN: Okay. So it's going to be dependent on the single-family?

MS. CRESPO: Yes.

CHAIRMAN STRAIN: On the product type and not --

MS. CRESPO: Yes, sir.

CHAIRMAN STRAIN: -- not in a deviation?

MS. CRESPO: We will meet code. We certainly did not want to request a deviation to reduce the buffer adjacent to Walden Oaks.

CHAIRMAN STRAIN: Just what I wanted to make sure.

Under your general notes, No. 5, the locations for recreation facilities are approximate in nature. Recreational facilities are not required. And I have no problem with the fact that they're optional. That's fine. But you made a statement earlier that you located them to avoid any conflicts with the neighbors. I would just want to see that language in No. 5 amended to a point where we're assured that the locations you show are the approximate locations where they'll be and that you just can't use that approximation to move it to the end of the residential tract near to Walden Oaks, only because you made that assurance previously. Do you have any problem with that?

MS. CRESPO: No, sir.

CHAIRMAN STRAIN: Okay. Then under your Exhibit F, development commitments. It's on Page -- actually Page 7. And this may be a question more of staff than you, but I'm assuming you may have written it. Under 2.7, 2.8, and 2.9, all potable water infrastructures shall be conveyed to Collier County and wastewater, and they'll all be customers of Collier County. I understand they'll all be customers. But 2.7 and 2.8, in the letter that you got from county staff, if you don't provide them with CUEs, all those internal lines are yours to maintain yet by this is a conflict because here it's saying you're going to be county. So I'm just wondering, has anybody understood how that letter applies in relationship to the requirements in this PUD?

MS. CRESPO: To be honest, no, sir. Ms. Deselem and I were given these commitments by utility staff, and we did elect to include them to appease their concerns; however, we are not sure of their origin or intent. It was simply a step we took to be found sufficient to move forward to hearing. I don't know if Mr. Martins is here.

CHAIRMAN STRAIN: Well, when the staff report comes up, I'll bring up staff, and we'll find that answer

out to that question. That would be -- work for that.

That's all I got. Thank you very much.

MS. CRESPO: Thank you.

CHAIRMAN STRAIN: Okay. Is there a staff report now?

MS. DESELEM: Good morning. For the record, Kay Deselem, principal planner in zoning. Also here today we have someone from transportation to address any concerns you might have with transportation issues, and we also have a representative from utilities here to address your concerns about utilities, as was just mentioned.

I won't go into the staff report in detail because the applicant has made a very thorough presentation, as you noted. I will suffice to say that staff has recommended approval as shown on Page 19 with approval of Deviation 2 stipulated.

We have provided the findings of fact, both rezone and PUD findings in support of our recommendation. Other than that, if you have questions, I would be happy to address them or stand aside so other staff members can.

CHAIRMAN STRAIN: Any questions of staff?

COMMISSIONER AHERN: I just have one.

CHAIRMAN STRAIN: Go ahead, Melissa.

COMMISSIONER AHERN: Kay, what was the 28-day limit based on? Is that generally what we've given others?

MS. DESELEM: In the temporary sign requirements, there's a 45-day and a 28-day. And we figured that the -- we, being staff, decided that the 28-day should accommodate their needs rather than the 45-day.

COMMISSIONER AHERN: Okay, thanks.

CHAIRMAN STRAIN: Okay. Anybody else? Go ahead, Bill.

COMMISSIONER VONIER: Why?

MS. DESELEM: Just because it seemed that there wasn't any underlying reason to the -- to allow more time. They didn't seek more time, and we thought that the 28 days would accommodate their wishes. They didn't come back with anything asking for more, so I have to assume then that we picked the right number.

CHAIRMAN STRAIN: Anybody else?

COMMISSIONER EBERT: No, you're --

CHAIRMAN STRAIN: Go ahead, Diane.

COMMISSIONER EBERT: You're going to talk about the utilities though, correct?

CHAIRMAN STRAIN: Well, I have my question about it. If you have other questions, go right ahead.

COMMISSIONER EBERT: Well, it's pretty much -- in here, the way it's written, Kay, because this already has -- right out in front of them has the Collier County Utilities, I think it was the way it was written that it said the product -- the project shall connect, you know, and then it says, should the Collier County Water District determine they don't have sufficiency. That is done ahead of time, I hope, you know, because, otherwise, they're telling -- in this, it's the explanation of this, I think, that I have a little problem with, because there are utilities there, correct?

MS. DESELEM: If I may, I'm going to defer the question to the utilities staff person.

COMMISSIONER EBERT: Okay.

MR. CROMER: For the record, Aaron Cromer, public utilities.

The generic language was created to be standard across all public planned unit developments, and there are -- there is existing capacity for water and sewer in front of this PUD as described in the letter dated September 27, 2011, I believe, from Javier Martinez.

CHAIRMAN STRAIN: Okay. Anything else, Diane?

COMMISSIONER EBERT: No.

CHAIRMAN STRAIN: Okay. Well, I have a -- stay right up there. Since you're utilities --

MR. CROMER: All right.

CHAIRMAN STRAIN: -- let me jump in.

MR. CROMER: I'm here, I'm here.

CHAIRMAN STRAIN: First of all, under -- are you familiar with Exhibit F, or do you have a copy of it in front of you, Page 6 and 7?

MR. CROMER: Yep, got it right here, yes, sir.

CHAIRMAN STRAIN: Okay. In 2.5, all utility facilities shall be designed and constructed in accordance

with 2004-41. If that wasn't written there, does that mean they wouldn't have to construct in accordance with that ordinance?

MR. CROMER: No, it does not.

CHAIRMAN STRAIN: Then we can drop it?

MR. CROMER: What it does do is it allows us to make sure that we are checking for those processes and progress through the PUD project.

CHAIRMAN STRAIN: Well, if you --

MR. CROMER: It allows us to manage and maintain the commitments as we move forward through the PUD.

CHAIRMAN STRAIN: Well, if your staff doesn't know to do that, then you've got the wrong staff. So I can't see the redundancy needed in this document. We've stressed for many years to remove redundancy. And if you get along -- if you feel this is necessary, then we better start reinserting all of our Code of Laws and Ordinances into this document. I can't see the need for that, so --

MR. CROMER: Sure, at your request.

CHAIRMAN STRAIN: I think 2.5 needs to be struck.

And 2.6, where does that come from? I mean, did you -- do you rewrite that at every occasion? Do you decide that -- isn't the utility facilities that have to be included spelled out in 2001-31?

MR. CROMER: Generically, sir, they are; however, some SDPs are different than others, and some of this language here is designed to ensure that all the documents that are pertinent to each PUD is received in the appropriate time, and we manage and review those through the coordination of our GMD review process.

CHAIRMAN STRAIN: Okay. So when someone's looking at this particular project, if there is a utility facility there that's unique to the project, by this language you're saying it becomes included as part of the facilities, and that wouldn't be done by a normal ordinance that we have?

MR. CROMER: That is the intent.

CHAIRMAN STRAIN: Okay.

MR. CROMER: Again, your recommendation -- we can do what the board recommends. There's no problem with that. This was a consistent language that we're trying to get standard across the PUDs to ensure that we don't have to change the language many, many, many, many times between the PUDs as they come through rezones and re-permitting.

CHAIRMAN STRAIN: The best way to do that is to avoid this kind of language in the PUDs and include it in ordinances that go across the board regardless of the PUD; then you're covered. And we tried to clarify that. Ray rewrote the PUD language after we normally were getting PUDs 30 and 40 pages long, which were ridiculous.

And so all this was supposed to be streamlined to accommodate these flexibilities that you need. And if our ordinances don't do it, I suggest an easier way for your department to get that point across is to amend the ordinance, then you've got that point covered for every PUD regardless of the situation.

MR. CROMER: And we're coordinated with growth management as well to do that.

CHAIRMAN STRAIN: Ray, 2.6, did you see a particular need for it in here?

MR. BELLOWS: Yeah. I was just rereading it again, and it seems to be redundant to current codes and the procedures in place. It's -- I think I understand the intent of creating unified language, but it's already covered by current code.

CHAIRMAN STRAIN: Thank you. 2.7, all potable water infrastructure shall be conveyed to the Collier County. That conflicts with the letter that I saw your department wrote to this applicant regarding whether or not they use CUEs. If they don't use CUEs, all the internal lines are going to be theirs. They're not going to be conveyed, then, I would assume. So is that a conflict?

MR. CROMER: It's really the intent of the PUD owner/operator. If they're going to convey them to utilities, which some do, some don't, we need to be consistent with that. So we need to coordinate more closely with the owner.

CHAIRMAN STRAIN: Okay. But that doesn't help you here. Under Exhibit F, under 2.7 it's not choice. They have to. So that means you're requiring them to produce the CUEs that you previously provided as an option in your letter. I'm just trying to get to what is going to be done so the commitment either is yea or nay and we don't have a conflict between your letter and the commitment.

MR. CROMER: So my question would be, without looking like a fool, what is the intent of the developer? Do they want to convey or not convey? Because I did not ask that question up front.

CHAIRMAN STRAIN: It's -- and they can -- why don't you come forward to the mike and --

MR. CROMER: And that can be resolved offline, and these can be adjusted.

CHAIRMAN STRAIN: Well -- but it can't be resolved offline if the document is written this way. That's why I'm trying to resolve it so that we don't have a conflict offline.

COMMISSIONER EBERT: Thank you.

MR. WALDROP: For the record, Ron Waldrop, engineer for the project.

Because we don't know where we're going with the product type, that usually dictates to us what we do with the utilities. In a single-family situation, typically we'll have the right-of-way and convey all of the utilities over to Collier County Utilities, but if we have a -- let's say, some services that are serving a recreation area, there might be the requirement that we have private utilities that serve that parcel.

So it would be something that's typically worked through during the construction plan, permitting process, whether it's an SDP or a PPL.

So I think, as far as at this level, we would want it to be an option as long as it meets the codes and the ordinances for the utility group.

CHAIRMAN STRAIN: Well, I would suggest that 2.7 and 2.8 also be removed, and they'll be worked out as you guys build the project. I don't know why you wouldn't have objected to it when it was added to the PUD for the same reason I'm objecting to it. It protects your client. And you might want to -- these kind of things don't need to be in here. They just confuse it and they muck it up as we go down the road.

So, Ray, I'm suggesting 2.7 and 2.8 come out as well. Any problem with that?

MR. BELLOWS: Typically they would be addressed at subsequent development orders as they come in, so it seems to be unnecessary to put it in the PUD document.

COMMISSIONER EBERT: But it is in the PUD document.

CHAIRMAN STRAIN: Okay, thank you. That's all I have of the utilities.

Anybody else?

(No response.)

CHAIRMAN STRAIN: Kay, do you have any problem moving that accessory recreational facility to principal use in the various tracts to cover the concern I had?

MS. DESELEM: No, sir.

CHAIRMAN STRAIN: Okay. That's all I've got.

Anybody else have anything?

(No response.)

CHAIRMAN STRAIN: Are there any public speakers? Anybody in the public wishing to speak in this matter? Sir, come on up, identify yourself for the record. And I believe you were sworn in earlier, if not -- okay, you were.

MR. JONATHAN: Good morning. For the record, my name is Michael Jonathan. I'm a resident of Naples since 1987 and of Walden Oaks since 1996. Walden Oaks, of course, is that residential subdivision that borders the proposed Naples View project.

I'm also the owner of Design Drafting of Naples, and we've been in the business of designing blueprints for commercial and residential products for Collier County since 2000.

CHAIRMAN STRAIN: You need to pull that mike a little closer to you. There you go. Thank you.

MR. JONATHAN: In Walden Oaks there are five homeowners' associations. I've been asked to speak on behalf of Lexington at Lone Oak, which directly borders the north side of the potential rezone project right here.

Lexington at Lone Oak is a nice community. The reason a lot of us moved there is because there's not a lot of vertical -- tall vertical structures right around our properties.

My specific property borders 324 feet of this rezone property. And a lot of us were very nervous when we heard about this new development going in because the preliminary petition called for multifamily, multistory structures. And I can tell you that Walden Oaks is adamant that we don't want 45-foot buildings right adjacent to our properties looking down into our privacy.

So I know that Commissioner, respectfully, Schiffer mentioned that the rear residential tract would be better

for that. I can tell you that, as a whole, Walden Oaks is adamantly opposed to that. We want the lower-density single-family homes back there, and that's one reason why several meetings negotiating that with the developer and the engineer, we arrived at the building schedule the way it was.

It was a pleasant surprise for us that they were completely courteous and professional from the beginning of this project and asked us what kind -- our feeling was on the buildings, the wall that's going to be surrounding the property, the landscape buffer, and have listened to all our suggestions. So that was a very pleasant surprise, especially when they went in and revised and struck the language about the multifamily, multistory buildings. That made a lot of the residents there feel a lot better.

One of the main issues that they're concerned about right now is that turning lane when you're southbound on Airport Road. Right now there's a no U-turn there. And the sign is so far back and obscured by the landscape that nobody sees it.

So during rush hour, traffic is coming north in three lanes of traffic, we're trying to pull out, and people are going to be making U-turns trying to do the development in that property. And, of course, there's a lot of close calls there.

So one thing we wanted to ask the commission to do was ask the traffic division to look at putting a second sign, no U-turn, right by that turning lane where it can actually be seen. And that, along with some additional enforcement, will probably help a lot in easing that potential traffic accident that's just waiting to happen up there.

But we're very happy with how the planners at the county and also the developer and the engineer worked with Walden Oaks, listened to all our concerns; we'd like to thank them for that. And Lexington of Lone Oak would like to recommend that the board pass this in the affirmative. We think it will be good for the community, good for our values, certainly, to clean up that property over there which, I can tell you being in my backyard, is a real mess.

We have a lot of animals coming over; overgrowth; there's been criminal mischief back there; disrepair of the property, and to clean that up and put a nice community back there is probably the best thing that can happen.

Does the commission have any questions?

CHAIRMAN STRAIN: No, we're good. Thank you.

MR. JONATHAN: Thank you.

CHAIRMAN STRAIN: Is there anybody else that wishes to speak on this item?

(No response.)

CHAIRMAN STRAIN: John, can we bend your ear just for a minute?

MR. PODCZERWINSKY: Absolutely, yes, sir. John Podczerwinsky, transportation planning, for the record.

CHAIRMAN STRAIN: This will come back for consent on the 17th. With that return, could you give us a status on that U-turn sign that the gentleman just spoke about --

MR. PODCZERWINSKY: Yes.

CHAIRMAN STRAIN: -- whether or not something should be done or not.

MR. PODCZERWINSKY: Yes, sir. I can give you an update on what we've already found out so far, if you'd like.

CHAIRMAN STRAIN: Sure.

MR. PODCZERWINSKY: I've checked in with our design folks over in TECM, Transportation Engineering and Construction Management Department within Growth Management Division, and we talked about -- this is northbound U-turn on Airport, correct? Yeah. The design is recommended to stay as it is today. We can put additional signage at the driveway of this site, but not really at that U-turn, additional signage that says we've -- you know, it is prohibited -- or we can find something for that signage. But the design of the median separation there and any kind of blockage in between those two lanes should not be extended.

CHAIRMAN STRAIN: No. And I think he's requesting additional signage. If you could look into that and either let us know at the consent if it's something you're going to do or not, that would be appreciated.

MR. PODCZERWINSKY: Absolutely, yes, sir.

CHAIRMAN STRAIN: Okay, thank you.

Anybody else have any questions of anybody at this stage? Is there any remarks by the applicant or rebuttal remarks or any kind?

MS. CRESPO: No, sir.

CHAIRMAN STRAIN: Okay. With that, we'll close the public hearing and entertain -- well, first we'll have

discussion. During the presentation I made notes on three stipulations, if that's the agreement with this board. I'll read them just in case they are.

First one is to add to the principal uses for the tracts, the accessory use for recreational facilities; second is to amend General Note No. 5 as was discussed during the presentation to more strictly locate the optional recreational facilities; and Number 3, remove Exhibit F, 2.5, 2.6, 2.7, and 2.8. And then, of course, accepting staff's recommendations.

Does anybody else have any comments?

(No response.)

CHAIRMAN STRAIN: Is there a motion?

COMMISSIONER AHERN: I'll make a motion that we forward PUDZ-PL20110001519, Naples View RPUD, to the commission for approval.

CHAIRMAN STRAIN: With those stipulations?

COMMISSIONER AHERN: Absolutely.

CHAIRMAN STRAIN: Is there a second?

COMMISSIONER KLEIN: Second.

COMMISSIONER HOMIAK: Second.

CHAIRMAN STRAIN: Seconded by Karen.

Discussion? First I want to compliment both the applicant and the Walden -- I'm not familiar enough you with your -- Waldrop Engineering. You guys did a great job in communicating and working with the neighborhood. And, Kay, thank you too. That's critical, and these discussions go a lot farther when all that's done ahead of time. So we very much appreciate that.

Call for the vote. All those in favor, signify by saying aye.

COMMISSIONER VONIER: Aye.

COMMISSIONER SCHIFFER: Aye.

COMMISSIONER MIDNEY: Aye.

COMMISSIONER AHERN: Aye.

CHAIRMAN STRAIN: Aye.

COMMISSIONER HOMIAK: Aye.

COMMISSIONER EBERT: Aye.

COMMISSIONER KLEIN: Aye.

COMMISSIONER BROUGHAM: Aye.

CHAIRMAN STRAIN: Anybody opposed?

(No response.)

CHAIRMAN STRAIN: Motion carries 9-0.

Thank you very much.

Okay. The next two advertised public hearings have been continued to the last item today. That's 9B and C, the Jaffe variance and the Jaffe boat dock extension. So we're not going to hear those right now.

9D --

COMMISSIONER EBERT: I don't know if Rocky heard you.

CHAIRMAN STRAIN: Pardon me?

COMMISSIONER EBERT: I don't know if -- is it Tim -- heard you on that.

CHAIRMAN STRAIN: I don't care if he heard me or not. I wasn't --

COMMISSIONER EBERT: He just walked in the room.

CHAIRMAN STRAIN: It doesn't matter.

Item 9D is Agave Grill. That's been continued to the 5/17 meeting.

***Item 9E has been moved to 11A, but to expedite the process today, because that was a regularly scheduled item, we can move that up and discuss it now instead of under new business, under later new business.

But I notice Chris Curry's not here, and I think he came in to be involved in this.

COMMISSIONER BROUGHAM: They're in conference, I believe, in the hall.

CHAIRMAN STRAIN: Okay. Well, you might want to ask him to step in if he's going to be involved.

Okay. With that, we will move into Item 11A, which will be new business, which was formerly 9E,

ST-PL-2012-0000900, the Marco Island Executive Airport expansion special treatment permit.

All those wishing to testify on behalf of this item, please rise to be sworn in by the court reporter.

(The speakers were duly sworn and indicated in the affirmative.)

CHAIRMAN STRAIN: Disclosures by Planning Commission?

I spoke to Nicole Johnson a couple times on the phone, and I think that's about it.

Okay. Anybody else?

COMMISSIONER EBERT: I also spoke with Nicole on the phone.

CHAIRMAN STRAIN: Okay. Who's making the presentation?

MR. D'ARCO: Good morning, for the record.

CHAIRMAN STRAIN: Chris?

MR. D'ARCO: Chris D'Arco with Collier County Stormwater Environmental Permitting Department.

Being brought before you this morning is an after-the-fact ST permit application for the recent improvements done at the Marco Island Executive Airport.

I'll just put this on the overhead for you. The Board of County Commissioners directed staff to bring this after-the-fact application forward to address a zoning concern that they had regarding the recent expansion, the expansion being the parallel runway that they added to the west here and the apron expansion, and that that expansion may encroach into the existing conservation special treatment overlay, which is these general lands here. In the orange here it shows where it may be encroaching.

And I say may be encroaching because staff had found previous maps from various years that show conflicting lines regarding where the ST line actually lies over the project site.

So this ST permit will be for impacts to the true ST boundary, but further analysis may show that it may not be the same boundary as is shown currently on the current zoning map. And right now on the current zoning map it shows it roughly to be -- I'll put this up here for you.

This is not a current aerial of the airport but -- basically where that red line's going through that yellow oval right there.

As far as environmental permitting for this project goes, they did obtain both DEP and U.S. Army Corps of Engineers permits, an ERP from the DEP, and a dredging fill permit from the U.S. Army Corps of Engineers that addresses both listed species and wetland impacts to the project site -- as a result of the project site.

And this airport is part of the Deltona Settlement Agreement. So in regards to land preservation, the Deltona Settlement Agreement identified lands that needed to be preserved as a result, and this map here shows the lands.

Everything in red is the development areas, sorry, and everything else in blue and black is under preservation, and you can see the airport here in the center.

So with that, staff does recommend approval of this ST -- after-the-fact ST permit application. And also, for the record, this was heard by the Environmental Advisory Council board yesterday. They also recommended approval, but they have approve -- they recommended approval with stipulations, and I'll read those stipulations into the record.

Chairman Hushon moved to recommend the Board of County Commissioners approval of the Marco Island Executive Airport Special Treatment Permit ST-PL-2012-0900 subject to the following conditions: One, the conservation easement required in No. 5 of the September 11, 2001, MOU, or memorandum of understanding, and vegetation management program required in No. 2 of the MOU are to be prepared within three months and adopted, approved within six months of the issuance of the permit;

Number 2, upon development of a draft vegetation management program, the necessary parties are to begin operating under the auspices of the proposed program.

Three, said conservation easement is to be recorded.

And, 4, all signatories or their successors, and that would include the Conservancy of Southwest Florida, the National Audubon Society, the Florida Audubon Society, the Environmental Defense Fund, IZAAK Walton League, Florida division, Florida Department of Environmental Protection, the South Florida Water Management District, the Florida Department of Community Affairs, the Deltona Corporation, and Collier County to be notified of the process for developing the vegetation management program and given an opportunity to participate in an information/agreement meeting.

And I could put those stipulations up on the overhead as well. And with that, if you have any questions, we'll

be happy to take them at this time.

COMMISSIONER KLEIN: Paul?

COMMISSIONER MIDNEY: Number 3 said conservation easement to be recorded. What does that mean?

MR. D'ARCO: In the MOU there is a section -- there is an item in the MOU that mentions that a conservation easement was to be drafted 30 days after the MOU was signed back in 2001. It was supposed to be drafted in coordination with the Conservancy and the airport authority. And as far as we know, that was never done, so that needs to be addressed because it's a requirement of the MOU.

COMMISSIONER MIDNEY: Why does it say "recorded" instead of "done"?

MR. D'ARCO: I'm sorry.

COMMISSIONER MIDNEY: Why does it say "recorded" instead of "done"?

MR. D'ARCO: Well, you draft a -- draft a conservation easement, and then get it recorded.

COMMISSIONER MIDNEY: Oh, okay, thank you.

MR. D'ARCO: Yeah.

CHAIRMAN STRAIN: Anybody else have any questions?

COMMISSIONER EBERT: Oh, yes, I do.

CHAIRMAN STRAIN: Diane.

COMMISSIONER EBERT: Chris?

MR. D'ARCO: Yes.

COMMISSIONER EBERT: I did kind of get a kick out of some of this. We have to have a sense of humor with this. I notice that we got the staff report for the EAC on the 25th, and I just want to know if you can deliver the Wall Street Journal to me ahead of time. I mean, that would be very good. I couldn't believe --

MR. D'ARCO: Yeah, we apologize. The timing and scheduling was certainly not standard.

COMMISSIONER EBERT: Yeah. And then the -- you said you got a permit from the DEP. When did you get that permit?

MR. D'ARCO: The DEP -- the DEP permit was issued in 2003.

COMMISSIONER EBERT: Uh-huh.

MR. D'ARCO: And I believe the Army Corps of Engineers' permit was issued in 2007. I have copies of that. I can grab that and put them on the overhead, if you'd like. And that was submitted with the SDPA, the Site Development Plan Amendment approval packet.

COMMISSIONER EBERT: Well, there are some other things. Maybe this could go to Chris. Is he also here?

Just looking at the plans of the airport -- Chris, maybe you can help me out here. With these plans that we got along with this, which were done in 2010 which were approved, in there it does show the airport boundaries. And this is -- I mean, it's definitely over the boundaries from what this is showing. Does the FAA require -- between the taxi and the runway, what does the FAA require for distance between the two; do you know?

MR. CURRY: Chris Curry, executive director of the Collier County Airport Authority, and I also have with me Bob Tweedy, who's the manager of the Marco Island Executive Airport, who may have a little more history with this project than I have, because when I arrived it was basically the same time that the SDP permit was granted.

So between Bob and I, we will try to address any questions that the board may that.

MR. TWEEDY: For the record, Robert Tweedy, airport manager, Collier County Airport Authority.

To address your question specifically, for this category of runway, the required separation between runway and taxiway, per FAA standard, is 240 feet from center line to center line. So from the center line of the runway to the center line of the taxiway, there has to be a separation distance of 240 feet minimum, which is the way it was built.

COMMISSIONER EBERT: Okay. So that is -- that's why I was wondering.

MR. TWEEDY: That's an FAA requirement.

COMMISSIONER EBERT: FAA, I understand that.

But just looking at the drawings from this, I would have thought that somebody would have looked at this to see where the airport boundary lines were. I was surprised on here just to see how much it went over. I mean, I would have thought -- does the Deltona agreement mean anything?

CHAIRMAN STRAIN: They have an amendment to Deltona agreement that allows them to go over the airport boundary, and the only part of it that was in question is the ST permit, which is what they're trying to get fixed

by coming here today.

The Deltona agreement does cover the area in question, but they did amend it, and all the interveners of that agreement did sign the memorandum of understanding. So it doesn't matter where the boundary is in regards to that agreement, because the agreement was amended by that MOU.

COMMISSIONER EBERT: But they didn't follow parts of that MOU.

CHAIRMAN STRAIN: Well, the parts they didn't follow are the stipulations that we now have an opportunity to correct that are part of the EAC recommendations. So if we include these EAC recommendations and the stipulations will go forward, those pieces that were missed get taken care of.

MR. CURRY: That is correct. And I'm not here to make any excuse, but --

COMMISSIONER EBERT: No, you're not here --

MR. CURRY: -- over the past 10 years, you've had three executive directors and four interim directors at the airport, and so some of these steps were obviously missed over the past 10 years that we plan to certainly correct, and I'll take responsibility for that.

COMMISSIONER EBERT: It really was not, you know, for you, because you were not here at the time. It was just that, in reading through this, I noticed a lot of things were missed.

CHAIRMAN STRAIN: Anything else, Diane?

COMMISSIONER EBERT: Not at this time.

CHAIRMAN STRAIN: Okay. Anybody else have any questions of staff at this point?

(No response.)

CHAIRMAN STRAIN: Thank you.

MR. CURRY: Thank you.

CHAIRMAN STRAIN: Are there any other reports or -- because normally we have staff, and now we're going to have staff and staff. So is there a counter staff to oversee the staff? Chris, no one's going to fight you on this, huh? I mean Chris DeMarco (sic).

Okay. Then is there any public speakers? Nicole, did you -- I thought so.

MR. BELLOWS: Yes. We have one speaker, Nicole.

CHAIRMAN STRAIN: I thought she was here for a reason.

MS. JOHNSON: Good morning. For the record, Nicole Johnson here on behalf of the Conservancy. And I think just to provide a little bit of context, I was not working specifically on the MOU at the time that it was being crafted and signed, but I was with the Conservancy, and so I do have a little bit of that historical knowledge, and I think it might provide good context for you. So if you would allow me to give just a very brief background on that.

As has been mentioned, the airport actually predates the Deltona settlement. It was Deltona's airport. And 1982, when everybody signed off on the Deltona settlement, it was essentially outside the boundaries of the settlement. It was there, and it was going to remain there.

It had a footprint that would allow for the runway which was in place, and then it anticipated some sort of taxiway being a part of the airport at some point in the future.

In the late 1990s, it came to the Conservancy's attention that the location of where that parallel taxiway could have been -- and I'll just put this visual up. The location of the parallel taxiway per what was agreed to in the Deltona settlement -- you have the runway here, this is north, this is south -- and it was going to go in this location.

And as you can maybe see, there are a lot of wetlands there. You have some deeper pockets of water. And this area was also crocodile nesting habitat. So there was a lot of concern about that parallel taxiway going in this area. And it could have gone there. There were interlocal agreements, so we all knew this could happen.

And so the Conservancy and others worked with the airport authority to say, you know what, if we could maybe move that taxiway over to the other side, you'd avoid the really highly sensitive wetlands and you'd avoid the crocodile nesting habitat. So we understand this would require impacting some of the Deltona settlement wetlands, but we think it's a better alternative.

Another concern that the Conservancy was having at that time was the proposed vegetation trimming plan at the ends of the runways, and we were concerned that too many mangroves were going to be cut too low to the ground. So there was a lot of discussion about FAA rules, safety issues, and how much really needed to be trimmed, and so that was another issue that we were working with the airport authority on at that time.

And this is a 2011 aerial that shows -- and I don't know if this picks it up or not, but you can see that there's

an area of what looks like a lot of vegetation trimming, and this was what we wanted to talk to the airport authority about.

So these were a couple items that really began the discussions on that MOU. And by the time that the MOU was signed by Collier County -- the Conservancy had turned our information in in 1990/2000. And by the time that the Collier County Commission signed the MOU in 2001, everyone had agreed, yes, the taxiway could and should be moved, and as part of that, we would take a look at the vegetation management program for those areas at the ends of the runway so that we could find something that would meet FAA requirements, safety requirements, but that would also protect to the maximum extent possible those mangroves.

So that was one of the conditions in the MOU is that the airport authority would work with Audubon Society to find a mutually agreeable vegetation management program.

Another of the conditions was that the mitigation portions of the permits, when they were being submitted to the agencies, would be submitted to the other signatories, and we could comment on those.

And the third thing was to have the conservation easement in place, and that conservation easement was intended to cover this area here, where the taxiway was originally proposed, and we wanted that mainly to provide assurance that there wouldn't be another runway or another parallel taxiway. So we had those requirements in place and part of the MOU.

And what happens so often is that an MOU is signed and then filed away, and by the time that things start rolling, you have turnover in staffs, and so it just didn't happen. And, you know, I don't think there's any blame to be assigned on this. We just want to get this done.

So it has been unearthed, and these issues have been brought up. And I've talked with Bob and Chris, and we're going to be moving forward, hopefully -- well, absolutely with a meeting before this goes to the BCC, and we hope in the very near future to have these issues resolved.

But we're comfortable with the commitments made by the airport authority that this will be resolved, and I thought it would be good for -- to give you that history of how we got to where we are.

Are there any questions?

CHAIRMAN STRAIN: Okay. I've got one Nicole, one of the EAC rentals, No. 2 upon development of a draft vegetation management program, the necessary parties are to begin operating under the auspices of the proposed program. Why is that being insisted upon on a draft? Only because drafts are risky. If they have to go through further approvals, we wouldn't require that, or wouldn't expect that of the private sector. So why are we demanding it of the public sector?

MS. JOHNSON: I'm not sure. That wasn't a suggestion that the Conservancy made. I'm not sure that legally the airport authority could do that because it has to be approved by FAA and FDOT. So I'm not sure they could implement a draft program that was not approved by those other agencies.

CHAIRMAN STRAIN: Okay. I appreciate that. Thank you. I didn't know who -- so that will be a correction we make in whatever stipulations go forward.

Okay, thank you.

MS. JOHNSON: Thank you.

CHAIRMAN STRAIN: Anybody else in the public wishing to speak on this item? Brad.

MR. CORNELL: Good morning. I'm Brad Cornell, and I'm here on behalf of National Audubon Society and Florida Audubon Society, the two of the other Deltona settlement signatories, and I do appreciate Nicole sharing the background and history of this. It's hard to keep track as the years go by. And I was not participating in the MOU. Although I was here, and I was a volunteer with Audubon then, that escaped my -- the detail of my scrutiny. So Nicole's history is really important.

It's also really important to facilitate communication, permitting, and discussion of any land-use changes or impacts that are going to affect Deltona settlement preserves. Audubon did not receive any notice about this other than the public notices, which I didn't realize had so much significance relative to undone commitments from the MOU.

So in the future -- this is not my idea -- I think it's a good one, though -- it would make a great deal of sense if Collier County adopted a Deltona settlement overlay to alert staff and the public that these sorts of issues are going to be relevant to whatever your discussion is, because this happens with City of Marco Island, it happens with Collier County and, you know, we shouldn't be relying on Nicole or folks from the past, like Charles Lee, who's, you know,

probably going to retire sometime, and then we'll have lost the institutional memory of what all this stuff meant and who's going to be tracking it. So that would be an important suggestion.

And I'll just note that I'm looking forward to sitting down and meeting with staff and other signatories, the Conservancy to resolve the stipulations that the EAC has proposed. Thanks.

CHAIRMAN STRAIN: Thank you.

Ray, as a follow-up to the comment that Brad just made concerning the Deltona settlement and as an overlay, could you look into, between now and the next meeting, and find out if the settlement agreement is referenced in the zoning atlas as one of the sub-numbers. Do you know what I mean? When you have a ConST and then up at the top there's a little red number that tells you to look for something down below.

Because if it isn't, that would all -- that's all that would probably need to be done to make sure everybody's aware of the additional documents that are really pertinent to this area, if that's possible to do.

MR. BELLOWS: Yes. We have actually discussed this with staff maybe six months ago, and we have other settlement agreements. And we worked this out with the County Attorney's Office, because there are other settlement agreements that could apply. So we've updated our applications to note when you're dealing with a project in a certain location and there's a settlement agreement involved; however, it's not shown on the zoning map, and I think that is a great idea that we should maybe reference that, and I believe we had some preliminary discussions with our graphics folks to do that.

CHAIRMAN STRAIN: Could you, at some point, confer with the County Attorney's Office to make sure, first of all, it's legal to do that, and that if it's possible to do it and how it could get expedited if staff agrees it's something that should be done. I think any clarity like that helps avoid mistakes.

MR. BELLOWS: Definitely.

CHAIRMAN STRAIN: So thank you.

Anybody else have any comments?

(No response.)

CHAIRMAN STRAIN: Are there any members of the public that further wish to speak? I think everybody's done.

Is there any other presentation?

(No response.)

CHAIRMAN STRAIN: We're covered. The only question I have -- and I've been through the documentation -- on Page 3 of the staff report, I'd like to request that the second and third sentence be dropped from A, Future Land Use Element, and that you begin the fourth sentence, drop the word "also" and use a capital A. The reason for that is -- and both of them pertain to zoning matters that are not part, really, of this ST application.

So I'd rather not muck waters up with that if staff doesn't have any objection. It would be from the word "allowable uses" down to the word "also."

MR. BELLOWS: Staff does not object to that change.

CHAIRMAN STRAIN: Okay. I just think that cleans it up.

Any other comments, suggestions by anybody?

(No response.)

CHAIRMAN STRAIN: If not, we'll close the public hearing and entertain a motion, or discussion and then a motion, if need be. Either way. Does anybody have any discussion?

(No response.)

CHAIRMAN STRAIN: If not, is there a motion?

COMMISSIONER SCHIFFER: I'll make one.

CHAIRMAN STRAIN: Brad?

COMMISSIONER SCHIFFER: I move we forward ST-PL-2012-900, the Marco Island Executive Airport Special Treatment, with a recommendation of approval.

CHAIRMAN STRAIN: Okay. Is there a second?

COMMISSIONER EBERT: I'll second.

COMMISSIONER SCHIFFER: Including the EAC's stipulation, sorry.

CHAIRMAN STRAIN: Okay. Including the EAC stipulations with the exception of No. 2?

COMMISSIONER SCHIFFER: Yes.

CHAIRMAN STRAIN: And, Diane, do you accept that?

COMMISSIONER EBERT: I accept that.

CHAIRMAN STRAIN: Okay. Motion's made and seconded.

Discussion? Just from my comment, I am certainly going to support the ST application. I'm glad it's finally come through and it's cleaned up. I do not support the references to the zoning that I've asked to have eliminated from the executive summary. Staff's going to do that. So with that, I have no further problem.

All those in favor, signify by saying aye.

COMMISSIONER VONIER: Aye.

COMMISSIONER SCHIFFER: Aye.

COMMISSIONER MIDNEY: Aye.

COMMISSIONER AHERN: Aye.

CHAIRMAN STRAIN: Aye.

COMMISSIONER HOMIAK: Aye.

COMMISSIONER EBERT: Aye.

COMMISSIONER KLEIN: Aye.

COMMISSIONER BROUGHAM: Aye.

CHAIRMAN STRAIN: Anybody opposed?

(No response.)

CHAIRMAN STRAIN: Motion carries 9-0.

Thank you.

Before I move on to the next item, which will be the old business, our Land Development Code amendments, we'll take a break until, oh, 10:40 -- no, 10:35 -- 10:35. I was adding wrong, 10:35. Let's get back at 10:35, okay.

(A brief recess was had.)

CHAIRMAN STRAIN: Okay. Welcome back from break. We're going to switch gears here, and we're going to go from advertised public hearings into the continuation of the LDC amendments that we started several meetings ago, and basically they're going to be heard at the end of every regular meeting until they're done.

To accommodate the applicant of the Jaffe boat dock variance and extension, that still has not been heard yet today. We're going to hear that after 12 o'clock, if this takes that long. If not, we'll hear it directly after the remaining business that we have.

Okay. Caroline, it's all yours.

MS. CILEK: Great. Caroline Cilek, for the record, and we are here to first review a tabled amendment that was first looked at on February -- or excuse me -- April 13th, and that is 3.05.02(G) 1 through 7, and a new draft was provided to you with corrections and comments from our first review.

And Steve Lenberger will be presenting that amendment.

CHAIRMAN STRAIN: Good morning, Steve.

MR. LENBERGER: Good morning. For the record, Stephen Lenberger, Land Development Services Department.

This amendment here, which I'll call the clearing and filling amendment, we brought to you last time, and you had asked that I take a look at stockpiles, which are addressed on Page 7 of the amendment. If you'll turn to Page 7. And you asked to take a look at stockpiles as far as different types of ways of stabilizing it and also to look at stockpiles in more rural areas and really thinking about whether we need to require stabilization for these more remote-type stockpiles.

So what I did is I spoke with Jack McKenna, the county engineer. And after I spoke to Jack, I drafted some language. I believe it's highlighted in your text. And I sent it to stakeholders, and I copied you-all on that, so you can see I coordinated with them. And, basically, what I have here is what's proposed.

If you have any questions, I'll be more than glad to address them.

CHAIRMAN STRAIN: Okay. Are there questions? And we're on 3.05.02(G) 1 through 7 basically. Anybody have any questions with the new language or any language at all?

Steve, you may have a winner here. This is too easy.

COMMISSIONER EBERT: It mainly comes to light when we're working with a development.

CHAIRMAN STRAIN: Well, I like the addition of C. I think C was a very practical entry into the program.

So -- okay. Then if there's no other -- if there's no questions or concerns, is there a motion?

COMMISSIONER SCHIFFER: I move we forward with a recommendation of approval.

CHAIRMAN STRAIN: Is there a second?

COMMISSIONER VONIER: Second.

CHAIRMAN STRAIN: Motion made by Brad, seconded by Bill.

Discussion?

(No response.)

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

COMMISSIONER VONIER: Aye.

COMMISSIONER SCHIFFER: Aye.

COMMISSIONER MIDNEY: Aye.

COMMISSIONER AHERN: (Absent.)

CHAIRMAN STRAIN: Aye.

COMMISSIONER HOMIAK: Aye.

COMMISSIONER EBERT: Aye.

COMMISSIONER KLEIN: Aye.

COMMISSIONER BROUGHAM: Aye.

CHAIRMAN STRAIN: Anybody opposed?

(No response.)

CHAIRMAN STRAIN: Motion carries, and let the record note Melissa Ahern's not here at the moment, so it will be 8-0.

Next item.

MS. CILEK: Excellent. The next LDC amendment to review was also tabled and brought back with changes, and that is 4.05.02, design standards, and 4.05.04, parking space reqs.

And you'll see that I have done two things. Highlighted in yellow are the changes that were made following the review on the 13th, and then there's also some questions regarding where 4.05.04(D) was being relocated within the proposed Section B, and I just highlighted that in red for you to see. And I know Brad had some comments on reorganization, so if that looks okay to you --

COMMISSIONER SCHIFFER: Not quite. I think when you look at it, number one is, obviously, our standard, and I would take the driveways thing out. But let me do one other thing. First is "a" should probably be what you have as "i," because all of a sudden you start talking about grass, compacted spaces, and then the "i" is actually telling you that you can use grass parking in lieu of the above.

So I would make "i" be "a," and your "a" there be "i," if you want. And I do think that the driveways should be under the grass parking because, obviously, they'll be paved if they're above. Unless your thought is that if somebody had a driveway or had a crushed stone, that you would have the driveway itself always paved.

MS. CILEK: Yes, we did want to keep that driveways and handicap spaces shall be paved for all parking lots in the overarching umbrella component.

COMMISSIONER SCHIFFER: Okay. Then maybe put it in both places, because you're going to treat grass parking as an exception to the one above, so just make sure that your intention there is always to have the driveway and the thing paved.

MS. CILEK: Okay.

COMMISSIONER SCHIFFER: And that's it. So I'd kind of like -- just kind of reshuffle it again.

MS. CILEK: Yep. We'll scoot up little "a," 1A up to 1, and then just push everything up one.

CHAIRMAN STRAIN: You're actually just going to switch little "a" and "i."

COMMISSIONER VONIER: "a" and "i."

MS. CILEK: Okay.

CHAIRMAN STRAIN: I think that works. Anybody have any problem with it?

(No response.)

CHAIRMAN STRAIN: Any other comments?

(No response.)

CHAIRMAN STRAIN: I know this is existing language, but I've just got to ask the question now because

we have an opportunity to maybe fix it if it needs to be. What is a durable grass cover? I mean --

MS. CILEK: Very good question.

CHAIRMAN STRAIN: Right. And if -- what's durable to you may not be durable to somebody else. So how do we know if they're putting down a durable grass cover?

MS. CILEK: I'm going to leave that to an expert, and we have Alison here from the engineering department. And if she'd like to speak on that, she's welcome to.

CHAIRMAN STRAIN: As she's trying to slide down in her seat so -- oh, no.

MS. BRADFORD: Alison Bradford. Well, transportation planning, but I'm actually covering for Jack McKenna right now.

Actually with the durable cover, it's something that can basically handle with -- I guess with the language and all was basically to be able to accept with the cars driving over top of it not, you know, with the dust covering and the grass.

CHAIRMAN STRAIN: Well, this is durable grass cover.

MS. BRADFORD: Okay.

CHAIRMAN STRAIN: That's defining grass.

MS. BRADFORD: Yeah.

CHAIRMAN STRAIN: So which grass is durable?

MS. BRADFORD: Well, basically, like, not dead grass. I mean, because when you have a lot of traffic over top of it, the grass is, basically, going to be dead and not, basically, support, you know, for the cover.

CHAIRMAN STRAIN: Okay. Boy, are you on the spot today, huh? I'm just concerned that if someone reads this and they're saying that they've got to have a durable grass cover, why don't we just say with a grass cover that must be maintained in a living condition --

MS. CILEK: A maintained grass cover.

CHAIRMAN STRAIN: -- or something like that, then you know what it means. Is that --

MS. BRADFORD: Yeah, I think that's the basic intent. It's just something to say that it's holding up, it's not dead grass that it, you know, can't become dusty. Yeah.

COMMISSIONER EBERT: Maintained?

CHAIRMAN STRAIN: That must be maintained in a livable condition or some language that, Caroline, you can feel is appropriate.

MS. CILEK: Sure, use "maintain."

CHAIRMAN STRAIN: But that defines what we're trying to say "durable" is when you drop the word "durable," because I'm not sure what that means. I mean, Astro Turf is durable grass cover, so --

MS. BRADFORD: Yeah, I mean --

COMMISSIONER EBERT: Tart (sic) and turf.

MS. CILEK: All right. We will work to craft some language regarding "maintained."

CHAIRMAN STRAIN: Thank you.

COMMISSIONER SCHIFFER: Mark, on that point, I think the importance of the word there is that if it is ruts and mud, that that grass isn't durable. So there are some grasses that will stand up, some that won't.

MS. CILEK: That's true.

COMMISSIONER SCHIFFER: So I think the purpose of it is more for enforcement than it is design.

CHAIRMAN STRAIN: Right. I think to fix it would be a good thing. Even though it's not changed language, why don't we just fix it while we've got it up here to deal with.

MS. BRADFORD: Maybe like properly maintained? I mean, it's, you know, in between. That's just --

COMMISSIONER SCHIFFER: I like the word "durable" so it's not a bunch of ruts like some grass. So maybe durable and maintained.

MS. CILEK: I think that would work.

COMMISSIONER SCHIFFER: And if it's failing, you have those words to rely on.

CHAIRMAN STRAIN: Yeah. But, I mean, what if you put Floratam out there. Is that durable?

COMMISSIONER SCHIFFER: I don't know what that is, but --

CHAIRMAN STRAIN: Oh, okay. I mean, there's all -- that's just a form of grass. It's what most of the yards are.

COMMISSIONER SCHIFFER: Right. And you'll learn that some grasses won't work and some grasses will. Some grasses need, you know, stabilizers within them; some don't.

MS. BRADFORD: Yeah. And I think it's going to be all kind of dependent in the use and, you know, how often it is being used, basically.

COMMISSIONER SCHIFFER: Right, right.

CHAIRMAN STRAIN: Caroline, if you work something into this to get the intent of the word "durable," that would be very helpful.

MS. CILEK: You bet.

CHAIRMAN STRAIN: Okay. So we're going to have to bring that one back at some point for further discussion. Thank you. Appreciate -- you can sit up straight in your seat now.

Number 3 is definition of usable open space, and it's 1.08.02. Is that the next one, I assume? I'm going in order.

MS. CILEK: Yep. And the new language is on Page 3. And following conversations with Heidi, we modified it a bit from your original version, just the three definitions, and we adjusted the numbering and language on Page 4 as well.

CHAIRMAN STRAIN: Anybody have any questions or concerns about the revision --

MS. CILEK: I'll give a little history, if needed, too.

COMMISSIONER SCHIFFER: I have one question, and that's the elimination of some of these things. Why are we crossing out beach frontage not being allowed?

MS. CILEK: That's a good question. What we did with the open space usable definition was to do a hybrid of an existing usable open space definition in the rural fringe and modified it a little bit for clarity. So we wanted to use a definition that was consistent with the GMP, and that's where we found it. And then we sort of made it a little bit more clear. We removed some language that didn't make sense regarding public streets.

COMMISSIONER SCHIFFER: Well, I mean, if you're modeling the public fringe, I can see why beachfront disappeared, but why can't we keep that in there? What's wrong with people counting their beachfront property as part of their open space?

MS. CILEK: We really haven't -- we just worked with this definition. I haven't really thought about the removal of certain aspects of it, of certain parts of it. The floodplains is also being removed.

COMMISSIONER SCHIFFER: A residential development with a 60 percent requirement, you know, that would take a big -- I mean, take Moraya Bay, you would kill Moraya Bay because that's beach frontage. I mean, most of that back of that building is beach frontage.

MS. CILEK: Yeah. I can't speak to individual PUDs, but I know this amendment is trying to include the required yard setbacks as -- counted as open space, which the current LDC definition does not do.

COMMISSIONER SCHIFFER: I think what this word would do is that when I'm trying to get 60 percent open space, this is the open space I'd be trying to get. Is that right, or would I be --

MS. CILEK: Yep. The definition outlines what can be included as usable open space. If your recommendation is to include beach frontage, that's just fine.

CHAIRMAN STRAIN: But isn't it already included by the fact it's part of usable open space? You're saying it's being excluded from here forward.

COMMISSIONER SCHIFFER: Well, she's striking it out.

MS. CILEK: In this definition, yes.

COMMISSIONER SCHIFFER: And I don't know why -- I mean, I don't know why a lagoon, a floodplain -- I mean, we don't have a lot of floodplains, but why would that be taken out? That's pretty common --

MS. CILEK: Well, I think you make a really valid point of that. You know, we did want to work with a definition that already existed within the GMP, but that was particular to the rural fringe which doesn't have some of these elements.

So if you want to make the recommendation to include the beachfront and lagoons and floodplains, that's just fine, because this is the whole county we're looking at. So it's actually good insight.

COMMISSIONER SCHIFFER: Tennis courts. I mean, why can't that amenity -- I mean, it's -- I would not exclude anything that's in there, and I think adding a lake makes sense.

MS. CILEK: Okay. That's just fine.

COMMISSIONER SCHIFFER: I think the only thing I like -- anyway, the exclusionary part of it, I don't like any of -- you taking anything out and feel free to add, you know.

MS. CILEK: You make a valid point in the fact that this was looking at an area that doesn't have coastal area. So in most of -- and lots of the county does have a coastal area, and you would include that.

CHAIRMAN STRAIN: Well, and instead of changing the definition to exclude what was there before so that we include yards, why don't you just keep what was there before and add yards?

MS. CILEK: And that's what I think the recommendation should be, yeah, I agree.

CHAIRMAN STRAIN: I think that kind of gets to where Brad's trying to go. Does it, Brad?

COMMISSIONER SCHIFFER: Yes, it does.

MS. CILEK: Yes, I think so.

CHAIRMAN STRAIN: Okay. That will be another rewrite?

MS. CILEK: Sure. Anything else regarding the other provisions?

CHAIRMAN STRAIN: Anybody have any other issues on 1.08.02?

COMMISSIONER SCHIFFER: Hold on. Where -- why are you crossing out G1 entirely?

MS. CILEK: I'm sorry. I can't hear you.

COMMISSIONER SCHIFFER: G1, why is it being crossed out?

MS. CILEK: Because in the header we describe that having definitions within the LDC and other locations isn't the best way to guide people to using the correct definition. So what we want to do is just have one place for the defined usable open space as well as the other types of open space and leave just the regulation in G, which is guiding the site design standards. So G1 is removed so that people use the definition in the definitions section.

COMMISSIONER SCHIFFER: Okay.

MS. CILEK: And not to have different definitions all throughout the code.

COMMISSIONER SCHIFFER: And it's essentially covered in the prior paragraph that we talked about?

MS. CILEK: (Nods head.)

COMMISSIONER SCHIFFER: Okay.

MS. CILEK: Correct.

CHAIRMAN STRAIN: Okay. Anybody else?

(No response.)

CHAIRMAN STRAIN: Okay, thank you.

MS. CILEK: Great.

CHAIRMAN STRAIN: We'll move on to the next one. That's 3.05.07(H)(1)(E).

MS. CILEK: Yes. Preservation standards, and that one will be presented by Steve Lenberger as well.

MR. LENBERGER: For the record, Steve Lenberger, development services.

There's two amendments here that were -- came about with the recommendations from the Collier Building Industry Association, CBIA. The county manager had approached CBIA and asked them if they wanted to propose LDC amendments to make the LDC more efficient, you know, streamline the development process, and allow for flexibility without sacrificing quality of development.

And CBIA organized professionals from different disciplines to propose amendments. And amendments were posed, worked through staff, and some staff agreed upon and others were dropped. But the ones staff agreed upon have now been staff sponsored, so we are in agreement with the amendments that are going forward by CBIA.

The first one would be the archaeologic amendment. This amendment is to allow historical and archaeological sites that count towards the minimum native vegetation and retention requirement for the county. There, I guess, have been different interpretations of whether it should be allowed in the future -- I mean, should be allowed by past management, so I know it has, in my time here with the county, been counted towards minimum preservation requirements, and I know some past management have not allowed it.

But it's interesting, as we researched this we noticed the conservation and coastal management element, and Fred Reischl was very helpful in doing research on this initially. In Policy 11.1.2, Subsection E, it says, conservation of such historic archaeological sites shall qualify for any open space requirements mandated by development regulations. So that would include preservation of native vegetation or retention of native vegetation.

So this amendment is to allow for that to count towards the retention of native vegetation. And in doing so we had to address whether these sites were previously cleared, partially cleared, or were excavated for one reason or

another to take a look scientifically at the archaeological artifacts that may be contained within.

So what I did is I added criteria under the creative preserve section of the Land Development Code. And on Page 3 of the amendment, I added that archaeological historical sites, where such sites are authorized by the BCC as part of a PUD rezone, are by subsequent development order approved by the Collier County Historical Archaeological Preservation Board to be planted with native vegetation in accordance with the criteria herein.

And this is under criteria which creative preserves would be allowed. And if you turn to Page 5, what we did is we added similar language indicating that these areas could be revegetated with native vegetation similar to or compatible with the vegetation, the native vegetation, in the preserve or archaeological site, and the revegetation would be with one-gallon ground covers.

This is trying to acknowledge the sensitivity of these archaeological sites. You don't want to really disturb the soil. So ground covers would be appropriate in those instances.

MS. ASHTON-CICKO: I do have an issue with this one about the Historical Advisory Board delegation. You know, it could either be archaeological site, you know, identified by the state or it could be by the county, but I'm not sure about delegating that to HAPB.

CHAIRMAN STRAIN: So you're suggesting in that fourth line down where it says, "or by subsequent development order approved by the HAPB" be struck?

MS. ASHTON-CICKO: Yes.

CHAIRMAN STRAIN: Okay. Steve, do you have any concerns, since you wrote this?

MR. LENBERGER: No concerns.

MS. ASHTON-CICKO: And that occurs in two places, I believe.

COMMISSIONER KLEIN: Both -- wherever that occurs.

MR. LENBERGER: That's fine.

CHAIRMAN STRAIN: The end of that paragraph also has "or the HAPB," so we'd strike that there as well.

MR. LENBERGER: Yeah, three places I see it.

CHAIRMAN STRAIN: That it would be, yeah.

Anybody else have any questions? Paul?

COMMISSIONER MIDNEY: Would that preclude grass when you talk about native vegetation?

MR. LENBERGER: If it was counted -- if the archaeological site was used towards the minimum native vegetation retention requirement, it would exclude non-native grasses, yes, but it would allow native grasses, absolutely.

COMMISSIONER MIDNEY: Okay. And what do you mean by one-gallon containers? What kind of plants are you talking about?

MR. LENBERGER: Oh, ground covers, and ground covers are typically one-gallon container or smaller. They are liners depending on the nature of the type of restoration. The idea is not to disturb the soil too deep. One-gallon plant would be, perhaps, about six inches deep, and that's normally the soil level. You start getting below that, you would start doing more disturbance of archaeological sites. You don't want to do that.

COMMISSIONER MIDNEY: I was just unfamiliar about native versus non-native grasses. I --

MR. LENBERGER: There are a variety of native grasses so, yes, they would be allowed.

COMMISSIONER MIDNEY: Thank you.

MR. LENBERGER: You're welcome.

CHAIRMAN STRAIN: Anybody else? Steve, your -- on Page 5, your first sentence, I'm trying to understand how it would occur. Where it says, where sites are counted towards the minimum native vegetation retention requirement and where such sites have no native vegetation, that part I understand, but then it says, or are authorized to be cleared and excavated by the BCC as part of a PUD rezone.

So an applicant would come in with a PUD, he would have to show how much native vegetation he has and make up for whatever he doesn't have by replanting or any other means. Why would he ask to have it excavated then if he was going to use it for native vegetation?

MR. LENBERGER: That's a good point. Excavation -- what would initiate an excavation, I'm not sure. I did receive some correspondence and I had communicated with the state preservation board, and they don't get involved in determining whether a site's excavated or not, so I was kind of surprised at that. I know some sites are, and they are often done as part of permitting with the state, particularly if the site's going to be impacted by development.

But I wanted to allow, for whatever reason in the future, perhaps a site might be desired to be excavated and allow for revegetation.

And maybe that wouldn't be determined at the PUD level by the BCC, but maybe modifying the language, now that I'm thinking about it a little bit more, to allow for excavations if for some reason it would be desirable to unearth some of the artifacts or take a look at them. But other than having the BCC approve that, I'm not sure quite what to do as far as your questions there.

CHAIRMAN STRAIN: Well, where the word -- after the bold "native vegetation," the second one, and it starts with the word or are authorized to be cleared and excavated by the BCC as part of a PUD. Why don't we just drop that? The whole thing would read better, and it would stop the confusion as to why they would allow you to excavate an archaeological site to begin with, especially if you now wanted to come in and replant it with native vegetation. You wouldn't do that after you got your zoning. You'd do it as part of the zoning process, and you'd have to recognize the archaeological site at that point, too. So what is the need for that last part of that sentence?

MR. LENBERGER: Okay. So you're --

CHAIRMAN STRAIN: See where it says, or are authorized to be cleared and excavated by the BCC as part of a rezone process?

MR. LENBERGER: Right.

CHAIRMAN STRAIN: Rezone, just drop that. And then continues -- then you've got your first three lines, and then it drops down to the -- whereafter the reference to the HAPB, then it says these sites shall be revegetated. Wouldn't that make it cleaner?

MR. LENBERGER: Well, I think you'd have to have, where there's no native veg -- third line -- well, it's Line 25, where such sites have no native vegetation or are authorized to be cleared and excavated, at least you'd have to acknowledge that they could be cleared and excavated in the future.

CHAIRMAN STRAIN: But how could they be if they're archaeological or historic sites?

MR. LENBERGER: Well, there could be -- I know they are -- normally when a site is developed, and if that site's going to be impacted, they are excavated and looked at. But there are, perhaps, scientific studies maybe in the future where they might want to take a look at these sites. After all, you're preserving them. So we need to at least allow some flexibility for them to be looked at in the future and possibly excavated, so -- but the excavation, I had cleared -- authorized to be cleared and excavated by the BCC as part of a PUD rezone. And that's a good point. You would not necessarily know that right up front, but it could happen in the future, and --

CHAIRMAN STRAIN: Well, I mean, I guess it doesn't hurt. It just seemed -- it just makes it more confusing. But if you feel it's necessary, I'll go with your judgment. You've done a lot more of this than I have. So -- anybody else have any issues?

COMMISSIONER EBERT: Not on that particular one.

CHAIRMAN STRAIN: Okay. Well, then I think this is --

MS. ASHTON-CICKO: Can I just ask for a clarification on that one? So what Steve is saying, it would be where such sites have no native vegetation or the native vegetation is authorized to be -- so you'd probably have to insert a word, right?

MR. LENBERGER: Or are authorized to be cleared and excavated by the BCC as part of a PUD rezone or subsequent development order, maybe something like that where -- because you may -- might not necessarily force an applicant to do a PUD rezone, but maybe another type of authorization to the board.

So where such sites have no native vegetation or are authorized to be cleared and excavated by the BCC as part of a PUD rezone or subsequent development order, period.

CHAIRMAN STRAIN: Then you'd start on a couple lines down and capitalize the word "these"?

MS. ASHTON-CICKO: I would take out "or by subsequent development order," because I don't know what you're talking about, but I would also insert the words "the native vegetation is authorized to be cleared and excavated by the BCC as part of a rezone."

MR. LENBERGER: Okay.

CHAIRMAN STRAIN: So it would read, where such sites have no native vegetation or the native vegetation is authorized to be cleared and excavated by the BCC as part of the PUD rezone.

MS. ASHTON-CICKO: Period.

CHAIRMAN STRAIN: Then either semicolon or whatever, then it would go on, these sites shall be

revegetated with native vegetation, and then it goes on from there, right.

MS. ASHTON-CICKO: Yep.

CHAIRMAN STRAIN: Okay. Does that work, Steve?

MR. LENBERGER: That looks like it would work.

CHAIRMAN STRAIN: Does that work -- anybody on the commission got any concerns?

(No response.)

CHAIRMAN STRAIN: So basically we're making that change in the paragraph, we'll be dropping the last three words, "or the HAPB," since we dropped the reference earlier.

MR. LENBERGER: Yes.

CHAIRMAN STRAIN: And on Page 3 we would drop the similar reference to the HAPB in the development order on that page as well. So on Page 3 it would be after the word "PUD rezone," or by subsequent development order be dropped along with all the references to the HAPB up until the word "to," is that what we're -- so we're all on the same page?

MR. LENBERGER: Yes.

CHAIRMAN STRAIN: Okay. For those that -- the changes needed to this document, does anybody see a need for it to come back again?

(No response.)

CHAIRMAN STRAIN: I think staff's got the changes clear. They're not that -- they're not flexible. They're just pretty straightforward.

With those changes, is there a motion regarding this one, 3.05.07(H)(1)(E)?

COMMISSIONER HOMIAK: I'll make a motion to approve.

CHAIRMAN STRAIN: Made by Ms. Homiak, seconded by?

COMMISSIONER AHERN: I'll second it.

CHAIRMAN STRAIN: By Melissa.

Discussion?

(No response.)

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

COMMISSIONER VONIER: Aye.

COMMISSIONER SCHIFFER: Aye.

COMMISSIONER MIDNEY: Aye.

COMMISSIONER AHERN: Aye.

CHAIRMAN STRAIN: Aye.

COMMISSIONER HOMIAK: Aye.

COMMISSIONER EBERT: Aye.

COMMISSIONER KLEIN: Aye.

COMMISSIONER BROUGHAM: Aye.

CHAIRMAN STRAIN: Anybody opposed?

(No response.)

CHAIRMAN STRAIN: Motion carries 9-0.

Okay. Next one is a new draft of the preservation standards, exotic removal, 3.05.07(F)(4)(D).

MS. CILEK: Correct. And there was just one minor change in the labeling of this one, and it's highlighted in yellow in your new draft. And there will be several speakers on this one as well.

COMMISSIONER EBERT: Yes.

MS. CILEK: Okay. Thank you.

CHAIRMAN STRAIN: Anybody have any questions at this point before the speakers?

(No response.)

CHAIRMAN STRAIN: Steve, did you want to make any presentation or comment? Did this one come up last Wednesday?

MS. CILEK: No.

MR. LENBERGER: This is the -- no, the exotic vegetation, no.

CHAIRMAN STRAIN: Okay.

MR. LENBERGER: Did you want to hear from public speakers first?

CHAIRMAN STRAIN: Sure. Those members of the public wishing to speak, you want to just come on up one at a time, either podium. Don't be shy. Well, most of you aren't. They're old hands at this.

MR. WOODRUFF: Good morning.

CHAIRMAN STRAIN: Good morning.

MR. WOODRUFF: For the record, Andy Woodruff here on -- just in support of staff's recommendation, on behalf of CBIA as well.

I'd like to address a couple parts of the Growth Management Plan that I believe are inconsistent with this section of the Land Development Code.

The first -- the first is the Future Land Use Element rural fringe mixed-use district, Page 75, Section C, sending lands, subpart F, any sending lands from which TDR credits have been severed may also be utilized for mitigation programs and associated mitigation activities and uses in conjunction with any county, state, or federal permitting.

I believe the LDC language directly conflicts with this language and that the land development rights of the property owners in the rural fringe, those rights have been stripped for their ability to mitigate consistent with state and federal policies.

CHAIRMAN STRAIN: And you're saying that because in their rural fringe area, the exotic removal is excluded from being used as mitigation credits where it is used as mitigation credits in other parts of the county?

MR. WOODRUFF: That's correct.

CHAIRMAN STRAIN: Okay. I just wanted to make it clear since I thought this was heard on the 25th, but if it wasn't, I need to make sure everybody knows what we're talking about, so --

COMMISSIONER EBERT: This was not heard on it.

CHAIRMAN STRAIN: No. For some reason, I thought --

MS. CILEK: For the record, this was not heard. This is the first time this is coming to the Planning Commission.

CHAIRMAN STRAIN: Right. I understand now. Okay.

MR. WOODRUFF: The second goal that I believe is inconsistent with the Land Development Code is Goal 65 of the Coast Conservation Management Element, and this is Part 6, mitigation required for direct impacts to wetlands in order to result in no net loss of wetland functions. And there's three basic mitigation requirements that need to be met before the county can require mitigation exceeding that of the jurisdictional agencies.

The first is no net loss of wetland functions, the second is no net loss of storage or conveyance volume resulting from direct impacts to wetlands, and the third is a placement of a conservation easement over land and a plan for initial exotic removal and exotic plant maintenance.

So if you can demonstrate compliance with those three parts of the code in Subpart 4 here hyphenated in yellow, if agency permits have not provided mitigation consistent with this policy, Collier County will require mitigation exceeding that of the jurisdictional agencies.

I believe this is where the Land Development Code exceeds that of the jurisdictional agencies regardless of Parts 1, 2, and 3 are being met by the property owner.

Additionally, on top of the fact that the rural fringe has been divided into sending, neutral, and receiving lands, additional density restrictions have been imposed on those landowners and preservation requirements have been imposed on those landowners.

There's also additional restrictions that are specific to the rural fringe that I'd like to point out. The first is a requirement to preserve wetlands occupied by listed species regardless if this exceeds the native vegetation preserve requirement.

The second is a requirement to preserve wetlands acting as a corridor for wildlife regardless, again, if this exceeds the native vegetation preserve requirement.

And the third is a requirement to preserve wetlands acting as flowways regardless if this exceeds the native vegetation preserve requirement.

So by adding all of these restrictions to rural fringe, designating these additional preserve restrictions, the county's all but mandated that mitigation for state and federal permits is going to be done on site through preservation and enhancement of wetlands, and by disallowing the use of exotic removal to count as mitigation on those lands, I

think, puts rural fringe mixed-use landowners in a real bind.

CHAIRMAN STRAIN: Before you leave, do you know when -- was this rule put in place with the original rural fringe process when it was developed in around 2000 or so?

MR. WOODRUFF: 2004 they're telling me. I'm not that familiar with when this language was actually put in place.

CHAIRMAN STRAIN: Okay. Well, I'll wait for staff to talk about it then. Thank you.

Are there any other public speakers on this matter?

MR. LAYMAN: For the record, my name is Bruce Layman. I work as a senior ecologist with Stantec locally, and I'm here in support of staff's LDC amendment this morning.

What I'd like to do is run you through why I believe --

CHAIRMAN STRAIN: Bruce, you said you're in support of staff's LDC amendment?

MR. LAYMAN: Yes. I'm here to support their amendment, yes.

CHAIRMAN STRAIN: Okay.

MR. LAYMAN: What I'd like to do is run through why I believe the LDC as it's written is in direct conflict with the Growth Management Plan policies.

In short, Growth Management Plan Policy 6.2.5 requires that wetland impacts within the rural fringe be mitigated and that that mitigation result in no net loss of wetland function. This basically means that your mitigation function needs to be equal to or greater than the function of the wetland that's being impacted.

The GMP further identifies the need for you to use one of two functional -- wetland functional assessment methodologies in quantifying what those functions are. They go by the acronym UMAM and WRAP. Both of these analyses include exotic vegetation coverage as a scoring parameter in determining and quantifying what that functional value is.

In fact, three out of six of the parameters used in the WRAP analysis include exotic vegetation as part of the scoring mechanism, and two out of three of the parameters in the UMAM analysis also include exotic vegetation as part of the scoring mechanism in that methodology as well.

So in following the directive of the GMP that we need to quantify the loss of function that may come from a wetland impact and balance it with a gain in function resulting from mitigation, if exotic vegetation removal results in the gain in wetland function, which is obligatory based on going through the UMAM and WRAP methodologies, then it would represent mitigation, and this is where it directly conflicts with the LDC that says -- what does it say -- oh, I lost it. Dang it.

CHAIRMAN STRAIN: Those are called senior moments. I have quite a few.

MR. LAYMAN: Yes, I'm getting up there, sorry. Oh, exotic removal will not constitute mitigation. It's in direct conflict with that, because if you remove exotics from a mitigation area, it increases the gain and functional value, and it is, in fact, mitigation. So that -- because of that conflict, I'm fully supportive of the current LDC amendment as it's proposed.

COMMISSIONER KLEIN: Thank you.

MR. LAYMAN: And I'm happy to answer any questions if you have any.

CHAIRMAN STRAIN: Time frames -- I saw you trying to relay time frames. So you -- 2004, this was initiated with the initial rural fringe policies, or was it added and changed later on after the policies first came up to play?

MR. LAYMAN: It was adopted by the Board of County Commissioners in February of '04. So it had been going through the process up through the end of '03, and it was adopted in '04. I can't answer specifically whether the rural fringe amendments were adopted in '04. Maybe staff may know that directly, but --

CHAIRMAN STRAIN: And I intended to query staff about it as well, because I'm -- I like to know -- consistency is always an important factor in our code, and if we have something that's inconsistent, I would assume it was done with good reason, and I'm trying to understand the reason based on, especially, the things that you have said so far.

MR. LENBERGER: Stephen Lenberger, for the record.

The rural fringe amendments, according to the CCME section I have in front of me, the ordinance was approved in -- it was Ordinance No. 2002-32, which was adopted in June 19, 2002. But due to a challenge, it didn't go into effect until July 22, 2003.

CHAIRMAN STRAIN: Was the initial language devised for the rural fringe inclusive of this exotic removal mitigation issue or not? Was it something that was changed later on after the initial rural fringe district was established?

MR. LENBERGER: I don't believe the -- for the exotic removal, not counting -- I do not believe it's in the -- no, it's not in the GMP. I know it's not. So it's in the Land Development Code.

CHAIRMAN STRAIN: Right. But was it -- okay. But did it come about as a change from the initial rural fringe codes? When we established rural fringe based on the governor's order and all that, there was initial codes established. Was this one that was changed later on or no?

MR. LENBERGER: You're talking initial code, what do you mean? You're talking --

CHAIRMAN STRAIN: When we established the rural fringe criteria in the LDC, the first time we did it.

MR. LENBERGER: After the GMP was adopted?

CHAIRMAN STRAIN: Right.

MR. LENBERGER: Was this a restriction put in right away, is that what you're saying?

CHAIRMAN STRAIN: Yes. I'm sorry I'm not articulating it well. That's what I'm trying to get at.

MR. LENBERGER: I don't know for sure.

MR. MULHERE: I think it was. I mean, I could --

CHAIRMAN STRAIN: So it was part of the process from day one, and that's why I'm trying to understand how it got there.

MR. LENBERGER: I wasn't involved with the rural fringe, but Bob --

CHAIRMAN STRAIN: But he probably was.

MR. LENBERGER: -- probably, who knows.

CHAIRMAN STRAIN: He's been around way too long.

MR. MULHERE: For the record, Bob Mulhere. I was going to speak anyway, but just to answer your question. And the process was pretty lengthy. We went through the GMP amendments, of course, first to adopt the rural fringe mixed-use district. After the county adopted the GMP amendments to establish the district -- and those were very, very detailed. If you've looked at those in the GMP, they're extremely specific. They're almost code language.

There was no language about prohibiting exotic removal for mitigation in the permitting process and contained in those GMP amendments.

The research that we've done collectively indicates that this occurred after the Planning Commission but before the board adoption of subsequent Land Development Code amendments that would then implement the GMP policies.

In most cases that was the exact same language, because the GMP language was so detailed that the LDC language mirrored the GMP language. But somewhere in the process this was introduced. We've looked at the actual minutes and found that it occurred somewhere after the Planning Commission, before the final BCC hearing.

I think Mr. Cornell, who probably will speak on this issue, raised the issue, and the board included this prohibition in the LDC amendments.

CHAIRMAN STRAIN: Okay. So the Planning Commission heard this back before any of our --

MR. MULHERE: 2004.

CHAIRMAN STRAIN: Okay. The Planning Commission heard this, and at the time we heard it, there was no Item D? It wasn't there.

MR. MULHERE: That's what our research indicates, yes.

CHAIRMAN STRAIN: So it leaves this board, it goes to the BCC, and during the BCC process, D gets added; that's kind of what you're saying?

MR. MULHERE: That's correct.

CHAIRMAN STRAIN: Okay. Well, I mean, I know we've got other speakers, but right away I'm concerned as to how that happened without this board being the designated LPA for Collier County.

MR. MULHERE: Well, I mean, I guess the BCC does make changes to your recommendations, so that could happen. There were actually four hearings.

CHAIRMAN STRAIN: This isn't a change to a recommendation. This is a new element --

MR. MULHERE: I know.

CHAIRMAN STRAIN: -- that would have required stakeholder involvement, because it does have a rather grave impact on any property owners out there who are having to mitigate.

MR. MULHERE: Well -- and here's my concern representing property owners that have significant holdings in the rural fringe mixed-use district but also as part of the team that put that together, those property owners, particularly in sending lands, received a significant change in their allowable development rights. The density went from one per five to one per 40. Their preservation went to either 80 or 90 percent in sending lands. And we went through this whole process. And now, in addition, they're being treated differently in terms of the mitigation process than other landowners throughout the rest of the county. Having said that, the EAC had suggested when they discussed this matter most recently that perhaps there could be a limit in the amount of mitigation that you achieve through exotic removal, which really doesn't work very well; because every project is different, and exotics in every project is different, the percentage of exotics.

And also the EAC had suggested maybe we ought to be involved in the permitting process as a county, and maybe that's something that should be looked at. And that issue as a policy matter has come up at least 10 times since I've been working in the county, and the county has never supported creating a separate wetland permitting process when we already have several jurisdictional agencies involved in that process, including DEP, South Florida Water Management District, and the Corps of Engineers. It would be significant.

If that's something this county wants to consider, that should be done holistically through a very public process so that landowners can have an opportunity to weigh in on that as well as environmental groups and other stakeholders.

My position is that this -- I support staff's position. There's really no business having a prohibition on using exotic vegetation as part of the mitigation when it's part and parcel of the UMAM process.

I did speak a little bit with Tim Hall before the meeting. I don't know if he's registered, but I think he does want to speak on this. The reason I had Tim -- I asked Tim and Bruce, and -- these folks actually work in the permitting process all the time. I don't do that. I don't know the nuances of it. I'm not involved directly in that wetland permitting process. They are, and they have suggested that there are significant unintended consequences that we don't want to experience associated with this. That's why staff supports it.

So I would suggest it be removed or that you at least make that recommendation. If this wants to be looked at holistically, moving down the road we look at differently how we want to treat the process of permitting and having greater restrictions -- we already have some, and it relates to wetland, you know, no net loss in wetlands. And by doing this, we make it harder to actually achieve that goal.

So, thank you.

CHAIRMAN STRAIN: Thank you, Bob.

Brad, did you want to speak?

MR. CORNELL: Yeah, thank you. I'm Brad Cornell, and I'm here on behalf of Collier County Audubon Society and Audubon of Florida, which owns Corkscrew Swamp Sanctuary.

This has been an issue of concern to me for many years, and not just me alone. The science staff at Corkscrew Swamp Sanctuary, most particularly Ed Carlson and Jason Lauritsen, have done a lot of research and a lot of analysis of wetland permitting and protection programs in the State of Florida and right here in Southwest Florida because it's near and dear to our hearts. It's the lifeblood of supporting the wood stork rookery at Corkscrew Swamp Sanctuary.

That research and analysis has shown that there's significant wetland losses due to exotics clearing through the permitting process. And what the issue is before us on this policy -- and I oppose the deletion of this Subparagraph D. The issue is, let's be honest about what no net loss of wetland functions really is. We have to be honest about how this permitting process works.

Exotics clearing cannot compensate for direct wetland destruction because clearing exotics is not the same -- does not provide a wetland with the same functions that the destroyed wetland now has lost.

Now, for example, wet prairies; these are a seasonal shallow wetland type. We have lost over 80 percent of the wet prairies in the core foraging area around Corkscrew Swamp Sanctuary. These are the areas that are absolutely vital to the survival and nesting success of endangered wood storks. We've lost over 80 percent of -- 82 percent to be exact.

And those wet prairies provide fish and forage for wood storks and wading birds early in the dry season.

That's when nesting is initiated. That triggers nesting initiation in wood storks. That's the biological life history of wood storks. You lose those wet -- those wet prairies, and you lose that early nesting in the wood storks. And, in fact, you may lose nesting entirely. We haven't had any nesting in five of the last six years at Corkscrew Swamp Sanctuary, the biggest rookery in the entire range in the United States, and no nesting in five of the last six years. So this is a problem.

We have demonstrated through our research that we are losing currently, through the permitting process, short hydroperiods, short shallow seasonal wetlands in Southwest Florida.

And my example is to say that if you destroy a hundred acres of wet prairie, there is no amount of exotics clearing that's going to put fish -- those fish back in the forage pool for wood storks. Exotic clearing does help, but it does not replace those fish-growing functions that were lost.

The state allows exotics clearing to count as mitigation, that's true, but not if there are net losses to the types of wetlands destroyed. In other words, if you're destroying wet prairies and your mitigation plan doesn't replace those wet prairie functions, that's not legal. That's not permissible.

Audubon research and analysis has demonstrated that state wetland permitting frequently results in net losses to specific wetland functions; therefore, Collier County is very wise to move -- to more vigorously protect its own wetlands.

Why should we be deferring to state permitting when this is a very specific well-documented identified issue for our wetlands? This would not require an additional program or additional staffing and could be implemented using an Excel tracking tool that has been developed by Audubon science staff.

We're using it right now in analyzing permits that the South Florida Water Management and DEP are examining. We've done a study of 17 -- we've looked at hundreds of ERP permits since the UMAM program has started in 2004, and we have done a comprehensive study of the largest ones of those in Southwest Florida, 17 of them, that demonstrates this problem, and I can share that with you-all if you're interested, and I can share it -- I have shared it with staff.

I want to note also that in the Conservation and Coastal Management Element, Policy 6.1.4 already requires exotics removal on all development proposed properties. So this is already a requirement of county regulations. It doesn't count as mitigation in that policy.

Our conclusion is, again, that our research and analysis has demonstrated state permitting frequently results in significant losses to shallow seasonal wetlands, like wet prairies, due to the heavy reliance of most mitigation plans on exotics removal; therefore, Collier County needs this prohibition of exotics clearing as mitigation to achieve true no net loss of wetland functions. This is not in conflict with any other Collier County Growth Management Plan or LDC policy.

Thank you.

CHAIRMAN STRAIN: Paul? Brad, wait a minute.

COMMISSIONER MIDNEY: When we're talking about clearing the exotics, are we talking about exotics within wetlands or if it's a development that the upland part is where the exotics are? If you cleared the exotics from the upland, does that allow you to take some of the wetland away? I'm not clear what's involved.

MR. CORNELL: Under the basis of review for the South Florida Water Management District under their ERP, environmental resource permitting program, both enhancement or exotics clearing and upland preservation and exotics clearing from uplands count as mitigation; however, it does not authorize net losses in specific functions in the wetlands. So you still have -- the balance of the equation still has to come out at least even or favorable to the full suite of wetland functions that are being destroyed, but it does allow that.

COMMISSIONER MIDNEY: But if we approve this ordinance, or whatever it is, if you remove exotics from the uplands, does that give you permission to take an equivalent amount of wetlands?

MR. CORNELL: I don't read the law to allow that. The law does allow exotics clearing on uplands to count as mitigation for wetland destruction. We believe that should only be applied very sparingly.

If you look at wetland permitting plans in most permits, they heavily rely on exotics clearing on both uplands and wetlands.

COMMISSIONER MIDNEY: Because I wouldn't be opposed to letting exotics clearing count towards mitigation on uplands, but I wouldn't want that to allow them to take an equivalent amount of wetlands away.

MR. CORNELL: It's -- they don't do it in terms of acreage. So when you say "an equivalent amount," Paul,

what we're really talking about, an equivalent amount of functional units. That's the way they calculate it. Not in acreage, but in functional units. And so it does allow them to destroy wetlands by preserving and taking off the exotics of uplands. It does. That's what they've been doing, and that's part of the problem that we've identified.

COMMISSIONER MIDNEY: But if they're removing exotics from the wetlands, that would improve the wetlands.

MR. CORNELL: It improves them, but it does not replace all the functions of an "entirely destroyed." If you fill in a wetland, like a wet prairie, taking off exotics from another wetland does help. That does replace some functions, but it does not replace the fish-growing functions or the natural water storage capacity of the wetland you lost.

COMMISSIONER MIDNEY: But if you remove exotics from a wetland, it's -- that would go back to being a better wetland, wouldn't it? It would still be --

MR. CORNELL: It gives you some lift.

COMMISSIONER MIDNEY: -- a wetland. It would be replaced with native vegetation, right?

MR. CORNELL: Yes, it would. So you get some value. There is some lift. But what I'm saying is that if you destroy, entirely destroy a wetland, not only the vegetation but the wetland itself, it no longer holds water and no longer recharges aquifers. It doesn't grow any fish anymore, and it doesn't have any native plants. You've lost that entirely.

Okay. Now you're going to go to an impacted wetland that already exists someplace else but it has, let's say, Melaleuca on it. Okay. You're going to take the Melaleuca out. Yes, that's a help, but that wetland already had water. It was already restoring -- I mean recharging aquifers, already growing fish. You haven't added those functions. Do you understand what I'm saying? You're not replacing all the functions of the destroyed wetland. You're only replacing some of them with the exotics clearing.

That's the myth. That's where we're losing functions in that no-net-loss requirement. That's how Audubon -- and it's a cumulative effect. This is happening on almost all permits.

COMMISSIONER MIDNEY: So if that's the case, how would you change the proposed LDC amendment request?

MR. CORNELL: I would not delete the policy. I would keep Policy D, don't delete it. That's my recommendation to you; leave it as it is. We've had it since 2004. It's an important policy. If you really want my opinion, I think we ought to apply it across the county in every district, not just in the rural fringe mixed-use district.

And that may -- maybe that should require a larger discussion amongst the EAC, the Development Services Advisory Committee, and the Planning Commission to bring forward such a plan. I think that would be in Collier County's interest.

CHAIRMAN STRAIN: Anything else?

(No response.)

CHAIRMAN STRAIN: Brad?

MR. CORNELL: Yeah.

CHAIRMAN STRAIN: Then you concur that this policy is not used anywhere else in Collier County except in the rural fringe?

MR. CORNELL: Actually, if you look at the LDC the way it's written, that policy applies countywide. That's a mistake, the way it's written. It should only apply to the rural fringe mixed-use district. And if you read policies that are countywide and apply to the rural fringe mixed-use district in the Growth Management Plan, under 6.2.5 you'll see that the no net loss justifies having the -- with the understanding of the research and analysis Audubon has done, justifies that prohibition of exotics clearing mitigation.

CHAIRMAN STRAIN: With your experience and knowledge of Collier County as of today, do you know of any other part of the county where this is enforced?

MR. CORNELL: It is not in any other part.

CHAIRMAN STRAIN: Okay. That answers my questions. RLSA: Is it enforced in the RLSA?

MR. CORNELL: It's enforced near the RLSA in a wetland strand that is on the south side of Immokalee. If you look at the aerials of Immokalee, you'll see a very significant wetland slough that goes into Lake Trafford. That's in the urban Immokalee area. That's technically not in the Rural Land Stewardship Area, but it is in that eastern part of the county, not in the rural fringe mixed-use district. That also enforces those same policies.

CHAIRMAN STRAIN: So is this policy in use in the Rural Land Stewardship Area?

MR. CORNELL: Not in the Rural Land Stewardship Area; right next to it.

CHAIRMAN STRAIN: That was my question. So the answer is no?

MR. CORNELL: No, no, it isn't. I think it should be countywide.

CHAIRMAN STRAIN: Did you support the RLSA?

MR. CORNELL: Yes.

CHAIRMAN STRAIN: Okay. Do you know how this got inserted between the Planning Commission's hearing when this came up back in whatever year it was, 2003 or '4 --

MR. CORNELL: My recollection --

CHAIRMAN STRAIN: -- until the time it got to the BCC?

MR. CORNELL: My recollection is very foggy on that. I'd have to go read minutes. But I do recall this being a suggestion of mine. I've been talking about this issue for a long time.

CHAIRMAN STRAIN: And did you make this suggestion to the Planning Commission at that time?

MR. CORNELL: I don't recall. I may not have, but it is something that is part of the no-net-loss requirement that we have countywide. And as we have learned more through Audubon research -- and I will note that our research has been, up until 2011, I personally have learned much more about the problems we have with wetland permitting through the state's permitting program. So I'm even more convinced that we need this prohibition of exotics clearing as mitigation.

CHAIRMAN STRAIN: Thank you.

MR. CORNELL: Sure.

COMMISSIONER SCHIFFER: Mark, I have a question.

CHAIRMAN STRAIN: Go ahead, Brad.

COMMISSIONER SCHIFFER: Brad, just to make sure I understand, I mean, the exotics are going to be removed from the wetland anyway, correct?

MR. CORNELL: Right. The county requires that anyway.

COMMISSIONER SCHIFFER: So isn't the problem with this -- I mean, you don't want them to count that towards mitigation.

MR. CORNELL: That's correct.

COMMISSIONER SCHIFFER: But isn't the problem with this thing is -- could you put some conditions where it would matter? In other words, should we keep it in, add the word "unless," and they do something after unless that would --

MR. CORNELL: I can imagine a way to refine this policy. For instance, one refinement might be to allow exotics clearing to count only as compensation for secondary impacts. In other words, not direct destruction of wetlands --

COMMISSIONER SCHIFFER: Okay.

MR. CORNELL: -- but for, you know, hydrologic impacts off site. You know, you're draining a development site, and off site you're going to be lowering the water table, and that destroys or harms wetlands off site. So that might be a reasonable refinement.

But as it stands now, I think we don't have that option to refine it. That might be a further conversation.

COMMISSIONER SCHIFFER: Well -- I mean, because the sad thing is you're going to walk away from this damaged wetland. So the best thing to do is bring them back on with some reward to count that toward mitigation that would work. And maybe it is working in the uplands. Maybe it is -- I mean, something, I think, could be done to allow them to count it if they brought it back to a certain standard, or the thing you said -- and I don't know this area like you do -- that there are other things you could give them for that.

MR. CORNELL: It's -- I'm not denying that exotics clearing has value. What I'm pointing out is it doesn't have as much value as is being ascribed by the permitting agencies, and that is to our disadvantage. We're losing wetlands, and we've documented it. Our research has clearly documented big losses, cumulatively.

So I'm much more -- I'm cautioning you to err on the side of being conservative in this wetland arena and protect the wetlands better than the state does.

COMMISSIONER SCHIFFER: Okay.

MR. CORNELL: That's -- I think that's the bottom line.

COMMISSIONER SCHIFFER: What I'm trying to do is find something in between, but it looks like --

MR. CORNELL: There is some in-between area. We'd have to sit down and work that out. And one area could be on secondary impacts, as mitigation on secondary impacts.

COMMISSIONER SCHIFFER: Thank you, Brad.

MR. CORNELL: Sure.

CHAIRMAN STRAIN: Anybody else?

(No response.)

CHAIRMAN STRAIN: Thank you.

MR. CORNELL: Sure.

CHAIRMAN STRAIN: Next speaker, please.

MR. HALL: For the record, Tim Hall with Turrell Hall & Associates. And I apologize, I wasn't anticipating speaking on this, but after hearing the comments and talking to Bob, I thought I would.

I've had a little bit of controversy related to this particular LDC amendment with staff for about six or seven years, and the reason is, my opinion, it's contrary actually to the state statutes.

And if you'll permit me to read one of them, Florida Statute 373.414, Paragraph 18. And it says, the department in each water management district responsible for implementation of the environmental resource permitting program shall develop a uniform mitigation assessment method for wetlands and other surface waters.

The rules shall provide an exclusive and consistent process for determining the amount of mitigation required to offset impacts to wetlands and other surface waters and, once affected -- effective shall supersede all rules, ordinances, and variance procedures from ordinances that determine the amount of mitigation needed to offset such impacts.

Once the department adopts the uniform mitigation assessment method by rule, the methods shall be binding on the department, the water management districts, local governments and any other governmental agencies and shall be the sole means to determine the amount of mitigation needed to offset adverse impacts to wetlands and other surface waters and to award and deduct mitigation bank credits.

It goes on a little bit after that, but the gist of it is, from my standpoint, when the state adopted UMAM, that became the sole means to assess mitigation. So by the county putting that language into their code, they basically superseded that state statute, and I don't believe they're allowed to do so.

CHAIRMAN STRAIN: Has that position been expanded into some kind of challenge to the local ordinances to a point where we have some case law that might refer to it?

MR. HALL: Not that I'm aware of.

CHAIRMAN STRAIN: Okay. Heidi, are you familiar with those sections of statutes he's reading from as how they may apply?

MS. ASHTON-CICKO: No, not that particular statute. I mean, he's just read a paragraph, so I'd have to go read the whole statute and section that it pertains to.

CHAIRMAN STRAIN: By the next time this comes back to us -- because I don't believe it's going to be resolved today -- would you be able to get familiar with it?

MS. ASHTON-CICKO: Sure.

CHAIRMAN STRAIN: Okay. Thank you.

Thank you, Tim.

Anybody else? Jeremy.

MR. FRANTZ: Hi. For the record, Jeremy Frantz on behalf of the Conservancy of Southwest Florida.

And Brad touched on a couple of the things that I wanted to speak to you about, in particular the applicability of this -- these wetland protection measures to other parts of the county.

It does apply or it is intended to apply to the Lake Trafford Camp/Keais Strand area. And if you go back to the GMP policies for that -- for that system, it is clearly stated that the wetland systems, which -- that those are wetland systems which require greater protection measures.

So I think that while these provisions are different than other areas of the county, we have identified these areas as requiring more protective measures.

Additionally, the -- there's been another concern throughout the process about the cost to developers. And I just wanted to, you know, bring up the issue of the cost to the public also.

Yesterday Jerry Kurtz made presentations to -- or a presentation to the EAC about stormwater improvement projects. The top four priorities of those projects that came out of the Water Management Plan are all in or around or affecting the rural fringe mixed-use district in the North Belle Meade area.

These projects are extremely expensive, millions of dollars, and they're going to be -- those costs are going to be borne by the public over many, many years. I think if there's any place in the county that deserves greater protection, these are the areas that we need to be looking at.

Additionally, in Objective 6.2 of the GMP, it states that the county's wetland protection policies and strategies shall be coordinated with the Watershed Management Plan, and based on the fact that the rural fringe is one of the areas identified based on those projects and some of the research that came out of that plan, we've identified that removing these greater protection measures, I believe, would be out of line with the Watershed Management Plan.

I think that about covers everything. I think that Brad touched on some of those issues. So just to be clear, we obviously do not support removing the policy. Thank you.

CHAIRMAN STRAIN: Thank you.

Are there any other speakers on this item?

(No response.)

CHAIRMAN STRAIN: Okay. Steve, could you come up and address a few concerns that have come out about the -- from the discussion.

This is limited to the rural fringe. I think we've -- and you agree with that?

MR. LENBERGER: Yes, it is limited to the fringe.

CHAIRMAN STRAIN: Okay. I heard Brad indicate that he felt it was more broadly applied or could -- should be -- is written in a manner that it was more broadly applied to Collier County; do you agree with that?

MR. LENBERGER: Let me back up a minute. There is an error in the LDC on the way the lettering and numbering is.

The language pertains in the GMP to the rural fringe mixed-use district. It's very specific, and most of that language is carried word for word in the LDC, but there is a misnumbering, which --

COMMISSIONER KLEIN: Could you speak a little bit louder.

COMMISSIONER EBERT: Yeah, we can't hear you.

MR. LENBERGER: I'm sorry. Can you hear me now? I apologize. There is a misnumbering in the code. And I can show you, actually, because I --

CHAIRMAN STRAIN: Well, I -- what I --

MR. LENBERGER: So, anyway, the way the code reads, it would imply that it applies countywide, but --

CHAIRMAN STRAIN: The intention --

MR. LENBERGER: -- there is an error in the LDC that needs to be corrected.

CHAIRMAN STRAIN: Is that being corrected with this amendment?

MR. LENBERGER: No, it's not. I did not bring it up. It was brought to my attention, but I could add that to this amendment, if you'd like.

CHAIRMAN STRAIN: I think it would be wise, however this is going to get cleaned up, it get cleaned up comprehensively. So, yes, I think it would be a good thing to add.

Does this Item D that's being removed or that's being suggested to be removed, does its presence there have an impact on property owners?

MR. LENBERGER: Yes, it does.

CHAIRMAN STRAIN: In what way?

MR. LENBERGER: Well, it would be the cost of developing a property. It was brought out, but UMAM's scores in assessing wetland functionality and removal of exotics counts as a significant portion of mitigation.

And staff looked at this, and we would have to analyze UMAM scores with exotic removal counted as lift, as it was mentioned earlier, and also UMAM scores without lift and look at comparisons.

We haven't, as staff, worked out details on how that analysis will be done, but we would have to start with two sets of UMAM scores and require additional mitigation if exotic removal is counted during project permitting with the Water Management District.

CHAIRMAN STRAIN: Heidi, I think we've heard enough results that this has an impact on property owners which are stakeholders in regards to this particular LDC amendment.

My concern is not right now about whether it should be in or out but how it got there in the first place.

The Planning Commission is a required element of the process for LDC amendments and the LDC language before it goes to the Board of County Commissioners, and I know the board can make changes. But is there anything that addresses the extend of the changes they can make before it should go back for rereview by the Planning Commission?

Because this particular item is unique, apparently, now to Collier County to this one area of property, and was added after the Planning Commission discussion. And I've heard no testimony to say it was even brought up to the Planning Commission. And at the time it was added, obviously, the stakeholders may not have had the opportunity to weigh in on it because it may not have been understood to be to the level of understanding it is today in regards to cost to a property owner.

Is there any criteria that you know of that requires those kind of changes when they're that substantial to come back to the Planning Commission for review?

MS. ASHTON-CICKO: I'm not aware of any county policies or any case law that directs the extent of the changes that can be made by the board.

CHAIRMAN STRAIN: Okay. Does staff have any knowledge as to how this came about to be? I mean, you heard some testimony today. Can you find -- do you have confirmation of that? Do you have any minutes of meeting that you've reviewed that show how this got introduced?

MR. LENBERGER: I don't. I wasn't involved with the process, and there was a lot of meetings for the LDC amendments and for the GMP. It would be quite an undertaking. I would have to look to staff that was here, and even then, you know, their recollection may not be the best on the history on -- Bill Lorenz may want to add to that.

CHAIRMAN STRAIN: Hi, Bill. It's been tossed to you. You're crawling down in your seat now.

MR. LORENZ: Unfortunately, like Bob, I was around at the time.

The general recollection is kind of the way Bob phrased it, and Brad as well. I kind of remember Brad making a presentation to the board, and then that's when it got into the -- into the code as a change at the board level. But that's my -- that's just a general recollection that I had.

COMMISSIONER EBERT: Can you get minutes?

CHAIRMAN STRAIN: Okay, thank you.

Anybody have any other questions on this particular one?

COMMISSIONER SCHIFFER: It's coming back, right?

CHAIRMAN STRAIN: Well, I think it needs to come back, but it needs to come back with some research on that Florida statute, which is 373.414(18). I'd like to -- confirmation, too, on whether or not a substantial change that impacts property owners to this level should have come back to the Planning Commission for review.

And I certainly would like to find out if staff can find any -- and I don't mean -- I know you said it could be an exhaustive review, I'm not asking you to do that. But if there's some way you can pinpoint how this actually happened -- because if this was just slipped in between the boards, I'm very uncomfortable leaving it in.

And I'm just telling you that straight up, because consistency is important in this county in our codes, and if there's not a good reason for this to be here, one that couldn't have been aired properly in the public, I'm very concerned then how it got here.

So I want to understand how it got here to the best we can. And for that reason, I would suggest it come back to us for further discussion. Is that in concurrence with everybody on this panel?

COMMISSIONER EBERT: Yes.

CHAIRMAN STRAIN: Brad?

COMMISSIONER SCHIFFER: And another thing I wouldn't mind seeing is keep in D but add the word "unless" after it, and then figure out what could happen that would cause you to still be able to constitute mitigation.

MR. LENBERGER: I'm sorry. I'm having a very difficult time hearing you.

COMMISSIONER SCHIFFER: What it is is keep in D, don't scratch it out, add the word "unless." In other words, what it's saying is you can't count it towards mitigation, and I'm getting to "unless," and see if you can think of something to do that would allow that to still count for mitigation.

MR. LENBERGER: You know --

CHAIRMAN STRAIN: And if you can't do it by the 17th, I think that's fine; we can just keep it moving until you get to it. But this one has a bigger impact than I think was led to believe at the time it was just added. And I

think we need to understand those impacts, especially to the property owners, before we get too far.

MR. LENBERGER: Well, I could -- well, I could post Brad's question to stakeholders.

CHAIRMAN STRAIN: I think you should.

MR. LENBERGER: And I can report back about the comments I get. That would probably be the best way.

CHAIRMAN STRAIN: Absolutely. Okay. Okay.

MR. MULHERE: One thing.

CHAIRMAN STRAIN: Go ahead, Bob.

MR. MULHERE: Thank you. I appreciate that.

I just think with respect to that, that's kind of somewhat what the EAC suggested as well, at least certain members of the EAC. There's only five members there. That, in my view -- I mean, I don't think anyone objects if you want to propose a certain public policy thing that's going to apply countywide. Let's have the public-policy debate, let's invite the stakeholders and, as you suggested, Mr. Chairman, let's have a process.

But I don't know that you're going to get the kind of involvement that you want by just changing Paragraph D right now to say less -- unless the following exists. It really needs to be -- it's a significant issue, it really is, and it needs to be debated with all of the affected property owners and everybody else involved.

CHAIRMAN STRAIN: And there was nothing indicated by this board as a whole that we're buying off on that. Brad just asked the question. And as a board member, he has an absolute right to ask that question and see what kind of information he can get from staff, and that's all we're doing. It's a research exercise at this point.

MR. MULHERE: Thank you.

CHAIRMAN STRAIN: So -- and I think it's a very -- this one's a very troubling one more from an aspect from me as to how it got here and why is it inconsistent with the rest of our codes. And I certainly will be looking to that as part of the decision process as it comes back to us.

Steve, did you have anything else you wanted to add, or are we done with this one?

MR. LENBERGER: I think we're done.

CHAIRMAN STRAIN: Good. Let's move on to -- we're at No. 6, 5.05.08, architectural and site design standards.

MS. VALERA: Good morning. Carolina Valera, principal planner with the comprehensive section. I also do review for compliance with architectural standards of the Land Development Code.

In your packets you have two amendments, a couple of amendments to the architectural standards. And today I will also be presenting an amendment that was recommended by the Development Services Advisory Council, DSAC, and a suggestion from them as well for your consideration.

In your packets you have two amendments. One has to do with how building facades -- how building elevations look, and it's what they call the code -- the code calls primary facades requirements.

Buildings that front or are along a private or a public street are required to meet certain features for facades. And the code has five options, from which two needs to be selected in order to meet those primary facade requirements.

Now, the facades that do not front streets do not need to meet those requirements except if you are within a shopping center or unified development plan. Buildings that are within shopping centers or unified development plans, every facade, every elevation needs to meet primary facade requirements.

Now, the primary facade requirements that are in the code -- as I said, there are a set of options, and there are five. For shopping centers they have two additional ones. But the five options that most buildings have are features that you typically encounter on the front of a facade, a percentage of window, a covered entry with a percentage of window, a covered walkway, tower.

As I said, there's a series of features. A porte cochere is another option -- series of features that you typically encounter in the front of a building.

Now, buildings that are within shopping centers, as I said, are also required to meet two of these five requirements in every facade. And what we've found through the years is that those buildings have -- are having a hard time meeting primary facades requirements in every elevation of the building.

So the amendment is to allow buildings that are within shopping centers or unified development plans not to have to meet one of the facades, one of the elevations, not to have to meet the primary facade elevation. They still have to meet the rest of the requirements. And, you know, the architectural standards do not allow things like, you

know, blank walls or -- you know, there's other features that the facades will have to meet, but the amendment, what -- the intent of the amendment is to exempt one of the elevations within a shopping center that does not front the exterior of the development to not have to meet the primary facade requirements, so that's one of the amendments.

And I can stop there and discuss it if you want, or I can go to the next one.

COMMISSIONER SCHIFFER: One at a time.

MS. VALERA: One at a time.

CHAIRMAN STRAIN: Yeah. Go ahead.

COMMISSIONER SCHIFFER: There was a group of architects that worked on the architectural standards.

MS. VALERA: Yes.

COMMISSIONER SCHIFFER: This was a topic that we discussed at length. And if you look at D, what we've done is we've added two additional primary facade requirements only available to outparcels.

MS. VALERA: That is correct.

COMMISSIONER SCHIFFER: And what they intend to do is to block and to prevent exactly what you want to allow, which is the back-of-building concept. So there have been some -- I mean, a great example is pay way, which is used as to put a courtyard. And if you read D, it makes sense, (D)(I), to totally block the utility side of the building, which a building in a shopping center is visible on all four sides. Some cases, all four sides are visible from streets in a corner shopping center.

So this is not a new topic. The thing that has to be done is you have the option of choosing additional options here for the ease of building the utility side of a building, a place to put your dumpsters, a place to put your power, all that stuff that's normally on the wall of the building.

So to invent something -- which this is the only place secondary facade would exist. To invent a concept of secondary facade is really inventing a concept of having a backup building, which is what you do not want in a shopping center in a free-standing building.

MS. VALERA: And I agree with you. There's two other options for those buildings that are within a shopping center, and you have them right there in your packet, is Roman Numeral I and II under D. And I tell you, the option of the courtyard, except for just that development that you've mentioned, it's never been used except for that one.

And what we have is that every other building, every other option -- every other development that we have approved uses, the Number II, Roman numeral, which is the trellis.

And so what we have now in the county is a lot of buildings within shopping centers with a lot of trellises with climbing plants, which is okay. I mean, it is definitely an option that is in the code, but I guess my concern is that it is the only option for buildings that are within a shopping center.

COMMISSIONER SCHIFFER: And, again, we all considered that, and nobody wanted -- what you're actually giving as your reason to consider a -- and you quote it, back of building. Nobody felt a back of building is something that should be built in the town and came up with ways to design around it that would not be difficult for someone building a building.

Essentially, their dumpsters are in containers anyways. In these areas -- and I've seen more than one. This does address it. And I would not want to drop the requirement and then start driving around the back of buildings and finding, you know, power systems exposed but, you know, the can wars (sic) for a restaurant, all that outside.

MS. VALERA: I don't believe the code will allow to have all those elements exposed, because the code still will require that, you know, equipment, et cetera, be concealed from view.

COMMISSIONER SCHIFFER: Well, you know, drive down Wiggins Pass, 41 and, you know, count the electrical disconnects in plain view.

MS. VALERA: And, I'm sorry, I cannot hear you well.

COMMISSIONER SCHIFFER: I said, if you go down on Wiggins Pass and 41, the building there, the disconnects are facing the Main Street, I mean.

MS. VALERA: Yes, yes. And I think the intent of this amendment is to allow one facade not to meet primary facade requirement, but that facade cannot be on the exterior of the building, meaning if that facade was facing Wiggins Pass or 41, it could not be a secondary facade. At least that was the intent of the amendment.

COMMISSIONER SCHIFFER: But it is visible from the parking and everything within the shopping center?

MS. VALERA: Yes, it would be; it would be, yes.

COMMISSIONER SCHIFFER: I mean, I'm not a fan of this because I think that there are options in the code now that can cover the intent of making the, quote, backside of a building not very expensive.

MS. VALERA: As I said, I bring it for discussion because it's been very difficult for developers out there to meet the code. So, again, I'm just bringing it for discussion.

CHAIRMAN STRAIN: Okay. Anybody else?

Carolina, Brad had mentioned that there was an architectural committee that worked on these.

MS. VALERA: Yes, oh, yes.

CHAIRMAN STRAIN: Were they consulted with regard to these change?

MS. VALERA: No, they were not.

CHAIRMAN STRAIN: Then why don't you just take these to them and come back to us after that's done?

MS. VALERA: Okay.

CHAIRMAN STRAIN: That would be a smart move, since they were the original committee.

MS. VALERA: Yes.

CHAIRMAN STRAIN: And I would love to hear their input. What's fair is fair, and that would be the fair way to approach it.

MS. VALERA: All right.

COMMISSIONER SCHIFFER: And that is good, Mark. And it was a topic of conversation for a long time.

MS. VALERA: Yes, it was.

COMMISSIONER SCHIFFER: And these were methods so that it would not be a burden on developers.

MS. VALERA: Yes, it was.

COMMISSIONER SCHIFFER: So if they can't meet it, you know, you can tell us -- give us examples of why they couldn't meet it. Not now, at that meeting.

MS. VALERA: Okay.

CHAIRMAN STRAIN: Okay. And you had a second part you wanted to discuss?

MS. VALERA: Yes, a second portion of this proposal is to -- it has to do with projects that are allowed to request deviations from the architectural standards. The code presently allows certain projects, especially those that are non-retail type of businesses, you know, the churches, schools, et cetera, to request a deviation, and it's an administrative process, to present alternative designs that meet the intent of the code, except that the code does not allow projects that are within PUDs to request deviations.

And so, as I said, those projects that will normally be allowed to request deviation, if they are within a PUD, they are not allowed.

And as you know, because, you know, it's in front of you all the time, when someone comes for a request for planned unit development, they are requesting, you know, the zoning. They're not -- there's some details. And I know you get into a lot of the details of the project, but the level of details that are in the architectural standards are not there yet at the PUD rezone stage.

And so when they come for the Site Development Plan and they do have all the details of the buildings that they want to impose, they encounter themselves at times with, you know, a hard time having to meet the requirements, and they are not able to go through the deviation process which, as I said, is allowed for any other building in the county to request.

COMMISSIONER SCHIFFER: Just a point of order. Is that something we have in our packets?

CHAIRMAN STRAIN: It's on Page 3.

MS. VALERA: Yes. It should -- it's Page 3.

CHAIRMAN STRAIN: It's on Page 3, 4A, Roman Numeral VI(A).

COMMISSIONER SCHIFFER: Got it.

CHAIRMAN STRAIN: And I think I'm of the same position, just take it to the committee. Let them come back with it and see if it sounds reasonable. I'd like to hear what they've got to say on it, since they're the ones that initiated this in the first place.

MS. VALERA: Okay. Then let me present to you next recommendation --

CHAIRMAN STRAIN: Is that okay? Well, before you go too far -- that was just my opinion. Is that okay with everybody here?

COMMISSIONER HOMIAK: Yes.

CHAIRMAN STRAIN: Okay. We're good.

MS. VALERA: Caroline's going to help me pull this recommendation up. So you should have it now in your screens. The Development Services Advisory Council --

CHAIRMAN STRAIN: We don't have it on our screen.

MS. CILEK: Hold on one second. There we go.

MS. VALERA: The Development Services Advisory Council, DSAC, is recommending that we also amend another portion of the architectural standards that has to do with the spandrel panels. And basically what the amendment will allow is to allow spandrel panels to count as percentage of glazing, and I kind of suspect what you're going to tell me now.

CHAIRMAN STRAIN: Yeah, I can -- unless somebody else has an objection, why are we the first -- we should not be looking at this until the committee that initiated these architectural standards had a chance to opine on it. That's absolutely fair.

MS. VALERA: Right. Well, let me let -- tell you what the other portion of the DSAC recommendation was, and it was to take to the Board of County Commissioners, you know, with your recommendation to present the -- an idea to go back and assess the architectural standards of the Land Development Code through a committee.

CHAIRMAN STRAIN: I mean, we had -- if the committee can reconvene and start working on this, I think that's great. If the times change and we need to change the codes, we should be doing it. So I think that's a great thing, not a bad thing, but at least they get to see it and --

MS. VALERA: And the staff is in agreement with that.

CHAIRMAN STRAIN: -- we don't try to supersede their recommendations. I have great respect for the professionalism of the architects. And if they've got some good criteria that we need to know about, by God, they should be telling us.

COMMISSIONER SCHIFFER: And, by the way, this is a disaster. I mean, what this part of the code said is that you can't have fake windows but, obviously, it addresses the fact that in curtain wall design, the high-rise curtain wall, there is portions of that curtain wall that are spandrel, and those are allowed. Those are not considered fake windows.

MS. VALERA: Correct.

COMMISSIONER SCHIFFER: This is saying you can do fake windows, which means you're going to have these fake little black windows all over the place counting as the window area of a building, which is precisely what that committee did not want to have happen. You'll have these fake little windows on roofs. I mean, that's not what Collier County's based on.

So we were saying you get credit for windows if it's a window, not some little decorative plaque on the side of a building.

CHAIRMAN STRAIN: So I think we're all in agreement, then, it should go to the committee? And, Caroline, if these need to have a more general rewrite and consideration, and the committee is willing to take that on, you may consider not moving forward with these until the committee has the time to do it adequately and come back to us with a different cycle of LDC amendments, if that's what's required. I would rather see it done right than put through in kind of an incomplete process.

MS. VALERA: Well, Mr. Chairman, I would like to take your recommendation to the Board of County Commissioners, because it will mean time, you know, from staff. And, you know, to put together this committee, we will need the direction from the board.

CHAIRMAN STRAIN: I mean, whatever process you've got to go through, I think that's the more correct way to do it. I applaud the fact that the private sector and CBIA and others are starting to opine on some of these codes, because most of the time nobody even knows they're going through, so we'll get a better product. But at the same time, I think we've got to respect the process that was there to initiate it. And that's all I'm suggesting we do. I think everybody on this panel is probably in agreement with that. Thank you.

MS. CILEK: Great. We will do that. Thank you for your recommendation.

MS. VALERA: Thank you.

CHAIRMAN STRAIN: This -- do we still have No. 7, the certificates of public adequate facilities? Is that on for today?

MS. CILEK: Yes, it is, and I believe it can be discussed in a couple minutes. So if Amy would like to present that.

COMMISSIONER KLEIN: Is there a lunch break today?

CHAIRMAN STRAIN: Yeah. We're going to take lunch after this. I'm trying to get through the LDC amendments so staff doesn't have to sit here.

MS. CILEK: This will be the last one, and it's in your binder, No. 10.02.07(C) 1 through 2.

CHAIRMAN STRAIN: Okay. Hi, Amy. How are you? We don't normally get to see you here.

MS. PATTERSON: Amy Patterson, for the record.

This is a Board of County Commissioners directed amendment. It is simply removing the specific payment requirements from the Land Development Code and putting in a reference to the consolidated impact fee ordinance, which is Chapter 74 of the Code of Laws and Ordinances.

The other provisions related to the certificate of adequate public facilities program remain, but what's happening is as the board adjusts the payment requirements for a certificate of adequate public facilities, it's been reduced from 50 percent to five payments of 20 percent, now to 33 percent. Every single time triggers a Land Development Code change.

And the provisions are already contained in the consolidated impact fee ordinance, so we're going to -- this move proposes -- or this amendment proposes to just eliminate those provisions specific to payment amounts.

CHAIRMAN STRAIN: Okay. Is there any discussion?

COMMISSIONER SCHIFFER: I move we forward with a recommendation of approval.

CHAIRMAN STRAIN: Is there a second?

COMMISSIONER AHERN: Second.

CHAIRMAN STRAIN: Made by Commissioner Schiffer, second by Commissioner Ahern. Discussion?

(No response.)

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

COMMISSIONER VONIER: Aye.

COMMISSIONER SCHIFFER: Aye.

COMMISSIONER MIDNEY: Aye.

COMMISSIONER AHERN: Aye.

CHAIRMAN STRAIN: Aye.

COMMISSIONER HOMIAK: Aye.

COMMISSIONER EBERT: (Absent.)

COMMISSIONER KLEIN: Aye.

COMMISSIONER BROUGHAM: Aye.

CHAIRMAN STRAIN: Anybody opposed?

(No response.)

CHAIRMAN STRAIN: Motion carries 8-0. I'm not sure what happened to Ms. Ebert, but she's not here for this one.

MS. PATTERSON: Thank you.

COMMISSIONER SCHIFFER: Mark, I have a question. We -- in our packet we also got 10.2.13. Is that for a lay hearing agenda?

CHAIRMAN STRAIN: That's for a future date.

MS. CILEK: Yep. On the memo with that packet you got at the CCPC meeting last week, it said that will be reviewed on the 17th of this month.

COMMISSIONER SCHIFFER: Got it.

CHAIRMAN STRAIN: Okay. With that, we have two public hearings to hear and one item of new business, and we'll take a lunch break and come back at 10 after 1, and we'll resume at that time with the two public hearings on the Jaffe boat dock extension and variance. Ten after one.

(A luncheon recess was had.)

CHAIRMAN STRAIN: Good afternoon, everyone. Welcome back from the lunch break.

When we left off, the Planning Commission had two advertised public hearings left that we postponed till as

late today as possible, which will be now.

***The first one is -- well, they're both going to be heard -- they're both on the same topic, so we're going to discuss them jointly and vote on them separately. When we do vote, we'll vote for the variance first and the boat dock extension second.

I'll read off what they are. The variance application is VA-PL-2011-1576, the Jaffe variance, located at 191 Gulf Shore Drive, Connors Vanderbilt Beach Estates. The second one is boat dock extension BDE-PL20110001573. Again, it's the Jaffe boat dock extension at the same address.

All those wishing to testify on behalf of this item, please rise to be sworn in by the court reporter.

(The speakers were duly sworn and indicated in the affirmative.)

CHAIRMAN STRAIN: Disclosures on the part of the Planning Commission.

COMMISSIONER SCHIFFER: None.

CHAIRMAN STRAIN: There are none.

Okay. It's all yours.

MR. ROGERS: First off I want to -- good afternoon, Commissioners. And I want to thank you for accommodating our schedule. The applicant, the petitioner, Andrew Jaffe, is in surgery this morning. We were hoping he'd be out by lunchtime, but I guess he's not out as of yet, so he will not be here. So I apologize for that.

For the record, my name is Jeff Rogers. I'm with Turrell Hall & Associates representing the petitioner, Andrew Jaffe.

And as the commissioner said, we are here requesting a boat dock extension and a variance from the required setbacks.

As you can see here on the overhead, the property is located in North Naples off Gulf Shore Drive, and it has an adjacent -- well, across the street a boat dock lot that has been deeded to this property.

And the history of that takes us back, way back to 1955 when this original -- this property was deeded as a boat dock lot during the process and was deeded to the property that Mr. Jaffe purchased at 191 Gulf Shore Drive. And since 1955, this property has gone through numerous exchanges of ownership. I believe it was -- I counted 10 different warranty deeds that had been issued for this particular subject property.

The petitioner purchased a property basically a year ago back in June 6th of 2011 from the neighbor, Mr. Forbis, to the south of the boat dock lot. Like I said, back in 2011.

And since then, Mr. Jaffe has purchased a street (sic) across the way on the beach and is currently remodeling/rebuilding the existing dock -- or the existing house, and it is going to be his full-time residence.

Move forward. The petition in front of you guys today is for the dock off the subject property. As I said, it's small boat dock lot only and, therefore, is deeded to have boat dock access for two vessels. The difference of this particular property is it's located at the end of a canal, as you can see on the overhead, and has less linear footage of shoreline. Those are basically the two hardships on this one.

The dock proposed -- well, the project proposed is to move the existing dock, which I'll show you is right here. I'll move it over. There you go. The subject property outlined in the red border is currently as the property sits minus the vessels. The vessels have been removed, but as you can see here on the overhead, the unique situation of this property. Luckily there is a history paper trail that we have to follow in order to determine how this came to be.

We're requesting a 19-foot boat dock extension. We're going to remove the existing dock and boat lifts and construct a finger dock that is only 116 square feet and is going to accommodate two vessels.

And as you can see on this overhead here -- I'll show you the proposed design here in a minute. The existing dock, as it sits, was -- is within the riparian rights of the property. You can't really see it very well, but the riparian lines are shown. They're labeled, obviously, but there is a dashed line, red dashed line indicating the actual location of the riparian lines.

And as it sits, the little white structure that's on the south end of that dock, southeast side of that dock, is over the riparian line. So as it currently was built or constructed or used, it was not in compliance with setbacks and/or within its riparian rights.

Now, what we've done is we're proposing to remove it, as I said, and we're proposing a 4-foot-wide dock as shown here. So we're basically taking -- removing out the dock and proposing a 4-foot-wide finger dock protruding straight out into the waterway.

As -- let me touch base on the uniqueness of this. The waterway from -- measured from our frontage, linear

frontage of shoreline, is 1,420 feet wide. Granted, we know this is at the end of the canal, so that's not the typical situation on this waterway. Typically the waterway's 100 feet wide. Due to the location of this one, the width is 1,420 feet.

We are proposing a 35-foot protrusion, like I've said before. And due to the, you know, remote -- or due to the uniqueness of this property, there's really no dock design that you could do that would accommodate two vessels, which is allowed here per the LDC rules. This is zoned a single-family lot and, therefore, is allowed two vessels to be moored up on there.

This is -- we've worked with it. We worked the design, Tim Hall and I, as well as the customer worked on the design, and based off what -- his wishes and his current vessels, this is what we came up with that would accommodate his use as well as be within the riparian rights of his property.

With that being said, we are requesting a variance from the required setbacks from those riparian lines. The typical setback requirement is seven-and-a-half feet. Now, looking at this, I've got a drawing here that shows that seven-and-a-half foot setback, and you'll see with this picture that it would be very hard to -- virtually impossible to accommodate two vessels of any typical size within those required setbacks.

As shown here on the overhead, the orange-reddish color indicates the seven-and-a-half foot setback area. The white area inside shows what would be the remaining buildable area that we would have to work with.

One could argue that you could turn the dock and accommodate one vessel possibly. It would be a smaller vessel, but the applicant owns these two boats and, therefore, we have to design something to accommodate those vessels that he currently owns. And during the process of the purchase of this property from the adjacent neighbor to the south, Mr. Forbis, it was negotiated at the sale that he was purchasing these -- this property for the purpose of installing this dock and this particular dock design.

Now, we do have a -- do have affidavits signed by both adjacent neighbors, one to the north and one to the south. Mr. Forbis has written a letter of no objection, but then come this week he wrote a letter of objection to us, to our surprise and, of course, to the petitioner's surprise.

When Nancy Gundlach of Collier County brought that to our attention, I immediately called the petitioner, Andrew Jaffe, to discuss the issue. He was just as surprised as we were. And, basically, since then we've contacted Mr. Forbis. I've reached out to him, and we have a paper trail of all the emails back and forth.

And since Mr. Jaffe (sic) did sign an affidavit or letter of no objection stating he does not object to this design -- and we have not changed that design -- he has retracted his letter of objection. And I can show you that in email. I don't have it printed out. I've forwarded it to Ray and I've forwarded it to Nancy for their review. So staff has seen that email that came this morning. They can vouch for that.

With all that being said, really, what we're here for today is requesting a 19-foot boat dock extension from the allowed 20 for an overall 39 feet into a water -- water body that is approximately 1,420 feet wide. That's very -- we can argue that.

With that being said, we're also asking for a variance for zero setbacks from the -- from the retired seven-and-a-half-foot setbacks. As I said, you know, there's really no other design that could work, and I open the floor to questions, if the commissioners have any.

CHAIRMAN STRAIN: Okay. Let's go Phil and then Brad.

COMMISSIONER BROUGHAM: Okay. I have a number of questions.

CHAIRMAN STRAIN: And by the way, we're taking both the variance and the boat dock extension simultaneously, so ask from both packages, if you'd like.

COMMISSIONER BROUGHAM: Now, the property in question here, that the dock -- proposed dock -- or the existing dock is attached to is a boat dock lot. Is that defined differently in the LDC than what's referenced in your application here as a single-family home which has certain rights associated with it with respect to the number of slips?

MR. ROGERS: Yes, sir. The difference between this boat dock lot -- we're calling it a boat dock lot. It's not your typical boat dock lot in regards to Collier County normal boat dock lots. There's only a few areas that actually have boat dock lots, and one of them being -- the main one that I can recall is up off Little Hickory on the north end of -- on the south side of Bonita Beach Road, off Third Street.

And those docks -- those boat dock lots are allowed to have zero setbacks. They're basically plotted boat dock lots, and you're allowed to maximize your water foot frontage of that property.

CHAIRMAN STRAIN: Well -- and I know Ray's about to interrupt, and so am I. Phil, you hit on a question that is really pertinent. Can you show us any document that you have that calls this a boat dock lot?

MR. ROGERS: No.

COMMISSIONER SCHIFFER: No.

CHAIRMAN STRAIN: Thank you.

COMMISSIONER BROUGHAM: Okay. That takes care of one.

MR. BELLOWS: And for the record, Ray Bellows. I'd just like to add that a boat dock lot in Collier County was approved -- is approved through a conditional use as the ones on the Vanderbilt area.

COMMISSIONER SCHIFFER: Right.

MR. BELLOWS: This has no conditional use or anything other than it has historically been used that way since 1955, I believe.

CHAIRMAN STRAIN: But does a property owner selling off a piece of his land constitute a legal use without going through the right process?

COMMISSIONER SCHIFFER: No.

MR. BELLOWS: As far as I know, it would not unless it preexisted the LDC. In '55 I think it probably did. It looks that way to me.

CHAIRMAN STRAIN: Okay. But in '55 this still was not called a boat dock lot.

MR. BELLOWS: No.

CHAIRMAN STRAIN: This was simply the north 50 feet of Parcel 14. And what Phil has hit upon was one of the biggest flaws I found in your argument. And when you said that this morning, you kept referring to it as a boat dock lot. I don't know how you got there. So I think that the record doesn't support it being called that. You can call it whatever you want, but I don't think a boat dock lot, as defined, is one that fits this lot.

So, go ahead, Phil. I'm sorry to interrupt.

COMMISSIONER BROUGHAM: No, that's okay. That's where I'm having some issues. Your variance is, I think, predicated -- my words, not yours -- on the fact that the Jaffe residence across the street is entitled to have two slips associated with a dock coming out of that piece of ground across the street at the end of the canal. Is that -- those are my words, not yours, right?

MR. ROGERS: Yes.

COMMISSIONER BROUGHAM: I don't understand that connection. To me that's a pretty long reach. If Mr. -- my example, if Mr. Forbis had decided to sell Phil Brougham that 50 foot of land at the end of that canal and I live in Fiddler's Creek, how many slips would I be allowed to put on that dock by code?

MR. ROGERS: Two.

COMMISSIONER SCHIFFER: No.

MR. ROGERS: Two vessels. No?

COMMISSIONER BROUGHAM: Whoops.

COMMISSIONER SCHIFFER: And, Mark, excuse me for butting in, but I think this issue has to be resolved before we go on.

CHAIRMAN STRAIN: I agree. And, Phil, you've got right to the point. And, I mean, that's the biggest issue with this whole thing. Brad, you're 100 percent right.

COMMISSIONER SCHIFFER: I mean, I have -- this is a subdivision. You cannot sell off your backyard in a subdivision and then give it the rights of a lot.

This is still part of Lot 14. I mean, the subdivision's been amended but never to isolate this piece of property. So, yes, it could be described; anything you can describe, you can sell. Look at Wall Street.

But -- but this could be described, but it doesn't have the rights. In other words, you're finding a riparian land coming off of a description of a piece of property in Mr. Forbis' backyard. I mean, right now Mr. Forbis and this other guy are partners on Lot 14, but it's not an individual lot. And it can't, any time, be expected to get the rights of a lot. It's a nonconforming lot even.

MR. ROGERS: I can't argue with you on that. We are just following what has historically been done here.

CHAIRMAN STRAIN: Ray, did want to -- can you help out?

MR. BELLOWS: Yeah. The reason I supported the petition or signed off on it was my understanding that this isn't a free-standing lot, that it was, in fact, deeded to the lot across the street, and it's now part of that property.

So, therefore, it's not a free-standing nonconforming lot, because it would be deemed an unbuildable lot because it doesn't meet the minimum lot area.

MS. ASHTON-CICKO: Yeah. I don't believe -- I haven't reviewed all the chain of title. This is not my particular project. But, generally, when you have a platted roadway, the property owner owns to the center line of the road. So since he owns parcels on either side of the road, he owns one parcel that's severed by an easement for a road. So it seems to me it's RSF3, and you're entitled to boats.

COMMISSIONER SCHIFFER: But, Heidi, this is platted subdivision. You can't go within a subdivision and start describing little pieces of land and have it have the rights of the lot. This is a part of Lot 14. He's never called it part of Lot 34 on the block across the way.

MS. ASHTON-CICKO: Well, this one's -- well, that's because that's how you would describe the legal. But this one is unique in that it -- this has enjoyed this particular configuration since 1955. It's not like somebody now could go and create one of these.

COMMISSIONER SCHIFFER: Then why -- when the subdivision was revised in, like, mid '60s, why wasn't that lot shown?

MS. ASHTON-CICKO: I can't answer that question. And, again, I don't have the benefit of looking at the file. I'm just looking at the documents.

COMMISSIONER SCHIFFER: I mean, a subdivision is a method in which you organize land, you plat it, and you can't then start to describe things by legal description. I mean, it's a subdivision. And that would mean that this little area could have four boats in that area, so this is a way to circumvent the rights of the landowners by cutting out pieces of their backyard and selling it and getting the rights of two boats per piece. I mean, makes no sense.

MR. BELLOWS: One other point. Any property owner can sell off a portion of their property to an adjacent property owner as long as they don't result in a nonconforming situation on their own.

Now, if the lot where this appendage came off of is still conforming, he can sell that off. But it can't be a buildable lot if it's not attached to something else that makes it conforming in some other way.

So if it was deeded to the Jaffe residence across the street and is part of that larger lot, then it is conforming in that regard, and they have some rights to the dockage.

COMMISSIONER SCHIFFER: But this is a plat. That roadway --

MR. BELLOWS: You can sell off a portion of a platted lot --

COMMISSIONER SCHIFFER: No. Gulf Drive -- Gulf Drive --

MR. BELLOWS: -- without replatting.

COMMISSIONER SCHIFFER: -- is not -- the people do not own to the center of a road on this platted situation. This is not out in the Estates. This is a subdivision. The subdivision has roadways, right-of-ways platted. So what you're saying is that they can own the land in the -- they don't own the land in the roadway. It's certainly not on the plat. It's not part of their legal description.

CHAIRMAN STRAIN: But there is the way --

MS. ASHTON-CICKO: Well, I've written opinions since the '90s that generally they do own to the middle of the road.

COMMISSIONER SCHIFFER: Right.

MS. ASHTON-CICKO: And they're encumbered by an easement unless it expressly states that it's fee-simple. Again, I haven't reviewed this subdivision plat.

COMMISSIONER SCHIFFER: I mean, look at the plat. Here it is.

MS. ASHTON-CICKO: But those are the general principles. Okay.

COMMISSIONER SCHIFFER: That's a road that --

CHAIRMAN STRAIN: Okay. But there is a way that we might be able to find out a little bit closer if this is a combined lot. The tax assessor's office does let you combine lots. Has this lot been joined with the lot across the street? Because if it isn't, then they're two separate lots.

MR. ROGERS: To my knowledge, no, it has not.

COMMISSIONER BROUGHAM: Couple more --

CHAIRMAN STRAIN: Well, why wouldn't they have done that? Go ahead, Phil. Sorry.

COMMISSIONER BROUGHAM: Just a couple more points that I want to pick at on this application, and then get back to the more central issue, I think.

Supposedly, there's a 35-foot-long boat dock for the neighbor to the north of the subject site. Is that that little dock that I see in the other 50-foot lot? Is that north?

MR. ROGERS: Where are you talking about exactly?

COMMISSIONER BROUGHAM: I'm looking at -- look what's on the visualizer. That -- to me that's what I'm looking at.

MR. ROGERS: Oh, yeah. That --

COMMISSIONER BROUGHAM: That's a 35-foot lot that's sticking out of that other 50 -- I'll say 50 feet.

CHAIRMAN STRAIN: Well, do you know if that other one to the north was sold off, Phil? So you're saying it's a 50-foot lot to the north, but isn't that still connected?

MR. ROGERS: It's part of -- it's connected to the --

CHAIRMAN STRAIN: Yeah, so that's why it's not a 50-foot lot.

MR. ROGERS: Right.

COMMISSIONER BROUGHAM: Well, my question is more, that's a 35-foot dock?

MR. ROGERS: Uh-huh. Oh, I -- I don't know. I didn't measure that dock. I would guess -- no, it's probably 20, 25.

COMMISSIONER BROUGHAM: Okay. It was stated in my document that immediately to the north has an existing approximately 35-foot-long boat dock. I guess that can't be verified.

And can you speak to the hardship issue here, which is, I think, one of the central arguments?

MR. ROGERS: The hardship here is the uniqueness and the history of it. The uniqueness in regards to its location and it being a separate parcel or looked at as a separate parcel and also, then, the riparian lines coming out of the corners or -- there's a couple hardships here.

COMMISSIONER BROUGHAM: To your knowledge, when Mr. Jaffe purchased this particular piece of property, was he aware of the riparian property lines and the uniqueness of this?

MR. ROGERS: Yes, sir.

COMMISSIONER BROUGHAM: So he bought into the hardship?

MR. ROGERS: Yes, sir.

COMMISSIONER BROUGHAM: So hardship is not something that's new?

MR. ROGERS: No. But when he was closing in the closing process, he had both neighbors at that time sign off on the proposed dock design that he's now proposing here. In order to -- to let -- inform them that that's what he's -- his intentions are, of building this dock, and that's why we have two letters of no objection from them signing off on the proposed dock.

CHAIRMAN STRAIN: I wish making things legal was that simple.

COMMISSIONER BROUGHAM: Is it appropriate if I ask one clarification to the staff report as well?

CHAIRMAN STRAIN: Sure. Everything, go right on through it, yeah.

COMMISSIONER BROUGHAM: Under recommendation, Ray or --

MR. BELLOWS: Of the variance or the boat dock?

COMMISSIONER BROUGHAM: On the variance -- you say your recommendation of approved -- subject to the approval of the companion boat dock extension petition, blah-blah-blah-blah, and issuance of a certificate of occupancy for building permit number, whatever, ending in 4314, what is that -- how does a building permit come into this equation?

MR. BELLOWS: The Land Development Code requires that you cannot have an accessory use such as a dock without a principle structure or principle use. In this case the principle use is the dwelling. And since they've destroyed, or are rehabbing the original by removing it -- right now, my understanding, the site's vacant.

COMMISSIONER BROUGHAM: Okay.

MR. BELLOWS: So we just want to make sure they don't do the dock without the dwelling.

COMMISSIONER BROUGHAM: I couldn't make the link. That's all I had right now.

CHAIRMAN STRAIN: Anybody else? Brad, did you --

COMMISSIONER SCHIFFER: Yeah, let me continue on. And I -- you know, Heidi, give me a binary answer, yes or no, is that that is a legally described lot such that we can figure riparian rights off of it and they can build -- you know, it's part of Lot 14, but you're saying once they describe it and sell it and, you know -- you know, it does go back. I think Eve sold it to Adam to start this.

It does go back, but the point is, that how can you, just by describing things, create a lot? And the reason that's an important question, there's probably about 10 other ones like this. And before everybody in Connors come running in here and selling off the lots and duplicating, you know, the boats in the backyard -- so you're 100 percent sure that this is a lot, and they can figure riparian rights off of the property lines accordingly?

MS. ASHTON-CICKO: Based on the fact that it's been in existence since the 1950s, 1955, yes. I don't think that people can start selling off parts of their lots and create new lots and then entitle additional boat docks. I don't think you can do that. But in this case because it was an existing dock and it's been sold for, you know, how many years now, as one lot, then, yes, I do think he's got riparian rights.

COMMISSIONER SCHIFFER: Then why is it being picked up in the replats and everything? I mean, this Connors Point's (sic) been replatted since then. I mean, why did they not start to show this as a legal piece of property? I mean, to me I --

MS. ASHTON-CICKO: I don't think it's not a legal piece of property, so -- and I think -- you know, I think he's got rights that if we take them away the county will have some significant exposure.

COMMISSIONER SCHIFFER: Okay. And Mr. Forbis, who's his partner on Lot 14, he has the ability to put in two more boats. Because the lot -- per lot, you're only allowed two boats. So what we're saying right now is per lot or per description, you're allowed as many boats -- two times how many descriptions you can get on your property. I mean --

MS. ASHTON-CICKO: Well, I think there's criteria you have to look at when you have a boat dock extension.

COMMISSIONER SCHIFFER: Okay. I mean, I'll -- the attorney says it's a legal lot that, yes, those are the riparian lines that are appropriate, then we'll go there. But the danger is everybody now in Connors can run in and sell that little nip on the back of the canal.

CHAIRMAN STRAIN: No. I think she qualified her statement by the fact it was a legal lot because it was created back in the 1950s, but it couldn't be done the same way today.

MR. BELLOWS: Yeah, current codes would prohibit that now.

CHAIRMAN STRAIN: That's the difference, I think.

COMMISSIONER SCHIFFER: Okay. I'll ask some questions later on the boat dock part.

CHAIRMAN STRAIN: Okay. Bill?

COMMISSIONER VONIER: The boat dock that exists, aside from that floating dock, which is not legal --

COMMISSIONER SCHIFFER: Right.

COMMISSIONER VONIER: -- it meets all of Collier County's criterion?

MR. ROGERS: No. The dock -- no, it does not.

COMMISSIONER VONIER: It does not?

MR. ROGERS: No.

COMMISSIONER VONIER: The existing dock does not?

MR. ROGERS: No, it's not providing -- the vessel on the dock, which is part of the dock, is not providing the required setbacks.

COMMISSIONER VONIER: Okay. Second question. The adjacent lot, 14, has 75 feet of frontage and this has 50. So looking at 75 feet and his ability to put in two boats, I think it's going to get pretty tight.

MR. ROGERS: Yes, sir, it is, but you could definitely design something that would accommodate the property owner to the south's wishes and get two vessels in there. It's not a perfect situation; that's why this is so difficult to get this approved, but historically this is what's been done and, you know, we'd have to reverse what's been done. I mean, not -- you know, I definitely know we could fit something in there.

And as the dock sits, go back to your other question, that is out past the 20 feet so -- and it does not have a DBE approval as well. So as that dock sits, it's encroaching on the setbacks as well as it's past the 20 foot.

We're trying to make a wrong a right the best way we can.

CHAIRMAN STRAIN: Anybody else?

COMMISSIONER EBERT: I have a question. I notice another boat. Does that belong to Lot 13?

MR. ROGERS: No. It -- are you talking about this here?

COMMISSIONER EBERT: Yes.

MR. ROGERS: I believe, by the looks of the -- if you look and see in the water, the turbidity screen that's

floating there, I believe that's a barge that just happened to be at that place doing some sort of -- I don't know, some sort of work.

COMMISSIONER EBERT: Okay. Now, this is not a clear picture, so I'm thinking, all right, he's got this, and if Lot 14 -- there's no home on Lot 14, I take it?

MR. ROGERS: Correct.

COMMISSIONER EBERT: And -- but you feel that they can go out and put in two boats out there also?

MR. ROGERS: Yes, ma'am. It would be considerably tight, but they could definitely work something out.

COMMISSIONER EBERT: Okay. And the one across -- on the northern portion there is also a dock there. Does that belong to the other residents across the street next to Mr. Jaffe?

MR. ROGERS: No, ma'am. That property is owned by the residents of the one to the north of us. He owns that whole L of the seawall.

COMMISSIONER EBERT: Okay. He owns the whole L. Okay, thank you.

CHAIRMAN STRAIN: Anybody else?

(No response.)

CHAIRMAN STRAIN: In your opening statement you said that this lot is zoned single-family. Do you still stand by that statement?

MR. ROGERS: Right now I'm unsure, but -- yes, sir, I believe -- that is my understanding.

CHAIRMAN STRAIN: Ray, do you consider this 50-by-30-foot square lot a single-family lot?

MR. BELLOWS: It's my understanding that that lot was deeded to the Jaffe residence lot across the way, so together it conforms a single-family lot.

CHAIRMAN STRAIN: It's not combined in the tax assessor map, so -- they've not combined them --

MR. BELLOWS: Yeah, I think I go back to what Heidi was saying is it was done back in the '50s as deeded to the Jaffe residence lot. And then, because it's not a free-standing lot in and of itself -- and I would agree with you, if it was created as a free-standing lot on its own, that it's an unbuildable lot. But since -- my understanding of the way it was explained to me is that it was deeded to the Jaffe residence lot and, therefore, is a conforming lot of record which has rights to have the dock, even though it -- even though the street crosses over.

CHAIRMAN STRAIN: During the preapp, staff said -- I guess it was -- Mike Sawyer, apparently, was talking to somebody from your organization, maybe you, Jeff --

MR. ROGERS: Yep.

CHAIRMAN STRAIN: -- note, nonconforming existing dock and -- I'm not sure what the next word -- also provide info regarding other comparable dock facilities within the area, single, canal, and locations. Did you do that?

MR. ROGERS: There are none.

CHAIRMAN STRAIN: There are none.

MR. ROGERS: That I could find on Gulf Shore Drive, that mimic this one.

CHAIRMAN STRAIN: Okay.

MR. ROGERS: At least on the three canals or the two canals north of us. Those western portions of those properties were not -- they're a part of the single-family residences.

CHAIRMAN STRAIN: I played around with your buildable area, and you can fit a boat in that buildable area with a dock without protruding on the setbacks. You can do it if you don't want an oversized boat. The fact that this guy has two boats and he wants to fit them in there is a hardship that he created, and self-created hardships aren't reasons to provide variances.

I -- and I especially am concerned that when you put a 35-foot boat in there and you've got a 100-foot lot that has 30 of it taken away, is down to 70, and of the 70, over half of it's being blocked by a boat, I don't see how that's fair to the adjoining property owner.

And by the way, that's nothing to do with Mr. Forbis or his letter, because I had that conclusion before he wrote his letter. I don't particularly like his style in his letter, so it didn't -- I didn't pay much heed to it. But, the point is, it does block that property substantially when you can actually fit a boat and a dock in there, maybe 20- or 25-foot-long boat, but I don't -- so I don't buy into the hardship fact. I'm having a hard time. And then why is it a hardship in this county if you can't have two boats? I mean, I don't get it.

COMMISSIONER EBERT: Yeah.

CHAIRMAN STRAIN: I mean --

COMMISSIONER EBERT: It's not a hardship.

CHAIRMAN STRAIN: -- it's ludicrous to think that everybody is entitled to two boats. What the code says, you may -- you may ask for two boats. Doesn't mean you're going to -- it's a hardship if you can't have the two.

MR. ROGERS: Right.

CHAIRMAN STRAIN: So I'm having a real hard time with your variance.

I think a boat dock extension would be warranted if it was within the setbacks, provided your dock configuration was different, but you've got a dock configuration that doesn't work in front of us today.

So I have a problem with both of your applications today on that basis. And I'm just letting you know, I haven't found a way around it yet. And if we start deciding hardships are because you can't have two boats, that's a -- that's a strange trail to get going down. Anyway.

MR. ROGERS: I didn't mean to interrupt you, sorry.

CHAIRMAN STRAIN: No, that's fine.

MR. ROGERS: In my mind, you know, the biggest hardship here is the fact that the riparian lines are very restrictive, and that's just due to the uniqueness of the location of the property and, you know, that goes back to the 1955s when this was originally established.

So it -- you can fit a vessel in there, you know, like you said, as shown here, but, you know, that's the area that you have to work with that Mark was talking about. And I can't argue that we couldn't fit a boat in there, but the petitioner came to us with the vessels in his ownership, and he thought he was doing the right thing at the closing in crossing the bridge, so to speak, with the neighbors at that time in making sure that they were okay with the proposed dock and vessels that were going to be stored there, and at that time they signed off on it.

Can't speak for Mr. Forbis in his confusion, but he's come back to say as long as it matches what he signed originally, he's okay with it.

CHAIRMAN STRAIN: And, again, even -- the neighbors don't dictate the codes and laws here, and for them to decide it's okay, that doesn't mean it's okay. You've still got to meet the --

MR. ROGERS: Understood.

CHAIRMAN STRAIN: -- thresholds of our rules, and I just don't see how you've done it -- so anyway. Go ahead.

COMMISSIONER SCHIFFER: Yeah, you know what I'd kind of like to see here is if he and Mr. Forbis get together and let them design how they want to put these boats in here. Because when you look at -- you're saying it's a nonconforming thing on the 45, but that's about the only thing that makes sense so far because it looks like a boat dock place where both of them could use it.

It may be, you know, going down the riparian line -- which I don't even yet believe with the riparian line, but that might catch up later.

But, you know, let them sit down and design the backyard here, because this is definitely, to me, one lot. The fact that you've found a way to get four boats on it instead of two is -- we'll let it go as clever. But I do think that it has to work for everybody, and he can't ignore the Lot 14, which it still is a part of. It's always been described as a part of it.

No one ever, you know, attached it across the street. They sold them together. They deeded them together, but they never joined them together.

So I really -- it would be difficult for me to even really give a good opinion on this unless you work something out with Mr. Forbis and showed how you're going to put four boats there, then we can start worrying about what the other neighbors are going to think, because there are people across the canal, people who have to look at this, and maybe they don't want four boats in there.

So let's get -- if we have to have four, let's make the four work together. The way you're doing it now, you're blocking his ability to come out, too.

MR. ROGERS: Well, we're coming out as one, one property owner, and we're -- you know, we took the approach where we're worrying about him and trying to accommodate the best we can for Mr. Forbis. I understand it's not a good situation no matter what -- no matter what we do here in regards to dock design and slip layout.

You know, state and federally it would be difficult for Mr. Jaffe to get a permit that authorized his vessel and/or dock to cross over his riparian lines. You know, that's at the state and federal level. That's something that we could work out, potentially.

COMMISSIONER SCHIFFER: But look at -- the original design has these boats on 45. So, essentially, they pull away from their docks and they go into the center of the channel. They don't cut across, you know, the backyard or the dock area of Mr. Forbis. Those boats look like they've been designed -- and you're right, there's nothing perfect there, but you're not coming in with that. That big boat can pull out into the center of the channel and not block the Forbis site.

MR. HALL: Sorry. For the record, Tim Hall with Turrell Hall & Associates, and I think I understand the concerns that the Planning Commission has been expressing.

In terms of the riparian lines, did you say you had a question or you were confused about how those related to each other or --

COMMISSIONER SCHIFFER: Well, here's -- I mean, the one that's obviously going east/west is a riparian -- is a property line with a riparian. Somebody did a legal description defining a piece of property -- and now I'm starting to think this is actually competing with Wall Street in cleverness. But they defined a piece of property, and now we're -- you know, they just defined something out of an existing lot, and now we're giving it riparian rights.

MR. HALL: Well, I mean, it's a deeded lot. It's been through 10 or 11 different transitions.

COMMISSIONER SCHIFFER: It's not a lot. You can't use the word "lot," because it's not. It's never been a lot.

MR. HALL: Okay. It's a deeded piece of property.

COMMISSIONER SCHIFFER: It's been legally -- it's been legally --

MR. HALL: It's a property that has specific ownership, okay. There's a gentleman that has a defined area that he owns.

COMMISSIONER SCHIFFER: It's been legally defined, and somebody in Iceland might have bought it. But go ahead.

MR. HALL: Okay. Well, that -- because that property is on the water, there are riparian rights associated with it, which -- and riparian rights are basically, if you own property on the water, you have the right to access that property from the water. And there are -- the ways that they define those riparian lines, generally, they start at the mean-high water line or where the water meets the shore.

COMMISSIONER SCHIFFER: I know how they define it. If -- my problem isn't with the riparian line. My problem is, does it have the rights for riparian line. And we can move off of that.

MR. HALL: No, I mean if it's --

COMMISSIONER SCHIFFER: If Heidi says it does, it does, so --

MR. HALL: And in terms of interfering with the riparian rights or the riparian lines of the owner to the south, you know, this design doesn't. If you look at how those lines -- if you look at how they line up, I mean, where the edge of the property -- the property to the south here and this property where they adjoin, that riparian line would come off a 45-degree angle to the center of the waterway.

COMMISSIONER SCHIFFER: If we're allowed a riparian line, that's the one you'd be allowed.

MR. HALL: Right.

COMMISSIONER SCHIFFER: I'm with you there.

MR. HALL: Okay. All right.

COMMISSIONER SCHIFFER: But the point is, too, is that since everyone's known about this lot and everybody's known about riparian lines and everybody's known about setbacks, what is the hardship then other than they can't, you know, take overadvantage of it? I mean, this is a very small lot so, obviously, shouldn't they be entitled to a very small boat? What would make them think that they should have the rights of somebody -- you know, a 39-foot boat, let's say 40, that's an 80-foot-wide lot.

MR. HALL: If you look at the boat that's there now on the aerials, that's a 32-foot boat.

COMMISSIONER SCHIFFER: Right.

MR. HALL: But it's not there legally. It's there -- well, I mean, I guess it is there. It's grandfathered in, but it doesn't meet the setback or boat dock extension criteria that the county has in place now.

So if he wants to upgrade that dock or change it, he has to become compliant with what the codes are now, which is what we're trying to do. And in taking that, what was a -- the 35-foot boat and doing the design, it was to move it as far away from that property to the south as possible.

COMMISSIONER SCHIFFER: I mean, if this guy wanted a variance to build what's there, he'd have a

friend in me. But what he's trying to do, the way he's trying to aim it down the channel and, essentially, make it difficult for the other lot and, essentially, put it in full view of the other lot, I'm not with that yet.

Thank you, Mark.

CHAIRMAN STRAIN: Okay. Anything else? Phil?

COMMISSIONER BROUGHAM: Just one more question; might be rhetorical.

What if -- well, I -- what if he did nothing? In other words, you say this is nonconforming and a boat that's currently -- I assume is currently docked there is not, quote-unquote, legal; it's grandfathered in, I guess.

But if this petition were denied and it was not appealed and ultimately approved, what harm is there then? I mean, how is this gentleman harmed? What would he have to do? He could keep his boat. He could keep the dock as legal nonconforming; is that correct?

MR. BELLOWS: Correct.

COMMISSIONER BROUGHAM: No harm, no foul.

MR. BELLOWS: Yeah. The existing situation can continue into the future.

COMMISSIONER BROUGHAM: Can or can't?

MR. BELLOWS: Can, C-a-n.

COMMISSIONER BROUGHAM: Okay, thanks.

COMMISSIONER SCHIFFER: Well, Ray, let me question.

MR. HALL: Except for he loses the -- just to keep this right now, he then is limited to the one boat instead of the two that are there now.

COMMISSIONER BROUGHAM: Okay. I understand that.

COMMISSIONER SCHIFFER: But, Ray, he's built boat lifts and stuff. I mean, he didn't have a boat lift in 1955. I mean, when they installed that boat lift, Elvis Presley wasn't on the radio.

MR. BELLOWS: I don't know of any code violations on this site, but there very may well be. But my understanding is it's preexisting dock, and the boat is there. I don't know how long that boat's been there, but I'm sure they've had many numerous boats over the years.

COMMISSIONER SCHIFFER: And it's designed in a courteous position where it will pull out and not, you know, block the other people around them.

MR. BELLOWS: I agree. It's --

MR. HALL: Well, I think I might disagree with you a little bit. Just if you look -- if you look at the -- can we blow that out some?

This boat currently has to back into this because of the way the lift is situated and all. So to come in and out he's actually -- if this owner brought another boat in which is, you know, permitted there and has this boat here, then to get in and out of that, he's got to work around both of these in reverse to get in and out of that slip as it exists now, whereas, with what we have proposed, none of these adjoining owners are affected at all, and it makes it easier to get that boat in and out of that lot without having those -- you know, without having to come in in reverse and go around those lots -- those docks that are already there now.

COMMISSIONER SCHIFFER: But, actually, you've pointed out a hardship. Your boat might -- if you come perpendicular to that wall and you're within that setback, you're going to make -- that boat's got to work around the tip of you. You're much further out than you'd be --

MR. HALL: No. The way this one can come in and out into the corner, the way we have the boat sitting right now, he's not affected by it at all.

COMMISSIONER SCHIFFER: We could discuss it. I mean, you're going to be sticking out towards the apex of that triangle. So anyway. Okay.

CHAIRMAN STRAIN: Anybody else?

(No response.)

CHAIRMAN STRAIN: Thank you, Tim and Jeff. Staff report?

COMMISSIONER BROUGHAM: Come on up, Mike.

COMMISSIONER EBERT: You've got it, Mike.

MR. SAWYER: Good afternoon. For the record, Mike Sawyer with planning services.

I actually worked on the boat dock extension for Jaffe. Nancy, my colleague, did the variance for this request.

On the boat dock extension, you've got a staff report originally dated April 6th, revised April 11th and the 13th. As you can see, basically, what we found as staff is that they're meeting four of the five primary and four of the six secondary, with one of the secondary being nonapplicable.

If you have questions, I'll be happy to answer what I can.

CHAIRMAN STRAIN: Anybody?

COMMISSIONER SCHIFFER: I'll play.

CHAIRMAN STRAIN: You'll play, huh?

COMMISSIONER SCHIFFER: Primary Criteria 1, you know, the intent there is to keep it an appropriate number, kind of says for single-family use, two boats is good, right?

MR. SAWYER: Correct.

COMMISSIONER SCHIFFER: So you're still claiming that these two boats belong to the house across the street?

MR. SAWYER: Since '55, correct.

COMMISSIONER SCHIFFER: Well -- okay. I mean, the lots have never been joined. To say it's on the same lot, that isn't true. Even in the descriptions it says "and," and then describes this guy's backyard. But anyway.

MR. SAWYER: Well, just to clarify one possible point, that in '55, this -- you know, certainly, the boat dock extension process certainly wasn't in the code at that time either. A minor point.

COMMISSIONER SCHIFFER: Right. I mean, to me I think there's only two boats allowed on Lot 14. Even though somebody else owns part of Lot 14, that's just creative.

Let me see if there's any other ones. They're claiming this, you know, the -- and because they measure perpendicular, they measured all the way across into Ohio, I think, to come up with the 1,400 feet. Do you believe that's the width of the waterway?

MR. SAWYER: As I tried to point out in the staff report, in black-and-white terms, that's what the criteria says; however, in this particular case, it's very hard to make that argument, quite honestly, and that's why in the staff report I tried to go back to what the actual intent is as far as navigability, and that's how we found that it actually, you know, met that navigation. Whether this configuration is used or the existing one is is not going to affect navigation because you don't have anything -- any navigation going further west.

COMMISSIONER SCHIFFER: No, obviously.

MR. SAWYER: Obviously.

COMMISSIONER SCHIFFER: Or this boat will stop them if they try.

MR. SAWYER: Exactly.

COMMISSIONER SCHIFFER: Number 5, is the -- will it interfere with the neighboring docks. When you look at that, do you look at it in terms of what's built now or what could be built later? And the intent of the question is, did you give Lot 14 the ability -- I mean, did you figure out what's going to happen on 14, what they can do to see if this is, in fact, especially with the variance, you know, interfering with their rights?

MR. SAWYER: We did. Quite honestly, Lot 14, whether they come in now or later, are still going to have to go off of the riparian lines that you see on the screen right now. They're going to have to -- whatever configuration of dock they propose, whether they need an extension or not, are still going to have to go off of that 45-degree riparian line that you see, because they don't have rights to that lot.

COMMISSIONER SCHIFFER: Right. But, remember, they're asking for a variance here, and that variance will make that more difficult for them, correct?

MR. SAWYER: To an extent, yes.

COMMISSIONER SCHIFFER: Yeah. Hold on. There may be another. No, that's good. Thanks, Mike.

CHAIRMAN STRAIN: Okay. Bill?

COMMISSIONER VONIER: Yeah. I'm reminded of the Isles of Capri case that we just reviewed a couple of weeks ago, and those conditions were not nearly as severe as these, and we did not allow one of the docks -- or one of the lifts to be -- to encroach on a riparian right. So this is a much worse condition in my estimation than the one we voted out in Isles of Capri.

And, for the record, I looked at that as 100-foot-wide waterway. I didn't buy your 1,400 feet.

CHAIRMAN STRAIN: Okay. Anybody else? Phil?

COMMISSIONER BROUGHAM: No.

CHAIRMAN STRAIN: No, okay.

Mike, you did the boat dock extension?

MR. SAWYER: Correct.

CHAIRMAN STRAIN: Let's see if I had anything left. No. So I only have a couple of questions on the variance. Thank you.

MR. SAWYER: Thank you.

MS. GUNDLACH: Good afternoon, Commissioners. For the record, I'm Nancy Gundlach, principal planner with the Department of Land Development Services.

And staff is recommending approval of the variance, of course subject to the approval of the boat dock extension and also the certificate of occupancy for the new house that's being built across the street.

And it would be my pleasure to answer any questions you might have this afternoon.

CHAIRMAN STRAIN: Anybody have any questions on the variance from Nancy?

(No response.)

CHAIRMAN STRAIN: Nancy, a couple cleanup questions maybe. Page 5, did you do the aerial?

MS. GUNDLACH: Yes, I did the aerial.

CHAIRMAN STRAIN: Could you -- if this is appealed, or wherever it goes, you reference that lot as a boat dock lot. We now know that's improper. Could you just make that correction?

MS. GUNDLACH: Okay. Yes.

CHAIRMAN STRAIN: Okay. Under your variance criteria on Page 6, No. E, the question was, will the granting of the variance confer on the applicant any special privilege that is denied by the zoning regulations to other lands, buildings, or structures in the same zoning district. Your answer was no. And then afterwards it says, most other neighboring properties moor two vessels.

Did you rely upon any kind of data, survey, or statistical information submitted to you to come to that conclusion?

COMMISSIONER EBERT: No.

MS. GUNDLACH: No.

CHAIRMAN STRAIN: Okay. So --

MS. GUNDLACH: I had to think about that for a minute.

CHAIRMAN STRAIN: So our record -- we don't have anything for the record to support that conclusion? That was just something you wrote in there?

MS. GUNDLACH: Actually, it's based on the application.

CHAIRMAN STRAIN: But you were not given any supporting data to validate that conclusion, were you?

MS. GUNDLACH: No.

CHAIRMAN STRAIN: Okay. That's what I was getting at. I just wanted to make sure --

MS. GUNDLACH: Okay.

CHAIRMAN STRAIN: -- if we have data here that we're relying upon, it's accurate. And under a variance, I wanted to especially check that. So that's all I had.

Anybody else have any questions of staff?

(No response.)

CHAIRMAN STRAIN: Thank you, Nancy.

MS. GUNDLACH: You're welcome.

CHAIRMAN STRAIN: Are there public speakers, Ray?

MR. BELLOWS: No one has registered.

CHAIRMAN STRAIN: Does anybody in the public wish to speak?

(No response.)

CHAIRMAN STRAIN: Okay. Is there any rebuttal wanted by the applicant?

(No response.)

CHAIRMAN STRAIN: You guys got any more you want to say before we close the public hearing?

MR. HALL: No, sir.

CHAIRMAN STRAIN: Let the record state that, rather than shaking his head, he actually said no off record. Okay. With that, we'll close the public hearing, and we'll entertain a motion first on the variance.

COMMISSIONER BROUGHAM: Motion to deny.

CHAIRMAN STRAIN: There's been a motion made to --

COMMISSIONER VONIER: Second.

CHAIRMAN STRAIN: -- deny, second -- by Mr. Brougham, seconded by Mr. Vonier.

Discussion? I'm going to support the denial for the following reasons: The -- I believe the hard -- first of all, under variance criteria, I don't agree that they've met the criteria of Elements B, C, D, E, and F. Most of that has to do with the fact that the hardship is based upon needing two vessels. I can't see where that occurs, and also the impact on the neighboring property. But those are my reasons for denying this variance.

Anybody else have any questions, comments?

(No response.)

CHAIRMAN STRAIN: If not, all those in favor of the motion, signify by saying aye.

COMMISSIONER VONIER: Aye.

COMMISSIONER SCHIFFER: Aye.

COMMISSIONER MIDNEY: Aye.

COMMISSIONER AHERN: Aye.

CHAIRMAN STRAIN: Aye.

COMMISSIONER EBERT: Aye.

COMMISSIONER KLEIN: Aye.

COMMISSIONER BROUGHAM: Aye.

CHAIRMAN STRAIN: Anybody opposed?

COMMISSIONER HOMIAK: Aye.

CHAIRMAN STRAIN: Okay. Motion carries, 8-1.

***Boat dock extension. Does anybody have any comments on the boat dock extension?

(No response.)

CHAIRMAN STRAIN: Is there a motion?

COMMISSIONER BROUGHAM: Well, I will move to deny the boat dock extension, BDE-20110001573.

COMMISSIONER VONIER: Second.

COMMISSIONER KLEIN: (Raises hand.)

CHAIRMAN STRAIN: Is there a second? Motion made by Mr. Brougham, seconded by Mr. Vonier.

Discussion? I'm going to be supporting the motion. I believe that they did not meet Primary Criteria No. 1 or No. 2, and they do not meet Secondary Criteria No. 1, 3, and 4.

COMMISSIONER VONIER: I agree.

CHAIRMAN STRAIN: Anybody else?

COMMISSIONER SCHIFFER: I'll be supporting the motion but adding Criteria No. Primary 5 and Primary

4.

CHAIRMAN STRAIN: Is that in addition to the ones I have suggested?

COMMISSIONER SCHIFFER: Yes, yes.

CHAIRMAN STRAIN: Okay. Anybody else?

(No response.)

CHAIRMAN STRAIN: All those in favor of the motion to deny, signify by saying aye.

COMMISSIONER VONIER: Aye.

COMMISSIONER SCHIFFER: Aye.

COMMISSIONER MIDNEY: Aye.

COMMISSIONER AHERN: Aye.

CHAIRMAN STRAIN: Aye.

COMMISSIONER EBERT: Aye.

COMMISSIONER KLEIN: Aye.

COMMISSIONER BROUGHAM: Aye.

CHAIRMAN STRAIN: Anybody opposed?

COMMISSIONER HOMIAK: Aye.

CHAIRMAN STRAIN: Motion carries 8-1.

Thank you, all. Appreciate your time.

We're done with our advertised public hearings.

***Next item up is a new business item, and it's 11B, suggested -- by -- Brad asked for it earlier today concerning the CCPC representation at the BCC meeting.

COMMISSIONER SCHIFFER: And this is actually the right roomful of people. At the Wahl presentation -- the concern I have is I don't want to second guess the BCC's judgment. That's made. That's locked. The question I have is how does our work -- I mean, we work hard on these things. How is that presented to the BCC?

At the Wahl hearing, the applicant, who's standing right where he was, stated that the application was solely about safe access to the boat, okay, and repeated that. I mean, I don't agree with that, but that's what -- he's allowed to say what he wants.

Nancy got up and said, staff doesn't approve -- or votes for approval. Do you have any questions? And it wasn't until midway in the hearing that the attorney actually stated, wait a minute. This is just about a boat lift, and a boat lift doesn't provide safe access.

So how do we spend time like we just did, how is that supposed to be presented to the commission?

MR. BELLOWES: The executive summary prepared for the Board of County Commissioners or the Board of Zoning Appeals in a case of variance and conditional uses always outlines the CCPC vote and the reasons for the vote. And it's very important, like you did on this petition, to outline the criteria and the reasons for recommending denial. That information is placed in the executive summary for the board to hear.

Now, if staff -- after going through the CCPC hearing and the information presented during that CCPC hearing, if we decided that information or new information presented is enough to change our recommendation, say we were -- either support or -- whatever our recommendation was different from the Planning Commission's, but as a result of the hearing, we are now in agreement, we will note that in the executive summary that staff is changing their vote for a recommendation that was presented to the Planning Commission and are now siding with the Planning Commission based on that information presented.

However, if we still feel that our recommendation is correct or we think that it should be presented as our recommendation to continue forward, we will note both, that staff disagrees with the CCPC. So that both information there -- so the Board of County Commissioners gets both recommendations when they're different.

COMMISSIONER SCHIFFER: But you see the problem. The staff of the Planning Commission is you guys, and you're the ones saying we want to approve this thing, which you're allowed, but you're also the ones that are supposed to be presenting our point.

I mean, so what I'd like to see -- and, Heidi, it would be great if -- and, Steve, if it's a legal thing, if the legal department is kind of watching the hearing to make sure. And, again, like I said, it was Jeff well into the hearing that finally said, wait, wait, this is only about a boat lift.

And I think that statements -- for example, the boat lift didn't -- doesn't have anything to do with safe access to a dock. So if someone's saying this is about safe access to a dock, somebody somewhere has got to say, wait a minute, wait a minute. It's about a boat lift. The boat will be down in the exact same position it would be with or without the lift. So, you know -- go ahead, Phil, you wanted --

COMMISSIONER BROUGHAM: No, no. When it's my turn. But I just want to join in with you, Brad. I watched the BCC meeting, and I was almost beating on the TV because I felt that the fullness of the discussion that this commission had concerning those two requests was not at all presented either in black and white or verbally by the staff. And I'm new at this game. But I guess I could come up and register as a public speaker, but I don't feel appropriate doing that.

I would just like to see some way that no matter what the recommendation of staff is, to approve or deny, that we have more forthcoming -- or more substance to the discussion or the debate and the conclusions and --

COMMISSIONER KLEIN: Rationale.

COMMISSIONER BROUGHAM: Good point -- rationale that this commission put into their recommendation. Because I feel if the commissioners, A, didn't read the executive summary -- I'm not accusing that -- or didn't ask the right questions, then our discussion in substance wouldn't have been presented or was not presented. And I felt the same as you, Brad. I just felt disenfranchised for all the time we put into those.

COMMISSIONER SCHIFFER: And we can't expect one of us to run down to these meetings. We give enough to do this job. The problem is we work hard. We worked an hour or so on this one, and to have that thrown

out in the presentation by two parties that really aren't interested in what we came up with in our hour anyway because it goes against what they want, I do think something should be done. I would love to see the county attorney kind of watch a hearing like that and be the one to say, wait a minute. That's -- you know, I want -- you know, the commission to know the Planning Commission was against it. It is not a question of safe access to the boat. The boat would always be allowed at the dock. The question is whether we can lift it in the air after you're using it.

And, you know, someone's got to speak for our voice, or let's just quit screwing around on these things. I mean, we are going to take them up, but it is disrespectful that we waste our time from our businesses and our resources and then have it blown off like it's a flippant opinion.

CHAIRMAN STRAIN: Well, let me comment on a couple of things. First of all, I have no reason to doubt on this executive summary that was presented on the Wahl docks -- I didn't -- I haven't read it, but I'm assuming staff articulated our position as they stated they have. So we've got to rely on that as an unbiased way to present our case, because that's why we have a consent agenda and the other agendas we have.

So assuming that was done correctly, for anyone, whether it be a member of this board to go there and try to represent this board or for the county attorney to speak on behalf of this board or Ray to speak on behalf of the board, all they can do is tell what's on record. If the BCC had watched us, which they probably don't, but had read the executive summary, I think they would get the gist of it.

To request staff to state our position without -- I'm not sure I'd be as comfortable with that, because they're going to state the majority position, which may be contrary. And your position right now, by the way, is not why I voted no on the Wahl docks. I voted no on that Wahl dock side not because of the lift and the height of it and all that, but because there was no hardship shown for the variance.

COMMISSIONER SCHIFFER: Right.

CHAIRMAN STRAIN: So I don't even match what you just said, so how could we get that straight at the BCC level?

COMMISSIONER SCHIFFER: No, but that proves the point that one of us can't go down --

CHAIRMAN STRAIN: Well, and I --

COMMISSIONER SCHIFFER: -- because we would never -- you know, and that's not fair to us and that's also the fact that we don't always speak in a unified voice. I think maybe one thing to do, Ray, could we see the executive summary that you're going to present with the consent agenda so we could critique that to make sure that that's covering what we're concerned about?

And, like I said, it was really the county attorney who finally had to step in and get the thing a little bit back on track with the boat-lift issue.

CHAIRMAN STRAIN: But the executive summaries are made the week prior. How could we chime in on them? It wouldn't do any good.

COMMISSIONER HOMIAK: But they read -- I know that some of the commissioners read our minutes. They read the transcripts of the meetings before -- that was --

COMMISSIONER SCHIFFER: Well, we -- how could they -- I mean, we don't get them.

COMMISSIONER HOMIAK: That was read before they voted on that by many of them.

COMMISSIONER SCHIFFER: I mean, we haven't -- the transcripts aren't ready that fast.

MR. BELLOWS: The best way to accurately reflect the varying opinions of the Planning --

COMMISSIONER HOMIAK: The video's right here.

MR. BELLOWS: -- Commission would be to provide the minutes. And on the bigger cases, such as the Lost Grove Mine, we do include the minutes of the Planning Commission, because there's no way you're going to summarize that in an executive summary to the board.

On a thing like the Wahl variance, staff did put in the staff -- Planning Commission recommendation, the recommendation of denial and the reasons for it. That's -- you know, like Mark had indicated, not everyone on the Planning Commission has the same opinion about a petition, and we would have to basically include the minutes to accurately reflect everyone's opinion to fully convey that to the Board of County Commissioners. And I don't have any problem attaching minutes if that's so -- the desire of the commission.

COMMISSIONER SCHIFFER: But you can't expect the commissioners to read an hour hearing.

MR. BELLOWS: And timing-wise of getting things into the agenda packet for the board, I don't think there would be time to get each one of you to respond and say it's accurately reflecting your concerns.

CHAIRMAN STRAIN: And I don't think our response off record substantiated as a policy of this board, so I think that would be a very difficult thing for you to change --

MR. BELLOWS: I think so, too.

CHAIRMAN STRAIN: -- based on someone's individual comment.

MR. BELLOWS: I think the only way to really -- to help your concern is -- because we do our best to try to reflect the Planning Commission vote in our executive summary. There's nothing gained by us trying to hide something or change the direction of the Planning Commission vote. We want to express to the board your findings as accurately as possible. And if doing so requires the minutes to be provided, we will do that.

COMMISSIONER SCHIFFER: Then in your staff presentation, make it part of your presentation. Don't just say, staff is in favor of this. Any questions? Sit there and say the Planning Commission -- and then use those -- executive summary to go over those points.

MR. BELLOWS: Well, that is a good point, and I will stress that with staff --

COMMISSIONER SCHIFFER: I mean, don't just blow us off.

MR. BELLOWS: -- in the future that when they are presenting the -- when they're asked to give staff comment on their executive summary that they make sure that they reference the CCPC vote.

COMMISSIONER SCHIFFER: You know, today covering the consent on the cultural arts, there's a nice thing presented. Nancy prepared it. Given a rundown of what our concerns were -- now, she was doing it in more checklist, I think, to show that it was in the packet, so that means that the best time for you to really think of what it is we're up to on that hearing is right away. So why can't you, within two weeks, have that -- it could be outlined. It could be what your executive summary's going to be -- to make sure that we're all on the same page with the points.

CHAIRMAN STRAIN: But I think consent does that, Brad. I think if we get the consent -- now you want not only a consent approval, but a draft executive summary approval?

COMMISSIONER SCHIFFER: I would like -- for the draft of the -- what they're going to say. I mean, the final executive summary, when they put it together is only about a -- two paragraphs anyway. It's not like a lot of written work. Go ahead. You obviously want to say --

COMMISSIONER EBERT: Ray, I have a --

MR. BELLOWS: There's a couple points I'd like to make. One is, if a petition is recommended for denial, then there's nothing to bring back to the Planning Commission on consent, because the resolution that was attached at our ordinance is not being forwarded with a recommendation from the Planning Commission. So there's nothing to bring back for you to verify.

In regards to an executive summary, they're working on four or five different projects at the same time, responding to other -- so not everyone can be able to get an executive summary comment, because they have to run it by me, Bill Lorenz, Nick Casalanguida before it's ready to be presented to the public eye, so to speak. I don't think the timing would ever work for an executive summary with the short time frames that we have.

COMMISSIONER SCHIFFER: Something like this cover letter today could not be done then?

MR. BELLOWS: Well, we could do a check list, certainly, or general outline.

CHAIRMAN STRAIN: Why don't you consider what Brad's asking for denials. When we've denied something, maybe put together a check list from staff as to why we denied it that you would eventually use for part of your executive summary. That's very minimal because we don't often deny things completely.

So where there's a denial and you wouldn't normally have a consent, well, at least just summarize our denial points so that we know going forward on a denial that could be controversial, our points are made as well as we expected them to, because that's normally what we check on a consent. Does that -- would that be a happy medium to get to a point where we could kind of test it out, see how it works?

MR. BELLOWS: That seems like a reasonable -- because we do need to reflect in our executive summaries the reasons for denial, and we want to make sure we get that right. And many times staff have to pull the minutes, go over the minutes, make sure what they have in their notes jives with the minutes before they finish the executive summary.

So as part of that process of verifying everything that's stated -- because, you know, when you go three or four hours on a petition, there's a lot of comments to weed through to make sure that we're accurately reflecting it.

That's why it's important when you make your motion, like you did just now, to cite all those reasons why you are not supporting it. A lot of times it's not very clear the reasons why you're denying something, so it's hard to

reflect that accurately in an executive summary.

COMMISSIONER SCHIFFER: Mark, Ray does mention a point that I noticed in the past that is a problem. If we do deny things -- because we're pretty good at running up stipulations, summarizing them. You are, Mark, at the end --

MR. BELLOWS: Yes.

COMMISSIONER SCHIFFER: -- so we know where we are. If it votes down, I honestly think we still should forward those stipulations almost at -- because if the commission overturns us, they don't get the stipulations then. In other words, we should almost have a clause that if you -- you know, we recommend disapproval, but if you were to approve, and then list things we would want, so maybe we should have a consent.

CHAIRMAN STRAIN: Well, the only problem is when you do it that way, it acts as an incentive to approve.

COMMISSIONER SCHIFFER: It does.

CHAIRMAN STRAIN: And then they say, well, the Planning Commission, if we did this, they probably wouldn't have a big problem with it because they said they wouldn't.

COMMISSIONER SCHIFFER: Right.

CHAIRMAN STRAIN: I don't want to go there because I think that opens another door we don't even want to test, because we have some strong opinions on some of these things.

COMMISSIONER SCHIFFER: Right. But we do lose some good ideas if they were to approve it, and sometimes they approve stuff that we deny.

COMMISSIONER KLEIN: But in that case, if staff does a -- like, a consent but just basically a rundown of reasons for denial for motions that we do deny, maybe that will take care of it. And we've got to try that at least, Brad, and see if that clears up the problem.

COMMISSIONER SCHIFFER: Okay.

CHAIRMAN STRAIN: And I think just bringing it up for discussion helps emphasize the issue, too, so --

MR. BELLOWS: I think it's a good idea. There's nothing that would make me more uncomfortable if we're presenting something to the board that isn't reflective of your condition and -- or -- and motion. And it's not the intent of staff to confuse the issue. We want to be as clear as possible.

So I think this is a good solution. And I think I'll work with staff and the attorney's office to come up with kind of like a consent agenda item for denial outlining the specific criteria in the code that you're referencing that's led to the motion of denial.

CHAIRMAN STRAIN: Okay. Diane?

COMMISSIONER EBERT: Ray, I have a question. These only come to the BCC if they are denied through the CCPC, or they just come on consent agenda; is that how it goes?

MR. BELLOWS: The way it works is if, like a variance petition or conditional use, the approving authority is the Board of Zoning Appeals. Our PUD rezone is the Board of County Commissioners. A boat dock extension is approved by the Planning Commission.

Now, if a variance or conditional use is acted upon by the Planning Commission and the recommendation is for denial, that executive summary also includes the resolution. In case the board approves it, the resolution will be there with conditions.

Now, if the Planning Commission has recommended denial, you don't have conditions that you're forwarding over to them, but you have conditions or reasons why you've denied it, and that is included in the executive summary, why did the Planning Commission recommend denial.

COMMISSIONER EBERT: Okay. The other question, because they had opposition for the Wahl dock -- and you had quite a few people here.

MR. BELLOWS: Yeah, and that lady spoke during the board hearing.

COMMISSIONER EBERT: Yes, yes. Oh, she did?

MR. BELLOWS: Yes.

COMMISSIONER EBERT: I was going to ask you, did the neighbors come and speak, okay. Because sometimes people don't even know that it's going to go to them.

MR. BELLOWS: Yeah. They've been coordinating with staff, and they were informed of the meeting, and they did show up.

COMMISSIONER EBERT: Okay, thank you. That's what I wanted to know.

CHAIRMAN STRAIN: Okay. Anything else? Brad?

COMMISSIONER SCHIFFER: Well, just -- but remember, the thing was, without the variance they wouldn't have safe access to the boat.

So what I'm kind of looking for is -- and I don't agree with that. And maybe -- he and I could argue forever -- is that somebody -- the Planning Commission never considered safe access to the boat as anything in that application. So somebody somewhere has to say, wait a minute, it's not about safe access. It's about a boat lift, you know, and make sure the commission's clear on that. That's what I don't -- we're walking away from this conversation without that probably happening.

MR. BELLOWS: No, I understand what you're trying to say, but --

CHAIRMAN STRAIN: Well -- and actually --

MR. BELLOWS: -- I believe the applicant has the right to express their reasons for it.

COMMISSIONER SCHIFFER: He does. I didn't say shoot him. I said, when he's done, talk about it.

MR. BELLOWS: Yeah.

COMMISSIONER SCHIFFER: Don't drop them in the middle of the presentation. Enough said.

CHAIRMAN STRAIN: Okay. Well, I think we've wrapped this one up.

MR. BELLOWS: I think it's a great idea and --

CHAIRMAN STRAIN: The point's been made.

MR. BELLOWS: -- I will -- for the next meeting I'll try to draw up something similar in this vein for you to look at on a consent item.

CHAIRMAN STRAIN: Thank you, Ray. Much appreciated. It works.

Public comments, items, anything else? Looks like we're about done. I do want to thank Karah Lewis for the brownies brought in by her mother, Terri.

K.D., thanks for the movies today and, records, thank you for the coffee. We appreciate it all.

And with that, I'll look for a motion to adjourn.

MS. ASHTON-CICKO: Mr. Strain?

CHAIRMAN STRAIN: Yes.

MS. ASHTON-CICKO: Can we -- we may have already done it, but can we officially continue the LDC hearings to the May 17th hearing?

CHAIRMAN STRAIN: Sure. Let's have a motion to continue to May 17th for the LDC amendments.

COMMISSIONER SCHIFFER: So moved.

COMMISSIONER AHERN: Second.

CHAIRMAN STRAIN: Made by Brad, seconded by Melissa.

All in favor, signify by saying aye.

COMMISSIONER VONIER: Aye.

COMMISSIONER SCHIFFER: Aye.

COMMISSIONER MIDNEY: Aye.

COMMISSIONER AHERN: Aye.

CHAIRMAN STRAIN: Aye.

COMMISSIONER HOMIAK: Aye.

COMMISSIONER EBERT: Aye.

COMMISSIONER KLEIN: Aye.

COMMISSIONER BROUGHAM: Aye.

CHAIRMAN STRAIN: Anybody opposed?

(No response.)

CHAIRMAN STRAIN: Motion carries 9-0.

Now, whoa, whoa, whoa, adjourned, motion to adjourn?

COMMISSIONER AHERN: So moved.

By Melissa. Seconded by --

COMMISSIONER HOMIAK: Second.

CHAIRMAN STRAIN: -- Karen.

All in favor?
COMMISSIONER VONIER: Aye.
COMMISSIONER SCHIFFER: Aye.
COMMISSIONER MIDNEY: Aye.
COMMISSIONER AHERN: Aye.
CHAIRMAN STRAIN: Aye.
COMMISSIONER HOMIAK: Aye.
COMMISSIONER EBERT: Aye.
COMMISSIONER KLEIN: Aye.
COMMISSIONER BROUGHAM: Aye.
CHAIRMAN STRAIN: Anybody opposed?
(No response.)
CHAIRMAN STRAIN: We're out of here.

There being no further business for the good of the County, the meeting was adjourned by order of the Chair at 2:20 p.m.

COLLIER COUNTY PLANNING COMMISSION



MARK STRAIN, CHAIRMAN

ATTEST
DWIGHT E. BROCK, CLERK

These minutes approved by the Board on 6-7-12, as presented or as corrected _____.

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