

TRANSCRIPT OF THE MEETING OF THE
COLLIER COUNTY PLANNING COMMISSION
Naples, Florida
June 21, 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:

Mark Strain, Chairman
Melissa Ahern
Phillip Brougham
Diane Ebert
Karen Homiak
Barry Klein
Paul Midney
Brad Schiffer
Bill Vonier

ALSO PRESENT:

Jeffrey Wright, Assistant County Attorney
Ray Bellows, Zoning Manager
Thomas Eastman, Real Property Director, CC School District

CHAIRMAN STRAIN: Good morning, everyone. Welcome to the Thursday, June 21st meeting of the Collier County Planning Commission. If you'll all please rise for Pledge of Allegiance.

(Pledge of Allegiance was recited in unison.)

CHAIRMAN STRAIN: Okay, now I know the roll call by the secretary is going to be a little hard this morning because Paul's here actually early. So when you get to his space, you can see him.

So would you mind doing the roll call.

COMMISSIONER HOMIAK: Mr. Eastman?

MR. EASTMAN: Here.

COMMISSIONER HOMIAK: Mr. Vonier?

COMMISSIONER VONIER: Here.

COMMISSIONER HOMIAK: Mr. Schiffer?

COMMISSIONER SCHIFFER: I'm 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: Here.

COMMISSIONER HOMIAK: Mr. Klein?

COMMISSIONER KLEIN: Here.

COMMISSIONER HOMIAK: And Mr. Brougham.

COMMISSIONER BROUGHAM: Present.

CHAIRMAN STRAIN: Okay, thank you.

***Addenda to the agenda. Ray, is there any changes from staff?

MR. BELLOWS: I don't have any.

CHAIRMAN STRAIN: I don't know, I don't see the necessity for any from us unless anybody has an issue.

***If not, Planning Commission absences.

We have a break. Our next meeting isn't until July 19th. If you all recall, we canceled the July 5th meeting because it was over the 4th of July weekend. So our next meeting will be July 19th. Does anybody know if they're not going to make it to that meeting?

(No response.)

CHAIRMAN STRAIN: Okay.

***Approval of minutes. We were electronically sent the May 17th, 2012 minutes. Is there any discussion?

(No response.)

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

COMMISSIONER HOMIAK: I make a motion to approve with one change on Page 18 where it says Commissioner Coyle, it should say Commissioner Strain.

CHAIRMAN STRAIN: Yeah, I'm sure Commissioner Coyle wouldn't want to be interposed with me.

So okay, so that one change is a good catch, because I didn't even notice it. Motion made to approve subject to that change.

Is there a second?

COMMISSIONER EBERT: Second.

CHAIRMAN STRAIN: Seconded by Ms. Ebert.

All in favor, signify by saying aye.

COMMISSIONER SCHIFFER: Aye.

COMMISSIONER HOMIAK: Aye.

COMMISSIONER EBERT: Aye.

COMMISSIONER KLEIN: Aye.

COMMISSIONER BROUGHAM: Aye.

COMMISSIONER AHERN: Aye.

COMMISSIONER MIDNEY: Aye.

COMMISSIONER VONIER: Aye.

CHAIRMAN STRAIN: Aye.

Anybody opposed?

(No response.)

CHAIRMAN STRAIN: Motion carries 9-0.

***BCC report, Ray?

MR. BELLOWS: I'm going to steal yours.

On June 12th, the Board of County Commissioners heard the Cultural Arts Village rezone. It was approved 5-0, subject to the CCPC conditions.

CHAIRMAN STRAIN: Great, thank you.

***Chairman's report. There's nothing today because we have a lot of discussion to get into on all the items we have. So let's just move into consent agenda item first.

First one up is CU-PL20110001157, Ichthyo -- I can't say that -- Ichthyo Park Conditional Use.

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

(Speakers were duly sworn.)

CHAIRMAN STRAIN: Disclosures by the Planning Commission. This is a consent item, but I'm going through this because there are some issues that we're waiting to confirm on consent. So we will have discussion on this.

Phil?

COMMISSIONER BROUGHAM: I had an exchange of E-mails with staff and Mr. Hancock two to three weeks ago.

CHAIRMAN STRAIN: Okay, and I spoke with Tim and the applicant out in the hallway before we came in. And what I said out there will be exactly what I will say in here. So let's go forward.

Tim, it's all yours.

MR. HANCOCK: Thank you, Mr. Chairman, Commissioners.

First of all, by way of apology, when we left here at the last meeting, the information the assistant county attorney had that we'd received from the Clerk's office indicated on one of the deeds that it was for 294 Morgan Road. And that was written by the clerk who handed the deed to Mr. Jarikov.

When we went back and was looking at the information, Heidi found out that that legal looked a little bit different than a prior deed for the same property. So we went back and we began checking every single deed that we had to make sure that the exhibit we gave you at that point was accurate.

What we found was that there -- we found one that we didn't have, but what we found is there were two missing pieces, if you will, that remained at that time.

On the right is what we call property number four, the Craumer piece. It's 154 feet of frontage by 417 feet of depth. That one we did not at that time have any deeds that reflected easement across that -- the westerly 30 feet of that piece.

The second one is the horseshoe shaped piece. That one actually was retained by the Carters until Mr. Carter was deceased and conveyed as a part of his estate. That one we could not find access for.

So those were the two missing pieces. And as you can see, it's really that Craumer piece and the south leg of the horseshoe is the hole in the doughnut. Otherwise we have 30 feet of the easterly side of the center line, with the exception of the Craumer property.

So what Mr. Jarikov did is Mr. Jarikov ordered title reports on both properties. And that's why we requested a continuance from the last consent agenda item for two weeks in order to have time to get the title reports.

We received those reports about two days ago. Unfortunately I was -- fortunately I was out of town on my honeymoon and -- thank you. Fortunate for me, not so much for her, but --

CHAIRMAN STRAIN: Did she come back with you, I hope?

MR. HANCOCK: The fun with the honeymoon is you spend every minute with them and they get to know

you. It's not working out for me real well.

But I was able -- Mr. Jarikov went through the best that he could to identify where there may be easement. And because there's not another meeting and a further continuance would end up probably in Mr. Jarikov incurring a \$1,000 readvertising expense, if you'll bear with me, I'd like to walk you through in the course of five to 10 minutes we have -- (cell phone) and I'll admonish him later for that.

What we have, and I think you'll see that we do indeed have access. And if it needs to be subject to the County Attorney's further review, we're comfortable with that.

The first deed we came across, and this was previously provided to the County Attorney's office, was a warranty deed that Judge Murphy prepared, who's fairly meticulous. And it was a little confusing to me that the language there says subject to easements and restrictions typical to the subdivision at the time. We went back to when Barron Collier had this land, and Carter bought the land from Collier, a large section, and then began to parcel off. Every time Mr. Carter made an arm's length transaction, he ensured there was a 30-foot easement along Morgan Road, either on the easterly or westerly side. And you can see that pattern through and through and through. When Judge Murphy did this, he didn't indicate a 30-foot easement, and we weren't really sure why. We started to figure it out as we went through the history of the deeds.

COMMISSIONER HOMIAK: Oh, my.

MR. HANCOCK: That's the best available copy from the title company.

Couple of things. If you go back to that first exhibit I showed you, the only piece of property on the east side of Morgan Road that is 154 feet of frontage is the Craumer piece. Everything else is 208 feet and greater. And all of the deeds confirm that. All the deeds in the possession of your record confirm that. It's the only piece that's 154 by 417. In this jumble you can pick up the numbers, 154 and 417.

Sorry, that's the next one.

On this one you can't find those numbers. You can see where they're supposed to be, but you can't read them. However, the sentence you see in the midpoint, and it's that magenta colored box in the bottom left, states that there's an easement over the westerly, and you can't read it, X number of feet. It could be 10 feet, it could be 30 feet. You can read that there's an easement. You can read that it's on the westerly side. And from the title company, based on the OR book and page, this is the Craumer parcel. Unfortunately again somewhat unreadable.

So we go to the predecessor warranty deed of that one.

We're getting better. But we're not quite there. Just make sure this is on, okay.

As you go through this one, you can actually see here is -- and I'll provide these hard copies as a part of the record. But you can see on this one you can pick up two dimensions in here, and they are the 154 and the 417. I did it under magnifying glass, so my apologies, but they are here. And you can pick up that it is a parcel, 154 by 417. It does have the point of beginning that it needs. The missing piece on this one for me is, right here is the linear distance from the start of the legal description to the point of beginning for the parcel. It should read 362 feet. I cannot tell you that it reads 362. I can tell you that it should read 362 and I can tell you that, again, it has the dimensions of 154 by 417. And the Craumer piece is the only one that carries those dimensions on that quarter section.

What's nice here though is that we do have a little clearer understanding and a clearer reading that the shown parcel is subject to an easement over the westerly 30 feet. So if this is the Craumer piece, there's an easement over the westerly 30 feet. The only thing that causes question for me is it does indicate an acre and a half, and again the Craumer piece was a little unique. Most of those pieces, when they were conveyed, were for the entire east-west link. This one only went 417. So you begin putting it together, the pieces come together a little bit better.

We go to the predecessor deed of that one, and the only benefit here is the -- where the 417 and the 154 are supposed to be are barely readable, but the 362 shows up a little bit better here. And again, that's the distance we need from the starting point of the legal to the point of beginning for the Craumer parcel.

This is the best we can provide you. These are the best available records. Mr. Jarikov is not responsible for their condition. And we have to actually put the three of them together to make sure. And all three of them have elements and pieces to indicate that it's the Craumer piece. Whether or not that will pass the litmus test with the County Attorney's Office to define legal access or not, it is the absolute best we can provide. There are no other records. And we have to put them together in succession in order to make sure that we are dealing with the same piece of property.

I'm confident that we are dealing with the Craumer piece. We have a title report that indicates these are OR

book and pages for the Craumer piece. And we have three documents that deal with an easement and identify an easement along the westerly side. If you put them together, we get there. No one of them by themselves gets us there.

And so that is our dilemma at this point but it's the best information we have and the best we're going to be able to provide to you.

CHAIRMAN STRAIN: Tim, your applicant, for his property did he obtain title insurance?

MR. HANCOCK: He did not. It was a cash purchase.

CHAIRMAN STRAIN: Bummer. Okay. I would -- because if a title company would insure over this, that would give us some assurance that this is exactly what you believe it is.

MR. HANCOCK: The title companies are going to face the same problem we all face sitting here today, and that is having to look at three or four successive deeds and put pieces together from each of them because of the quality, or poor quality of the records. It's not that the legal descriptions are insufficient. And each one of them, I can get -- you know, I can get to a certain point and I can get to another point. It's only when you put them together that I'm confident all three are the Craumer piece.

And by way of background, my Bachelor's degree is in geography and urban planning, which included cartography. And we were required to both read and lay out legal descriptions as a part of my core work. So I do have some background here other than just doing this for the last 23 years.

So each of these, I can tell we get to the starting point. I can't -- one of them I can tell is about 360 some odd feet to the point of beginning. Another one I can see the 417 by 154, and in two of them we can see an easement on the westerly side of 30 feet. We are unfortunately at a point where we can't bring any more information to you. The only options by Mr. Jarikov are to sue his neighbor to gain access, or to show legal access.

He has spoken with Ms. Craumer one time. Ms. Craumer's not objecting to the project; she has made no objections whatsoever. She has not told him that she has a problem with access. However, she is hesitant to give anything away. She just -- I think she felt, you know, a little uncertain as to why Mr. Jarikov was even contacting her.

So, you know, we can't do a handshake and we can't, you know, get affirmation from her. But we don't have her objection in written or verbal form in any way. So I don't think we have an access problem physically. The question is with these three documents together, can we convey to you that at some point in the history of this property there was an easement over the westerly 30 feet.

I believe they do that. It's my testimony that they do that. I'd be happy to sit with the County Attorney and walk them through each of them with a magnifying glass and do the absolute best we can to get a comfort level beyond what I can provide you today. But I'm here to try and avoid Mr. Jarikov having to come back in six weeks or eight weeks at additional expense if that can be done. And that is my request of you today.

CHAIRMAN STRAIN: Your conversations with Heidi though did not include what you now showed us?

MR. HANCOCK: They did not. We just got the title report two or three days ago. And I just got back in town yesterday.

CHAIRMAN STRAIN: Because the last correspondence I've seen between you and Heidi Ashton was that she could not confirm that you had the full access.

MR. HANCOCK: She said, Tim, you have an access problem. And she has not seen these documents. And I got here early today, hoping Heidi would be here. But -- no offense intended -- but to get you up to speed in seven seconds would be a little difficult. But unfortunately apparently she's somewhere else today.

But again, we're bringing to you the absolute best that we can. It's the only thing that's available. And I don't think further digging is going to help. Because we do have the chain of title going back from Barron Collier all the way through today. It's the quality of the documents that we're fighting.

CHAIRMAN STRAIN: Did your applicant ever out of, say, due diligence or whatever even just ask for a title policy review, title insurance on this property? And did you get a preliminary or some kind of exceptions report or anything like that from the title policy?

MR. HANCOCK: If I'm incorrect, Viktor, please clarify this for me. But just prior to closing there was an issue raised about access. And the attorney for the seller, you know, provided a statement in writing that the property had legal access. It wasn't a title insurance policy but it was from a local attorney representing the seller that yes, you have legal access. And that's what Mr. Jarikov went forward on. So access was a question. He did not obtain a title policy though.

CHAIRMAN STRAIN: Does anybody have any questions?

Go ahead, Brad.

COMMISSIONER SCHIFFER: The Morgan Road, it's a paved road?

MR. HANCOCK: Yes, sir.

COMMISSIONER SCHIFFER: Where is it located in the private right-of-ways?

MR. HANCOCK: It's primarily on the easterly side of the centerline; is that correct?

MR. JARIKOV: More or less.

MR. HANCOCK: Yes.

COMMISSIONER SCHIFFER: And it's been there for years? I mean, everybody's been using that as access to their properties north of --

MR. HANCOCK: Yes, sir. It's been there a long time. We even uncovered a maintenance agreement between the prior owner, Jonathan Green and an adjacent property owner for a section of the roadway that was recorded in Collier County records. As to what enforceability it has, I think it's limited.

But yes, apparently the issues of maintenance on the road and the road being there for -- let's see, Jonathan Green bought it in the Eighties, and it was paved at that time. So it's been paved for probably 20 years.

COMMISSIONER SCHIFFER: And the neighbors have all used it as access to their residences over the years?

MR. HANCOCK: Residences and --

COMMISSIONER SCHIFFER: Jonathan --

MR. HANCOCK: -- businesses and -- there are a couple businesses on the street.

MR. JARIKOV: There are five neighbors and businesses past the Craumer lot. If I have no access, they would not have access.

MR. HANCOCK: They can't hear your testimony unless you're here, so, but -- but yeah, the Craumer piece sits where there are beyond that five parcels, four of which are developed as homes or businesses and have been in use for an extended period of time.

COMMISSIONER SCHIFFER: And the Palmers have never complained about people using it. So wouldn't it by estoppel be a very difficult thing for them to close? I mean --

MR. HANCOCK: It would. And I think if we were to file a claim, we would be successful because of the length of time and use. You'd rather not sue your neighbor and have them incur legal expenses, nor do you wish to incur legal expenses yourself for an existing paved road. But it appears we have an access easement over from all best available information. Best we can bring you today.

COMMISSIONER SCHIFFER: Okay, thank you.

CHAIRMAN STRAIN: Anybody else have any questions?

Phil?

COMMISSIONER BROUGHAM: Not a question necessarily, but Mr. Hancock, you're aware of our exchange of emails and Mr. Sawyer and so forth, and it concerns the quote, unquote structure that was pictured in the Naples Daily News perhaps the week after you were here.

And I would like just for clarity of the record that -- first of all, I'd like to put this up on the visualizer so that everyone here sees what was published. And then review our questions and our dialogue and where we are now with respect to permits and so forth. I know that we approved subject to consent a conditional use for the aquarium operation.

However, I recall, and I'm paraphrasing, that within the petition it was stated that the aquarium operation would be contained within existing structures. And that's what I want clarified. Because there seems to be a little bit of misunderstanding in what is a structure versus what is a new structure. So you got the floor.

MR. HANCOCK: And I appreciate that, sir.

There are four permitted structures on the site. One is the primary home, one is a studio. And those are concrete block construction. There is a screened lanai that extends from the existing home to the studio, and then there's an additional screened lanai to the rear of the studio. So in succession you have the house, you have a screened lanai, you have a studio and then another screened lanai. By saying contained within existing structures, the intent was to say we're not going to go out and build a new structure over here.

When I was made aware of this photograph -- which is a very nice photograph of Viktor, I want to point out,

I thought they did a nice job with that, was the first that I was aware that he was actually -- what he's doing here is basically creating greenhouse over the existing pool cage. And by greenhouse, it's a shade so that the fish in the aquarium will not be subject to direct sunlight and so forth.

In ag. zoning you can construct a greenhouse on your property without a permit. But once you start attaching it to an existing structure, it requires a permit. Once I got the phone call from Mike Sawyer based on your inquiry, Viktor stopped immediately, went down to Horseshoe Drive, found out what he needs to do, which is going to be a permit by affidavit. He has a structural engineer working with him now to create the drawings necessary, and he will not be proceeding with anything until such time as a permit is in hand.

But what it will be is, it will be instead of having a screened lanai there, it will be a greenhouse type shade structure which serves the health of the aquaria better.

COMMISSIONER BROUGHAM: I have no issue with that. I just wanted it put on the record as to what was being built and how it's being controlled and permitted and so forth. So thank you for that.

MR. HANCOCK: I appreciate it. And as I indicated, the first I saw of it was when the article was made aware, and again, the layman sometimes can have a hard time working through our code, and Mr. Jarikov is following the rules as he has been -- as they have been described to him by Development Services.

CHAIRMAN STRAIN: Thanks, Tim.

Anybody else?

(No response.)

CHAIRMAN STRAIN: Tim, I like your project. I hope that in the end we figure out a way to approve it. But I want to read you one paragraph in the conditional use provisions that I need your help with and suggestions. And I'm asking that in conjunction with the County Attorney's acknowledgment that we could craft a way to get this approved, if that's the way the Board sees it.

My concern is under the findings category of the conditional use. It says, D, Findings: Before any conditional use shall be recommended for approval to the BZA, the Planning Commission shall make a finding that the granting of the conditional use will not adversely affect the public interest, and that the specific requirements governing the individual conditional use, if any, have been met by the petitioner and that further satisfactory provision and arrangement has been made concerning the following matters.

First one is consistency with the code and Growth Management Plan. But the second one is the ingress issue. It says: Ingress and egress to property and proposed structures thereon with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire or catastrophe.

I know in your correspondence to us you included an agreement, which I think is something that certainly is useful. And you also included a document that indicated there was a maintenance arrangement. But as I told you out in the hall, that only ended up being for a five-acre tract immediately south of this tract and then go for the full length of Morgan Road. And also, I notice that you all have agreed to put up, I think it was \$2,000 for your contribution towards getting this road maintained as it need in the future.

The language here is concerning in a sense that it's got to be set up so that it assures public -- automotive, pedestrian safety and convenience, traffic flow and control, and access in case of fire or catastrophe. I think that road's been operating for a long time, and I think the indication from Brad may have been that you're looking at a prescriptive easement possibly situation. I'm not an attorney in regards to those issues, and I don't know how that can happen.

I also feel that the evidence you provided today provides adequate information that the intention was that there would be an easement there. Now, because it's so old it doesn't seem like it's gotten through. I'm concerned, though, that we have not seen the evidence that there is satisfactory ingress and easement. So -- ingress and egress, I'm sorry.

But is there a -- when Heidi gets back, because she's much more familiar with this, Jeff just got dropped in today, unfortunately, and this has got a history of it. And when Heidi gets back, I would like the opportunity for her to review your latest findings to see what comfort level she has with this from a legal perspective. And I would also -- hopefully she could recommend to the board a solution.

I'm certainly suggesting that this board recommend approval subject to Heidi's recommendations to the Board of County Commissioners, which we won't have the opportunity to hear again. I don't know if that can be done. But I think the board, because they are the ultimate policy makers in this county, could by policy accept your conditions

and say it's fine. I think that would be up to the board to do. But if they got a nod from us that from a use perspective and everything else this seems to fit the envelope, then that may help get this moved ahead.

Jeff, do you have any comment?

MR. WRIGHT: The only thing I would like to add to that is we like things to be airtight. And if it's not airtight, there's a possibility that there might be some sort of indemnification or release so the county doesn't get in any sort of trouble because of this. So I think that's a smart way to go.

You could approve it subject to confirmation that access is airtight, in whatever form that must take. Right now these deeds, I think I wouldn't insure it if I was an insurer, and I don't think that the county should take on any risk.

So that's the caveat I'd add. Heidi might want to add some sort of additional protection on top of what he's provided today.

CHAIRMAN STRAIN: I think the concern that I have is from a -- I know you're going to open the facility up to tour buses, bring in -- they're limited to size and quantity. And I guess it would be primarily children who would look at this place. It would be horrible if for some reason access was lost and there was some emergency out there. And that's where my ultimate concern is.

I know that's probably very remote of happening, but I think if this -- if everything you've produced is viewed under that regard and the ability to shut it down at a -- in a less than a moment's notice, because that's where the concern would be. If you know something -- if your neighbor's going to stop letting you have access I think that might take some time, so you would know enough that you would have a dangerous situation. But I just don't want to see anybody caught out there without the access.

But I will take the County Attorney's comments, and as far as I'm concerned that would be a stipulation that we would add to this to get this through.

MR. HANCOCK: I think you'll be pleased to know that stipulation has been met. Mr. Jarikov has already filed in the official records of Collier County an affidavit that states -- and I'll have to ask that we make copies here or make it part of the record because what I have here is the original.

But what we did is we took the same thing that the county requires of an individual who is building a single-family home in a rural subdivision, where they indemnify the county, where they indicate that the county is not responsible for access, those exact same criteria and conditions have been placed into a signed and notarized agreement by Mr. Jarikov, Ms. Labachova, and have been recorded in Collier County records. And I'll point you to item number six, which is a hold harmless included in there, just as you require of a single-family homeowner.

And quite honestly, if I were to go pull a building permit on this roadway for a single-family home, this is the agreement the county may require if they deemed it to be a rural subdivision. Because it's inside the urban boundary, Collier County's rules don't call it a rural subdivision but the State of Florida does.

So what we've already done is we've already filed this, which codifies the \$2,000 a year maintenance agreement and it also includes all of the hold harmless and indicating the county is not responsible in any way, shape or form for the access to the site.

Thinking ahead, not understanding that we were going to get the information we presented to you today, we were trying to present the best case scenario that did not put this body or the Board of Commissioners in a position of feeling as if they signed off that the property had quote, legal access.

With respect to the points you raise in your findings, Commissioner Strain, we believe safety and convenience has been addressed by virtue of two separate things. Number one is the maintenance agreement that has been put out there. To our knowledge we're the only entity that will be responsible for maintaining any element of this roadway for safe passage. And that's -- while it's capped at \$2,000 a year, if it comes down to having access or not having access safely on the roadway, the property owner and the business is going to come first and they're going to take care of that.

Secondly is access in case of fire or catastrophe. Unlike a lot of projects we see in the Estates where we have unpaved roads that during the wet season are sometimes impassable, and we get into the issue of whether or not the property owner has the ability or the right to maintain the stretch of roadway, here we have a paved roadway that's been in existence for an extended period of time. Every property on the street is accessible via that paved roadway. And while we cannot show you with absolute definitive conclusion, you know, a definitive conclusion that we have legal access, physical access over a paved roadway I believe is far better than a lot of situations we find in this county

on projects that may have been approved.

In case of fire catastrophe these lots are accessible. So I think we meet the minimum standard there. Not to the degree that I think everyone would be more comfortable, but again, we'll work with the County Attorney's Office, we will walk them through everything we have. And we're comfortable, if you can move us forward to by the time we get to the board, that we can resolve that issue more fully with the County Attorney.

CHAIRMAN STRAIN: Just one comment. In all fairness to your statement about the maintenance and that you are putting up \$2,000, I have no problem with that. I'm certainly willing to accept that. But we've seen no evidence that \$2,000 is sufficient to maintain that road. So, I mean, it's like saying you're going to put up \$20 or \$200 or \$5,000. It's kind of irrelevant when you don't know what the conditions are on a lineal foot basis for a road of that character to be maintained. So from that -- but I still see it's a step in the right direction and it does help.

Anybody else have any comments?

Brad?

COMMISSIONER SCHIFFER: I have a question on this number six. Wouldn't that read better if you said we release and hold Collier County harmless in perpetuity for the maintenance of and access on Morgan Road?

The way you've written it, it's only discussing the maintenance.

MR. WRIGHT: We would probably need something a lot broader than simply maintenance. We're talking about everything. Hold harmless for anything that might happen as a result of this approval.

MR. HANCOCK: If I may, item number three states it is recognized that the access rights or personal rights between the grantor and grantee and the county's approval of the use of the access way in no way implies the use is permitted.

MR. WRIGHT: We'll just have to hammer out indemnification language.

MR. HANCOCK: Understood. If we need to repeal and modify this, that's not an issue. It was our effort to put something into the record to codify what we knew at the time and to take the county out of the position of being responsible for access to the site. We wanted to make sure that we were not implying that in any way in our application.

COMMISSIONER SCHIFFER: All right, okay.

CHAIRMAN STRAIN: Okay, is there anything else from anyone?

(No response.)

CHAIRMAN STRAIN: We don't normally do public speakers on consent items, so let's just move forward with the -- any discussion?

(No response.)

COMMISSIONER EBERT: Mark, I have a question.

CHAIRMAN STRAIN: Go ahead.

COMMISSIONER EBERT: I see code enforcement here. Is that for this item?

CHAIRMAN STRAIN: Doesn't matter. This is consent. So we'll move forward with consent like we always have.

Does anybody have any discussion on the matter?

(No response.)

CHAIRMAN STRAIN: Okay, we have conditions of approval that were attached that we did last time. The conditions of approval don't address all the issues we've now discussed about the road. I would suggest that we add a condition that the approval today is subject to further refinement by the County Attorney's Office to assure there's an airtight access to the property and that any indemnification needed is worked out and agreed to between the applicant and the County Attorney's Office prior to the Board of County Commissioners hearing.

And does that -- you think that works, Jeff?

MR. WRIGHT: Yes, it does.

CHAIRMAN STRAIN: Okay. So if there's no objection to that condition of approval, if there's a motion and that's acknowledged and the second does so, we can then go forward if -- because this has had a motion to approve subject to today's discussion.

Is there any motion on this?

COMMISSIONER AHERN: I'll make a motion.

COMMISSIONER VONIER: Second.

CHAIRMAN STRAIN: Melissa made the motion, seconded by Bill. The motion included the new condition concerning the County Attorney's review and indemnification?

COMMISSIONER AHERN: Yes.

CHAIRMAN STRAIN: Okay, the second agree to that too?

COMMISSIONER VONIER: Okay.

CHAIRMAN STRAIN: Okay. Discussion?

(No response.)

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

COMMISSIONER SCHIFFER: Aye.

COMMISSIONER HOMIAK: Aye.

COMMISSIONER EBERT: Aye.

COMMISSIONER KLEIN: Aye.

COMMISSIONER BROUGHAM: Aye.

COMMISSIONER AHERN: Aye.

COMMISSIONER MIDNEY: Aye.

COMMISSIONER VONIER: Aye.

CHAIRMAN STRAIN: Aye.

Anybody opposed?

(No response.)

CHAIRMAN STRAIN: Motion carries 9-0.

Tim, thank you very much. Congratulations on your wedding or honeymoon. I hope you can go back and resume that now.

MR. HANCOCK: That is precisely the plan. Again, thank you for your time this morning, I greatly appreciate it.

CHAIRMAN STRAIN: You're welcome.

***Okay, the next consent item up is Naples Reserve RPUD. It's PUDA-PL2011-1168. That's in our packet as the changes we discussed last time.

Does anyone see any further corrections needed?

(No response.)

CHAIRMAN STRAIN: Okay, hearing none, is there a motion?

COMMISSIONER SCHIFFER: I'll make it, Mark.

I move we forward that this represents the hearing of PUDZ-PL2011-1168.

COMMISSIONER AHERN: I'll second.

CHAIRMAN STRAIN: Motion made by Brad, second by Melissa. Discussion?

(No response.)

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

COMMISSIONER SCHIFFER: Aye.

COMMISSIONER HOMIAK: Aye.

COMMISSIONER EBERT: Aye.

COMMISSIONER KLEIN: Aye.

COMMISSIONER BROUGHAM: Aye.

COMMISSIONER AHERN: Aye.

COMMISSIONER MIDNEY: Aye.

COMMISSIONER VONIER: Aye.

CHAIRMAN STRAIN: Aye.

Motion carries 9-0.

***That takes us to our first advertised public hearing. And the agenda is written so that the advertised public hearings are also followed by their consent. And in the case of the next item up it's the Parklands PUD and DRI. So you'll see the next four items of our advertised public hearings are all Parklands related issues.

The first two will be the discussion part of the agenda for the PUDA-PL200100001551 and the DRI portion, which is DOA-PL20100001550. Both of those are, one is the Parklands PUD, the other is the Parklands DRI.

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

(Speakers were duly sworn.)

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

I had some correspondence between Bruce and myself regarding the changes they made to the deviations. Other than that, I don't think there's any.

Phil?

COMMISSIONER BROUGHAM: I had a discussion by phone with Mr. Anderson.

COMMISSIONER EBERT: And I also had discussion with Mr. Anderson, staff and Mr. -- and Kevin Ratterree.

CHAIRMAN STRAIN: Okay, and I noticed in front of us when we walked in this morning there's another document. Please tell me this is no different than what we reviewed.

MR. ANDERSON: For the record, my name is Bruce Anderson from the Roetzel and Andress law firm.

The document that you have before you with the strike-through and underline is simply to assist you in evaluating and understanding the changes that are reflected without the cross-through and underline in your agenda packet.

COMMISSIONER SCHIFFER: Mark?

CHAIRMAN STRAIN: Brad.

COMMISSIONER SCHIFFER: I'd like to make a comment to staff. Don't -- you really should not send out the application until we have the strike-through. That was very difficult, putting the two on your desk, making your own strike-through version at home. So if it takes another day or it has to be emailed after it, I mean, there's a lot of work without the strike-through and underline, the legislative version.

CHAIRMAN STRAIN: Well, I think under this particular instance, though, Brad, with the -- staff was under the gun in a short period of time because we weren't going to have a consent. So we had a lot of changes from last time. I'm not sure if they took another day we would have gotten our packages, so --

COMMISSIONER SCHIFFER: They could print it this morning, they could have emailed it last night, just to make it easier --

CHAIRMAN STRAIN: I wouldn't have been able to see it last night, because that would mean we would have had to print, which is against the policy we adopted that says the maximum pages we'll print by email is 10. This is 20. But anyway, let's just muddle through it and we'll do the best we can.

COMMISSIONER SCHIFFER: And I don't print everything, I can read it on the screen. But anyway, just -- it was really difficult having to play where's Waldo with everything.

CHAIRMAN STRAIN: Bruce, do you want to make any kind of presentation to start, I would assume?

MR. ANDERSON: Yes, yes, thank you.

First of all, we have the group of consultants and ownership that we had at our last meeting, led by Kevin Ratterree, the vice president of GL Homes.

To dispose of this, the development order for the DRI, there were no changes to that from the prior meeting. So let's move on into the changes to the PUD document.

And I'll give you a broad overview first of the most important ones and then we can go page by page, if you like.

CHAIRMAN STRAIN: Sounds good.

MR. ANDERSON: The big picture changes that have been made are: We have deleted all old deviations. And we have one deviation that could be characterized as old that has become new again. And that is with regard to the street right-of-way widths. And you'll also see that justifications have been provided for that one.

We had a meeting with Mr. Eastman and the transportation staff to iron out access issues for the school district property, and we have identified two access points on the master plan now for the school district property. And I think Mr. Eastman is satisfied with that. Staff, after we came to agreement with Mr. Eastman, then transportation staff had some additional changes after discussion with the County Attorney's office, and those are reflected in the master plan that you have before you.

We've made revisions to the PUD master plan to reflect the discussion from the prior meeting about pertaining to preserve and preserve buffers.

We have also changed the cross-section for Logan Boulevard north to reflect the asphalt rather than the

concrete multi-use path.

And I had a discussion with Commissioner Brougham regarding the trigger for clubhouse construction. And off the cuff, two weeks ago the number of 200 building permits was thrown out. And upon further reflection, we would request that it be 250 building permits. I believe Mr. Brougham is satisfied with that.

We also have a completion date that we have added for the clubhouse that requires it to be finished within a year after construction has started.

And then if you like, we'll start with the PUD document and --

CHAIRMAN STRAIN: Bruce, can we get Tom Eastman's input on the arrangement with the school board first as a general issue?

MR. ANDERSON: Sure.

MR. EASTMAN: We had a meeting with Reed Jarvi representing county transportation, other members of county transportation, Mr. Anderson, and we were able to resolve the issue related to school access. And it's indicated on the conceptual master plan.

In addition to that, we also have a provision and a commitment from the developer that there will be pedestrian access to the school site. We feel that that will be very beneficial, not only to the school but also to the Parklands community for their kids walking to the school.

All in all, I think we're in real good shape here and appreciate the time of Mr. Anderson and the county transportation.

CHAIRMAN STRAIN: Now, the two questions. The pedestrian access from within Parklands could be gated. Does that have any issues for the school?

MR. EASTMAN: No, provided that the gate is located on their property. And as you can see in the notes on the master plan, it allows the developer to gate the pedestrian access. And I think the reasoning here is that the community can feel safe that they don't have an open access. This is, after all, a gated community. However, the gate can be opened to allow pedestrian and bicycle access during school hours.

For example, in the middle of the night, that won't be wide open, and the community can feel safe that that can be closed by the developer or the follow-up homeowners association.

CHAIRMAN STRAIN: Okay. On the -- from the staff's perspective in regards to the accesses for the school, were you anticipating those to be full median openings, or did you get a confirmation on what kind of opening they would be from county staff?

MR. EASTMAN: We don't have that level of detail. We discussed it in depth at our meeting. And upon review of the County Attorney's office we have what you see today, which does not get into the turning movements or the medians.

But I do believe that given the notes, our second access, and by second I mean as you're proceeding in a northward direction, has the potential for a traffic signal, which would imply an open median. The specifics of the turning, although discussed at the meeting, are not reflected here. Which is okay. During the school board review process whereby the school board engages the county for a full review of the facility it's about to build, the transportation department would certainly be a part of that. And they could dictate, basically, orally traffic movements.

CHAIRMAN STRAIN: Right. My concern now isn't -- I see Reed's coming up, is that we need to get it on record as to what your connection there could be so that if you don't have the possibility of a full median opening but you find it necessary you have access to the possibly the light at the entryway from an internal road or something to give you the access both left and right that you need, if you need it. I just want to make sure there's no mistakes made in regards to what you need versus what you're going to get.

Reed, what is -- what could go there?

MR. JARVI: Reed Jarvi, Transportation Planning Manager.

We discussed fairly in depth the two access points and their locations. And you'll see that there is notes from a distance standpoint that they need to be 660 feet apart, the three access points.

And we talked about the movements and potentials. And some of the early drafts of the master plan had that, but we've been advised by the County Attorney's Office that we will show access points only. And according to the law that they -- the access points are mandated at a maximum of a right in right -- minimum of a right in/right out, and that we don't put in full access points or turning movements at this point.

CHAIRMAN STRAIN: Understand. But it's important to know if that's going to be a school site what the school needs, what the potential is that they might have so that if they don't have it prior to the approval of this PUD, we can look for another alternative.

And Tom, is a full median opening so that you can make left turns out and left turns in very important to you or very necessity in this kind of school at this location?

MR. EASTMAN: It is important for one access. And with the blessing and approval of the county transportation department, we discussed that possibility for the second or the most northern access point.

With respect to the first or the one that is to the south, we did not think that we'd have the ability to make a left going north; is that correct, Reed?

MR. JARVI: That's correct. We discussed and in our group agreed to a potential full access on the northern access and a restriction of no left outs on the southern western access. But once again, from the PUD standpoint they're just access points, there's no restrictions one way or another.

CHAIRMAN STRAIN: But the word you used was potential. And again, if we're counting on this as a necessity for the school system, the school system says they need it, then to find out two years down the road that Reed Jarvi has gone on to be assistant county manager and now they have somebody else in charge of transportation planning that says, no, this isn't right for a full turning access, we're not going to grant it, we said it was just potential. And then the school board's into a fight they don't need to be in.

So I'm just trying to get the acknowledgment. On the record now. And Tom, I think a stipulation ought to be is that we ought to add to that northern access that should it be required by the school board that that northern access would have the -- will have the ability to be a full turning movement.

MR. EASTMAN: That would add certainty and clarity and be very much appreciated by the school district.

CHAIRMAN STRAIN: Okay.

MR. JARVI: We would have no objection.

CHAIRMAN STRAIN: I think that stops any potential, let's say, disagreement in the future that we don't need to hire a bunch of attorneys for, even though Bruce would sure love to take the case.

They're conferring. Don't mean to distract you two guys.

MR. RATTERREE: It's important stuff going on.

CHAIRMAN STRAIN: We were working our way, now we're going to go through page by page. Bruce, is that where we left off before we got into general discussion on the access way?

MR. ANDERSON: Yes. But before we depart from that, even though my client and transportation department might deem it desirable to place that in the PUD, the County Attorney's Office was quite adamant that it not be in there that it's full throated access. They have a concern from a case law incident that --

CHAIRMAN STRAIN: Was that Jeff or Heidi that made that?

MR. ANDERSON: It was Miss Ashton.

CHAIRMAN STRAIN: She's not here today. So as far as my -- I personally I would like to see it added as a stipulation. And if she feels strongly it's the wrong stipulation, she can certainly convince the Board that very easily. Without her being here today, I'm not sure if -- Jeff, are you up to speed on what her concerns were?

MR. WRIGHT: Well, my understanding of her concern is she didn't want to vest in the PUD ordinance the right to turn a certain way. And I think that you've addressed that by updating the master plan to just show access points and then work out the turn movements later. That's my understanding of Heidi's concern. I'm not really sure how that ties into actual language in the PUD. I may be missing the link there.

MR. ANDERSON: She didn't want any. What is reflected on the master plan was blessed by her and was specifically to address her concerns.

CHAIRMAN STRAIN: Okay. Appreciate the input and we'll move forward when we get to the stipulations.

Want to move in the document then? We normally -- anybody have any -- let's take five or six pages. Let's take Pages 1 through 5. Does anybody have any questions on Pages 1 through 5 of the PUD document?

(No response.)

CHAIRMAN STRAIN: Bruce, on Page 2, item B.4, this is under the residential tract. B.4 says any general permitted accessory use listed in section 1.B of this ordinance. 1.B is the general uses permitted, which includes -- so you're saying in the residential tract you want utility storage buildings, irrigation water, and effluent storage tanks and ponds, signs permitted by the LDC provisions, open space uses and structures including but not limited to nature

trails, riding trails, fitness trails, you're going to do all that in a residential section? Docks, piers and the like, for residential use constructed -- can you explain to me what you're trying to do here?

Because you've got -- in number one you've got almost all the recreational facilities that someone would normally ask for or expect to find in a residential. You got three, you've got common area recreational and utility facilities, which is like your FPL transformers, things like that. So why do you need all those general permitted accessory uses in 1.B?

MR. ANDERSON: Other than the general principle of providing some level of flexibility in final design and construction --

CHAIRMAN STRAIN: You have that under B.1, two, three and five as it stands now. I don't understand what beyond the typical residential tract uses for accessories you're trying to get at by including 1.B uses. I don't -- because those are general uses throughout the RPUD. I don't get it.

MR. ANDERSON: I think that that was just something that -- well, since we didn't talk -- I don't recall that we talked about it at the last hearing. Perhaps we did. But it really is a leftover from the prior one that probably should have been removed.

So if you want to do that.

CHAIRMAN STRAIN: Yeah, I think it should be -- I don't think it fits. I don't think you need it, so.

COMMISSIONER EBERT: So we're going to extract it?

CHAIRMAN STRAIN: We're going to remove B.4.

COMMISSIONER BROUGHAM: 2.B.4.

CHAIRMAN STRAIN: 2.B.4, yeah.

Anybody else on one through five?

(No response.)

CHAIRMAN STRAIN: Let's go to Page 3. And this is probably a question in combination with staff. We normally -- we understand and we have routinely included uses that are commercial and retail in nature that are for the residents of the community, but I don't know if we limit them. Usually they're related to the clubhouse. They're like gift shops and cafes or stuff like that. Like Divosta does in their project.

Kay or Ray, does the general language under 3.A.2 where it starts out commercial retail establishes, including, would that open it up to all C-1 through three, or how would you look at that?

I understand what they want to do and I have no problem with it. I just want to make sure it's limited to what you normally find within a residential community, and someone doesn't come in there and wants to put a car wash in or something that isn't generally considered normal commercial retail establishments as part of a community clubhouse facility.

Or how were you looking at it? Was this a neighborhood commercial area? That would be a commercial use then.

Kay?

MS. DESELEM: I'm trying to understand your question. We're on Page 4 of 19 --

CHAIRMAN STRAIN: No, we're on Page 3.

MS. DESELEM: Page 3, okay.

CHAIRMAN STRAIN: We're on 3.A.2. Recreational site. They start out with the words commercial retail establishments.

How limiting is that? Or how unlimiting is that?

MS. DESELEM: I'm looking at the strike-through/underline version, so I'm probably looking at the wrong one.

CHAIRMAN STRAIN: Yeah, I didn't have the ability -- I didn't have that last night, so.

COMMISSIONER HOMIAK: It's the same one we had in our packet before anyway.

MR. ANDERSON: I'm advised by the project engineer that this language was reviewed and tweaked by the County Attorney's Office, that they were comfortable with it. And I think that the limitation language to similar uses provides some guidelines.

CHAIRMAN STRAIN: I just want staff's concurrence for the people that are going to be reviewing this through the planning process.

MS. DESELEM: For the record, Kay Deselem. Yes, I would concur with Bruce's analysis.

CHAIRMAN STRAIN: So you have no problem with the reference to commercial and retail establishments.

MS. DESELEM: Yes, I think that it's limited enough to keep it for this PUD to serve those residents and guests. I think that's acceptable.

CHAIRMAN STRAIN: Okay. On Page 5 under 8.A, why -- if this isn't a deviation and it should be okay with the code, if it is a deviation it shouldn't be here, it should be in the list of deviations. So what is 8.A trying to accomplish inconsistent with the code?

And if it's already in the code, we don't need it here. This is on Page 5.

MR. ANDERSON: It's in the code and it provides -- it already allows the county to make that call. This is to make sure that they do make that call.

There's been -- there was discussion with the county engineer about whether there was discretion or not, and some feeling I think on the part of county that there was a certain element of discretion. And we simply want to tighten that up.

CHAIRMAN STRAIN: Okay. If it's in the code, the verbiage on the fourth line, it says roadway access easements or external property line is properly protected. What does that mean? Put up hay bales?

I mean, I'm surprised if our code is that loose in the way it describes how this area will be addressed. Which then brings into the question, what is it you're trying to ask for?

COMMISSIONER BROUGHAM: They qualify it, Mark, by berm, fencing and landscaping in the next line.

CHAIRMAN STRAIN: Well, I mean, fencing -- if the purpose of this is -- I was familiar with one project that had a roadway that went right up to the 20-foot lake maintenance easement, but the requirement to protect the traffic was a guardrail. The guardrail was not pretty, so they had to put shrubs around it. But regardless, it was a guardrail.

That's not what I'm picking up here. So you're saying that you could go up to 20 feet and just put a berm there or a picket fence or a bush. What happens to the things like guardrails that have been required in the past for safety? Would that then not be a requirement because of this 8.A?

He's right on the money. That's probably why he's the guy that owns the place.

MR. RATTERREE: Just work, just work.

CHAIRMAN STRAIN: Is protected by a guardrail and landscaping, is that what you're going to say?

MR. RATTERREE: Yes.

CHAIRMAN STRAIN: That's only going to occur if you need to get that close to a lake, which certainly will be relegated by how you design your project.

So -- okay, let's move on to Pages 6 through 10. Does anybody have any questions on Pages 6 through 10.

MR. BELLOWS: For the rec -- Mark?

CHAIRMAN STRAIN: Yes, sir.

MR. BELLOWS: If I may, I just want to make sure we understand. Are we going to ask for revised language for that?

CHAIRMAN STRAIN: Yes. You're going to have to -- it doesn't reference a guardrail. Basically, when you get that close to the water, you're supposed to have traffic safety railing added. And the way this is written, it wouldn't necessarily require it, because this would then supersede the code, which I'm sure wasn't the intent. And I think -- it says it's not going to waive the Collier County laws or ordinances, but I think that if they're going to mention what they're going to use, we ought to make sure guardrail is included.

MR. BELLOWS: I concur. I just wanted to make sure that was the case.

CHAIRMAN STRAIN: Yeah, that would be.

COMMISSIONER BROUGHAM: And we strike-through berm fencing or landscaping and substitute guardrail and landscaping, correct?

CHAIRMAN STRAIN: Right. Fencing wouldn't do any good. I mean, it wouldn't be a barrier.

MR. ANDERSON: Just so we're clear, we'll be striking the words of the lake by berm, fencing. And it will be replaced by, by guardrail and landscaping.

CHAIRMAN STRAIN: I think the property line is -- and then we drop the word properly, is protected by guardrail and landscaping.

MR. ANDERSON: Okay, drop properly? Okay. We've already taken care of that.

CHAIRMAN STRAIN: Right. You attorneys love words like properly. So I'm trying to get away from that.

Okay, Pages 6 through 10, anybody, Planning Commission have any -- let's take it through 11, since that is the graphic. Same thing, projects 6 through 11?

COMMISSIONER SCHIFFER: I have a question.

CHAIRMAN STRAIN: I was hoping -- I think you would, yes.

COMMISSIONER SCHIFFER: Bruce, where is it that the setbacks are measured from buffers? I mean, you do have N/A from the tract boundary. And obviously there will be a buffer on the tract boundary.

MR. ANDERSON: You're talking about Exhibit B?

COMMISSIONER SCHIFFER: Yes. And I'm worried about setbacks of the different building types. And we really don't want buildings up against the buffers.

MR. HERMANSON: George Hermanson from Hole Montes.

Typically a buffer can be in the setback and part of the setback. So there is no setback from a buffer. It's from the property line or the parcel or tract line.

COMMISSIONER SCHIFFER: Right. But hence the problem, because --

MR. HERMANSON: I've never had it done any other way. It's always been buffer is within the setback. Unless the buffer is actually wider than the setback, then the buffer governs. But we've never put a setback from a buffer.

COMMISSIONER SCHIFFER: And here's the problem. That puts like the back of buildings, stuff like that, people's yards, and they're in the buffer.

CHAIRMAN STRAIN: See, I think the problem, Brad, is that a lot of buffers are platted common areas, they've not part of the property that you're selling. So in your case you're telling me this project's being set up so that the lot itself includes the buffer, which is generally -- well, where would be the problem? Because if you're -- where Brad's going is 100 percent --

MR. HERMANSON: Typically a buffer is a maybe a maximum of 15 feet. It's usually 10 or 15 feet. We have setbacks of say 25 feet, so there's still going to be space between the buffer and the building.

CHAIRMAN STRAIN: But your setback is going to be measured from the lot property line, is in the case of a lot --

MR. HERMANSON: Property line or the tract line.

CHAIRMAN STRAIN: Okay. But if it's from a lot property line, which is where most of your -- in your fee simple, how are you going to build -- how are you going to sell a common area buffer as part of a lot?

MR. RATTERREE: Good morning. For the record, Kevin Ratterree with GL Homes. R-A-T-T-E-R-R-E-E. We find a lot of time spending on things we're not even doing here. So can we just please put a note on this that says the buffer for a multi-family tract shall not be included in the tract of the multi-family parcel.

CHAIRMAN STRAIN: Thank you.

MR. RATTERREE: That covers it.

CHAIRMAN STRAIN: Your assistance in getting some of these things resolved is greatly appreciated.

MR. RATTERREE: Just so everybody understands, a lot of this is you're using a framework that supposedly has been set through projects before you. So you take that and you kind of use it as the framework. And so what we're dealing with now are those things, as each one comes through it becomes well, wait a minute, that probably should be read a little differently. So that's what we're dealing with. And I appreciate the comments. I agree with Mr. Schiffer, let's just move on.

COMMISSIONER SCHIFFER: Well, before we move on --

MR. RATTERREE: Sorry, I tried.

COMMISSIONER SCHIFFER: Let's point out the fact that in this table there is no setbacks for multi-family. So that means the multi-family unit is up on the buffer. Can be.

MR. RATTERREE: I would disagree with that assessment because of the red at the bottom of the table which is dealing with setback from the tract boundaries are clearly specified and they're as George said at the last meeting of this group, on a multi-family tract the setback are set by the tract, so --

COMMISSIONER SCHIFFER: So you're saying the 25 feet around the building --

MR. RATTERREE: Is the setback from the tract --

COMMISSIONER SCHIFFER: The buffer could be --

MR. RATTERREE: The buffer would not be included in that tract. So therefore it would resolve your issue

that the buildings then the buffers are inside the tract and then the buildings are right on the buffer.

COMMISSIONER SCHIFFER: We can move on.

MR. RATTERREE: Okay, great.

CHAIRMAN STRAIN: Thank you.

Anything else on through Page 11?

(No response.)

CHAIRMAN STRAIN: Bruce, the -- on Page 7, footnote 11, this is one for Brad, so -- he's getting coffee, I'll wait for him to --

COMMISSIONER SCHIFFER: Go ahead, I can hear.

CHAIRMAN STRAIN: Footnote 11 was in response to Brad's request at the last meeting. It says a maximum of 10 units attached in one building.

That may work. I just want to make sure -- I wanted to point it out in case Brad didn't see it. Did your intention during that discussion have a maximum length associated with lineal footage of a building and irregardless of the number of the units? Because I don't know if this is different than what you were intending.

Normally in the past we've looked at length of buildings, not number of units in a building.

COMMISSIONER SCHIFFER: Right. I mean, it's -- the minimum width is 35 feet, so they could have larger than that, it'd be a 350-foot building.

CHAIRMAN STRAIN: Right, is that what you were thinking? Previously we -- yeah, we didn't go that way.

MR. ANDERSON: Yes, yes. On Bent Creek Preserve you had the similar limitation by dwelling unit.

CHAIRMAN STRAIN: Boy, that one we just got done hearing, what a mistake. Thank you for correcting us on that mistake, Bruce.

COMMISSIONER SCHIFFER: I mean, it does cause them to break it. Otherwise they could, you know, look like a railroad train running around the development. But they're going to design nice units. They'll be playing with the look of it.

CHAIRMAN STRAIN: Does that work from your perspective?

COMMISSIONER SCHIFFER: I'm okay with that. If we learn from it, we'll deal with it next time.

CHAIRMAN STRAIN: Then my last question on this section would be Pages 10 and 11. They show a whole series of road section cross sections. I know they've brought over from the last document. From a perspective I guess of Ray or Kay, we have road cross sections in our Land Development Code too. And maybe Reed needs to jump in.

Do these road cross sections differ in any way from what's in the Land Development Code?

And if they don't, then we don't need them.

If they do, they're a deviation. So --

MS. DESELEM: For the record, Kay Deselem.

My understanding was that these -- the top two were going to remain and the others were going to come out so that they would match the DCA. But I will let Reed address the specifics as far as whether they match or do not match what's in the LDC.

MR. JARVI: Reed Jarvi, Transportation Planning Manager.

I'm sorry, which exhibit are you looking at?

CHAIRMAN STRAIN: Pages 10 and 11, all the brackets. All of them.

MR. JARVI: Yeah, okay, all of them.

CHAIRMAN STRAIN: I mean, it's nice that they're all here and they tell us what the road's going to be, but so does the LDC. So what is it we're trying to accomplish?

MR. JARVI: Yes. On the Page 11, if we go to that one first, it's simpler. The top two exhibits are for the Logan Boulevard north adjacent to the Parklands. And that's slightly different than the LDC talks about for a collector road. But that will be a -- it will be a county road eventually. So we've just put these in here to say this is how we'll do them. We don't typically do a divided two-lane road. But for this purposes they wanted to do it, and we've accepted it.

CHAIRMAN STRAIN: But let's not go past these two before I ask you a question. So you just acknowledged that the top two are not consistent with the Land Development Code, right?

MR. JARVI: Yes.

CHAIRMAN STRAIN: Then aren't they deviations? And if they're not, why not?

MR. JARVI: Um-hum.

CHAIRMAN STRAIN: And if they are, has one of the 18 deviations addressed it? Because I didn't --

MR. ANDERSON: Yes, it did --

CHAIRMAN STRAIN: -- I can't go back and read them all, at least right here on the fly.

I didn't expect the answer you just gave me, to be honest with you.

MS. DESELEM: For the record, Kay Deselem. If you look at deviations, I see 10 and 11, it does reference the exhibits. It references Exhibit C-2, and I think if I looked quickly, I think I'd find references to C-3 as well.

CHAIRMAN STRAIN: Okay, we're on, I believe --

MS. DESELEM: Number 12. Deviation 12 and 13 both reference Exhibit C-3.

CHAIRMAN STRAIN: Okay. And as far as C-2, then all those including the cul-de-sac are covered?

MS. DESELEM: There again, I'd let Reed address those, because I was under the impression that some of these came out of the DCA and we would want the two documents to match, I would think.

MR. JARVI: The DCA covers Exhibit C-3, which is your Page 11. The internal roadways are covered on Page 10, and those are deviations and it's mainly sidewalk and width of -- I think it's width of right-of-way. And they are covered in the deviations.

CHAIRMAN STRAIN: Thank you, Reed, appreciate it.

That gets us through Page 11. Next -- well, let's just finish up. Does anybody have any questions on the rest of the document?

(No response.)

CHAIRMAN STRAIN: Okay, hearing no further questions, are there any -- I guess Bruce, any final comments you want before we go to staff presentation or staff comments, if there are any?

MR. ANDERSON: Just that we would appreciate a recommendation of approval.

CHAIRMAN STRAIN: I got that figured out.

Kay, do you have any --

MR. ANDERSON: Thank you.

CHAIRMAN STRAIN: Thank you, sir.

MS. DESELEM: For the record, Kay Deselem. Staff is comfortable with what has been changed. We are still recommending that it be found consistent with the Growth Management Plan. And we are recommending approval as stipulated today and with the exhibits that you have now.

CHAIRMAN STRAIN: Okay. Are there any public speakers registered or otherwise? Okay, Reed's going to be a public speaker.

MR. JARVI: Reed Jarvi, Transportation Planning Manager.

I just didn't know if you wanted to go over the DCA, any issues with that, or is that a different --

CHAIRMAN STRAIN: I don't think we had that many issues from the DCA last time. If you want to raise some so we can get into a long protracted discussion on it, I'm sure that would work.

MR. JARVI: We did have -- Bruce had like 50 pages of additions, but we cut them down to minor.

CHAIRMAN STRAIN: That's the attorney working his numbers, you know.

MR. JARVI: Basically we did have one thing early this week after discussion, and it is in addition to number four, which is Page 5. I'll read it out loud, and we've all agreed to it.

It says: Collier County expressly agrees to take over the maintenance of Logan north from the northern limits of Olde Cypress, tract R-1, to the county line one year after the opening of Logan north to Bonita Beach Road and upon a satisfactory final acceptance of the road by Collier County Growth Management Division.

Acceptance shall be based on the typical sections as proposed in this agreement, the Collier County right-of-way permits for the roadway, and Collier County codes in place at the time of this agreement.

Basically says we'll take it over when it becomes a through road.

CHAIRMAN STRAIN: You wanted to add that or it's already --

MR. JARVI: That's added to the DCA. I know you don't probably like this, but that kind of tends to be a living document as we go through. Thank you.

CHAIRMAN STRAIN: Okay, thank you.

There are no public speakers registered, Ray?

MR. BELLOWS: That's correct.

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

(No response.)

CHAIRMAN STRAIN: Okay.

COMMISSIONER EBERT: Mark, may I say something on this project?

CHAIRMAN STRAIN: Of course.

COMMISSIONER EBERT: I've been very familiar with both projects behind Olde Cypress, along with Mirasol coming up, because it affects all of us. In fact, this DRI is from 1985. And I think that being it's such an old DRI that they tried to put everything in there to try and make some corrections. Because it's really not even a DRI anymore practically because of aggregation and everything. So I just think it just seems so long and involved only because they were trying to do the right thing.

CHAIRMAN STRAIN: Okay. Anybody else?

(No response.)

CHAIRMAN STRAIN: Then we'll close the public hearing. And we're going to have to have four motions, one for each in order that they appear on our agenda. The first would be 9.A.

Is there a motion for PUDA-PL200100001551, the Parklands PUD?

COMMISSIONER AHERN: So moved.

COMMISSIONER BROUGHAM: Mark, would you like to review the changes we made?

CHAIRMAN STRAIN: Sure, well, soon as there's a mo -- if there's a motion made in the affirmative, which I would expect --

COMMISSIONER AHERN: I'll make a motion.

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

COMMISSIONER BROUGHAM: I'll second.

COMMISSIONER EBERT: Second.

CHAIRMAN STRAIN: Phil made the second.

Discussion. I would suggest that the motion and the motion make allow the following four items to be added.

One: That there will be language providing a full turning movement if requested by the school board at the most northern access of the school's property.

Two: That we remove Section 2.2.B.4 regarding the accessory uses in I think it was 1.B.

Three: That under 8.A we add the language pertaining to a guardrail, and substituting it for the language we previously discussed being struck.

And number four: Add clarification for buffer. What was that about? There was a --

COMMISSIONER AHERN: It's the guardrail? Is it the --

CHAIRMAN STRAIN: I've got the guardrail language.

COMMISSIONER AHERN: Oh, that the buffer would not be in the setback.

CHAIRMAN STRAIN: Oh, yeah, I'm sorry. We had a discussion about the buffer not being in the setback. It was agreed to by the applicant. And we're going to add that clarification to the language. Those are the four stipulations that I'd written down. Does anybody have any else?

Brad?

COMMISSIONER SCHIFFER: Just to clarify, that was only for the multi units. The other ones are -- so I would make sure that's in there.

CHAIRMAN STRAIN: Okay, for multi-family.

Is staff comfortable with those stipulations, knowing what they mean? Because we're going to do consent right after this and I want to make sure there's not going to be a language issue.

MS. DESELEM: Yes, sir, I understand what you're asking for.

CHAIRMAN STRAIN: Anybody else have any?

COMMISSIONER EBERT: Yes, I do. On deviations, staff, there were some that they did not want allowed that they suggested.

I think three and four are fine to go through. Looking at this, the only -- so -- I believe number 13 --

CHAIRMAN STRAIN: Kay, when you said earlier that staff was in acceptance with the package that was

most recently provided to us, wasn't that meaning you were agreeing with the deviations?

MS. DESELEM: I do apologize, I had forgotten that we in fact had not supported some of the deviations. And the applicant has, through his resubmittals I believe, changed some of the deviation language.

But we look to you for your recommendation on those deviations to see if you concur with staff's recommendations or if you have another recommendation. So that we can take that to the Board.

And I apologize, I didn't catch that one.

CHAIRMAN STRAIN: I thought you were removing your concerns and we were going with a clean slate. Go ahead, Diane.

COMMISSIONER EBERT: Well, I think we should approve it with all the deviations in there.

CHAIRMAN STRAIN: Okay, does anybody else have any concerns with that?

COMMISSIONER SCHIFFER: No.

CHAIRMAN STRAIN: Okay. Then I think it will stand that the approval recognizes the document in front of us today, which includes all the 15 deviations that have been resolved from previously a larger number.

MS. DESELEM: If I may ask. If you go to the staff report that was originally prepared, on Page 28 there was a stipulation for deviation number one regarding the models not remaining more than 10 years without the C U.

And the approval of deviation two. I believe that the applicant has acquiesced to these and they're included in

--

CHAIRMAN STRAIN: Yes, I'm looking at it now. They did, so -- okay, can you tell us if the applicant hasn't agreed to something that you were concerned about previously, based on the new document?

MS. DESELEM: As far as I know, they have agreed to stipulations on deviations one and two and 15.

And then we recommended deviations two and three have stipulations, and the applicant is not agreeing with those. And I understand -- if I'm -- if I understand your recommendation correctly, you're not agreeing with staff's position on those.

CHAIRMAN STRAIN: Right.

COMMISSIONER AHERN: Correct.

MS. DESELEM: And you're also not agreeing with our recommendation of denial of deviations four, 12 and 13.

CHAIRMAN STRAIN: Correct.

COMMISSIONER AHERN: Correct.

MS. DESELEM: Thank you.

CHAIRMAN STRAIN: Discussion? There's been stipulations -- go ahead.

COMMISSIONER HOMIAK: So the -- one of the stipulations going to be against Heidi's advice on the school ingress and egress on the north side. She doesn't want vesting of a turn lane.

CHAIRMAN STRAIN: Right.

COMMISSIONER HOMIAK: That was right, right?

CHAIRMAN STRAIN: Right.

COMMISSIONER HOMIAK: And you're saying you want it in there.

CHAIRMAN STRAIN: I'm saying that to protect a future controversy with the school board over something that they basically expect they can have, why don't we just put it here. Because if there's a change in anything as this time goes on, there's no reason for the school board and Collier County to fight over an intersection improvement. We can settle it now.

So yeah, I'm recommending it go in there. And if the County Attorney has a legal reason why it shouldn't be there, then that argument can be made before the BCC and the BCC can correct it pursuant to any legal reason that is brought forth. So that's --

COMMISSIONER HOMIAK: And that's what -- you think it's all right to --

MR. WRIGHT: Yes. And this goes back to my prior comment. It really comes down to the depiction on the master plan of a turn movement. We don't want to vest that movement. But we do want to vest the access point. So it's been addressed and I don't see any problem.

COMMISSIONER SCHIFFER: But Mark, we're giving them the right to these turn lanes. And what if in the future traffic engineering -- because it is on an inside curve. It is kind of on a dangerous site. What if they deem that it's unsafe? Does that mean the school builds it same that the PUD made them build it?

CHAIRMAN STRAIN: Well, my point is if they're going to -- if that's going to happen in the future and there's a potential for it, then we need to open the PUD back up and the DRI for another access that the school board may need to get a signal there with a full turn movement in order for them to have a site that is viable for it. If the site's not good because you can't get in and out of it, then what are we doing even asking for the site in the first place?

So the fact we even asked for it, that it came part of this whole discussion and has to be functional, doesn't make any sense asking for things that aren't going to be functional in the future under a potential disagreement, and then saying we've got to withhold that property from the developer for a school site that we can never build because in the end it's not functional enough to build. So I'm saying let's make sure the functionality is there now, and if it isn't, find a solution to that functionality now before we approve this thing.

Let's -- seems to -- try to nip it in the bud early instead of waiting til late.

COMMISSIONER SCHIFFER: Okay. I mean, the only downside I could see is if they built an intersection, someone got hurt and a traffic engineer said nobody should have ever built that intersection. But they said, wait a minute, they had to.

CHAIRMAN STRAIN: He's not saying that, though. He got up there and said it's got a potential. He's not telling us it can't be done. I just want to make sure that someone in the future doesn't say, well, I've decided it can't be done. I'm a new traffic engineer working for the county, I'm not the old guy. Not that you're old, Reed.

COMMISSIONER SCHIFFER: But we can go on. I'm done, thanks.

COMMISSIONER EBERT: I just have one thing. Looking at this where a school is going to be is Collier County. It is at the very end of Collier County. They're pretty much only going to make right turns out of there. Because right next to it is Lee County. So that's -- was my feeling on that.

COMMISSIONER SCHIFFER: Good point.

CHAIRMAN STRAIN: But they'd have to make a left turn in, see, and those are the kind of things. Anybody coming north to make a left turn in, if you didn't have a median opening there, you couldn't make the turn. So whatever the school board needs we want to give them that ability so it's a functional site. And if they can't reach an agreement with the -- at least they got that to start with so that there's no disagreement in the future and all of a sudden the site becomes useless. That would be a wrong way to go today.

Anyway, those are the four stipulations. I read them. I don't know if the motion maker or second agreed to them or not. I'll ask the motion maker first.

COMMISSIONER AHERN: I agree.

CHAIRMAN STRAIN: Second?

COMMISSIONER EBERT: I agree.

CHAIRMAN STRAIN: Motion has been made, it's been amended and stipulated, both in agreement. Discussion?

(No response.)

CHAIRMAN STRAIN: I would like to thank Kevin for your assistance in getting us through this. It was an old difficult project. The county has quite a few of those. And you did a great job in working with us to get through it. So thank you.

All those in favor, signify by saying aye.

COMMISSIONER SCHIFFER: Aye.

COMMISSIONER HOMIAK: Aye.

COMMISSIONER EBERT: Aye.

COMMISSIONER KLEIN: Aye.

COMMISSIONER BROUGHAM: Aye.

COMMISSIONER AHERN: Aye.

COMMISSIONER MIDNEY: Aye.

COMMISSIONER VONIER: Aye.

CHAIRMAN STRAIN: Aye.

Anybody opposed?

(No response.)

CHAIRMAN STRAIN: Motion carries 9-0 with a recommendation of approval. Thank you all very much. Let's take a break. When we come back we will go into our LDC --

COMMISSIONER AHERN: We have to do the rest --

CHAIRMAN STRAIN: Oh, I'm sorry.

Let's go to --

MR. ANDERSON: Those little niceties, please.

CHAIRMAN STRAIN: Yeah, I know, we have to do these one at a time. I keep forgetting.

MS. DESELEM: Excuse me, if I may. Can I get a clarification on who seconded that motion? I have two --

CHAIRMAN STRAIN: Diane seconded it.

MS. DESELEM: Okay. Because I had Phil or Diane. I didn't know which one. So it's --

CHAIRMAN STRAIN: Well, they look alike, but --

COMMISSIONER BROUGHAM: Thank you.

CHAIRMAN STRAIN: Sorry, Diane.

COMMISSIONER BROUGHAM: Mustache.

MS. DESELEM: So it was Diane Ebert.

CHAIRMAN STRAIN: Yes, it was Diane.

Okay, the next item for recommendation is for denial or approval of DOA-PL200100001550. It's the Parklands DRI.

Is there a motion?

COMMISSIONER EBERT: I make a motion.

COMMISSIONER AHERN: Second.

CHAIRMAN STRAIN: Motion made by Melissa, seconded by Diane. Diane, I'll give you the next two, how's that? I'm sorry.

COMMISSIONER EBERT: That's fine.

CHAIRMAN STRAIN: Motion for recommendation for approval.

Melissa?

COMMISSIONER AHERN: So moved.

CHAIRMAN STRAIN: Seconded by Diane.

COMMISSIONER EBERT: Yes.

CHAIRMAN STRAIN: Any discussion?

(No response.)

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

COMMISSIONER SCHIFFER: Aye.

COMMISSIONER HOMIAK: Aye.

COMMISSIONER EBERT: Aye.

COMMISSIONER KLEIN: Aye.

COMMISSIONER BROUGHAM: Aye.

COMMISSIONER AHERN: Aye.

COMMISSIONER MIDNEY: Aye.

COMMISSIONER VONIER: Aye.

CHAIRMAN STRAIN: Aye.

Anybody opposed?

(No response.)

CHAIRMAN STRAIN: Motion carries 9-0.

The consent items, PUDA-PL200100000-- oh, there's only four zeros -- 1551. It's the Parklands PUD on consent. Is there a motion to approve subject to -- there wouldn't be any subject, we've -- assuming all the stipulations are in place.

COMMISSIONER EBERT: I make a motion we approve.

CHAIRMAN STRAIN: Thank you. Is there a second?

COMMISSIONER AHERN: I second.

CHAIRMAN STRAIN: Motion this time made by Diane, seconded by Melissa.

Discussion?

(No response.)

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

COMMISSIONER SCHIFFER: Aye.

COMMISSIONER HOMIAK: Aye.

COMMISSIONER EBERT: Aye.

COMMISSIONER KLEIN: Aye.

COMMISSIONER BROUGHAM: Aye.

COMMISSIONER AHERN: Aye.

COMMISSIONER MIDNEY: Aye.

COMMISSIONER VONIER: Aye.

CHAIRMAN STRAIN: Aye.

Anybody opposed?

(No response.)

CHAIRMAN STRAIN: Motion carries 9-0.

The last is the consent for DOA-PL200100001550, the Parklands DRI.

Diane?

COMMISSIONER EBERT: Yes, I make a motion that we approve it for consent.

CHAIRMAN STRAIN: Is there a second?

COMMISSIONER AHERN: Second.

CHAIRMAN LEFEBVRE: Seconded by Melissa.

Discussion?

(No response.)

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

COMMISSIONER SCHIFFER: Aye.

COMMISSIONER HOMIAK: Aye.

COMMISSIONER EBERT: Aye.

COMMISSIONER KLEIN: Aye.

COMMISSIONER BROUGHAM: Aye.

COMMISSIONER AHERN: Aye.

COMMISSIONER MIDNEY: Aye.

COMMISSIONER VONIER: Aye.

CHAIRMAN STRAIN: Aye.

Anybody opposed?

(No response.)

CHAIRMAN STRAIN: Motion carries 9-0.

Again, thank you very much for your cooperation and time. We got through it. Appreciate it.

Okay, with that we'll take a break until 10:40, come back at 10:40. At that time we'll go right into our LDC amendments.

(A recess was taken.)

CHAIRMAN STRAIN: Okay, everybody, welcome back from break.

***We are going to move into the second part of our meeting, which is a continuation of the LDC Amendments 2012 Cycle 1. And that's under old business, 10.A. Coordinator is Caroline Cilek.

We have a distribution of a lot of items that we've already -- in fact, we've heard some of these two or three times, maybe four already. But we're going to hear them today. So hopefully we can resolve and move forward and try to get things done.

I want to address those members of the public that are here first. How many -- and I think there's two of them that are controversial. How many are here for the docks? Okay.

And how many are here for -- Rich doesn't know why he's here but he knows who he's going to bill.

(Laughter.)

CHAIRMAN STRAIN: I don't know why I was there, but I'm going to bill you all.

Okay, and who is going to be here for the exotic removal issue?

Okay, two to one. So we'll go with the exotics first. And if Richard leaves, we know which one he was here

for.

Caroline or Steve, you want to -- let's start -- that's in our new packet we were just handed out this morning, if I'm not mistaken. Okay. And that is -- it's in the new packet and it's a little ways, second or third from the back.

It's 3.05.07, Preservation Standards. This was the one we talked about on Tuesday. And staff was able to get all this rewritten for today's meeting. Appreciate it.

You guys do a good job.

COMMISSIONER EBERT: Very good, Caroline.

MR. LENBERGER: For the record, Stephen Lenberger, Stormwater and Environmental Planning Section.

I made the changes you asked. Hopefully I captured your intent. And I've highlighted them in the document. I also sent it to stakeholders to see if there would be any input. I did get three responses back. I can read those to you, if you want.

CHAIRMAN STRAIN: Well, there's -- if two of them were from the people that are here, you don't have to read those. But if they're not from the people that were here, because I'm sure they're going to speak for themselves, we can --

MR. LENBERGER: Two of them are here.

CHAIRMAN STRAIN: Okay, can you read whoever isn't here.

MR. LENBERGER: Sure.

The issue, Steve, is like Mark Strain stated, the insertion of language to the LDC that did not go through the proper vetting of stakeholders, public or subcommittees. So now we are inserting language and debating when the fundamental issue is still being ignored. If the item is pulled and taken through the appropriate channels, the language issues can be adequately addressed. I thank you for your time.

COMMISSIONER BROUGHAM: Who was that from?

MR. LENBERGER: Marco Espinar.

CHAIRMAN STRAIN: Marco Espinar?

MR. LENBERGER: Yes.

CHAIRMAN STRAIN: Okay. I didn't know my name was in there, so -- I hadn't seen that. Okay.

And I think what we're do (sic) is we'll open it up to discussion from this board first, then we'll hear the public speakers and -- I mean, my position hasn't changed, I don't believe we're doing the right thing with this language change and we should just strike it. But I'm sure that others have opinions and we'll -- go right ahead. Anybody that's got a thought on this, let's hear it.

Nobody's got a thought.

COMMISSIONER HOMIAK: Are we going to be able to change --

CHAIRMAN STRAIN: Yeah, this isn't -- no, no, we voted at the last meeting to insert language, but we don't have to accept the language today. We can still say no -- because we weren't even a full board last time, we were seven instead of nine. We can go back now. If the majority decides that this language really isn't right, then we can strike it and make a motion to approve staff's strikeout of it.

COMMISSIONER BROUGHAM: I'm comfortable with the modifications that staff has inserted that it correctly reflects the majority vote at the last meeting on this.

And just another, and I may or may not be correct in this, but one of the issues that has been raised, and raised again just now, is that long ago in history when that was inserted into the LDC, it was done without proper vetting and so forth and so on. And the public and the stakeholders didn't get adequate time to weigh in on it. But I believe this hearing today is at least the second time that this LDC amendment has been advertised and discussed. And from my point of view, if there were significant objections by stakeholders, they could have appeared at the first hearing or at the first reading, whenever that was. And I only saw and heard from one person, I believe last week or earlier this week, two people.

So just an observation, whether it's a correct one or not. I think this is part of the public process.

CHAIRMAN STRAIN: Anybody else?

Brad?

COMMISSIONER SCHIFFER: Well, let me, you know, pile on with Phil. I mean, if the public was that interested in it, they've really had the opportunity. We had more than two hearings. We've -- I can think of probably four on this issue. So, you know, we did have some public, there are some people that don't agree with it.

time. But the bottom line is this is wording exactly what we wanted and exactly what we voted on, actually, last

CHAIRMAN STRAIN: Anybody else?

COMMISSIONER VONIER: Yeah, Mark, I'm a little confused as to what we wrote, what it actually means.

CHAIRMAN STRAIN: What I think --

COMMISSIONER VONIER: Can staff explain it?

CHAIRMAN STRAIN: Sure. Steve?

MR. LENBERGER: What --

CHAIRMAN STRAIN: I said sure, Steve. Go ahead, explain what we mean.

MR. LENBERGER: I feel comfortable about that.

Maybe you ought to point to the specific paragraph you're talking about.

COMMISSIONER VONIER: I'm looking at D.

MR. LENBERGER: Yeah, am I. And -- well, I'll read it. It says, exotic vegetation removal shall not constitute mitigation unless the mitigation is for secondary impacts, not dredge and fill, and it is reconciled with the state and federal permits.

So I would say that that would have to be in agreement with the state and federal permits to allow the exotic vegetation removal to account for secondary impacts. It says it does not allow for it to count for direct impacts. But if the state and federal permits allow it, they would prevail, unless we were in agreement with them.

CHAIRMAN STRAIN: Does that answer your question, Bill?

COMMISSIONER VONIER: Well, sort of.

COMMISSIONER MIDNEY: Yeah, I'm kind of going with Bill. I -- what's the difference between a secondary impact and a primary impact? Would primary be dredge and fill and secondary would be anything else?

MR. LENBERGER: Yes, pretty much everything else, affecting the water table, things like that.

COMMISSIONER MIDNEY: So how would you affect the water table if you weren't doing dredging or filling?

MR. LENBERGER: If you would do dredge and fill as a direct impact, let's just say you alter the flow of water, therefore wetlands outside your project could be affected by, for example hydrological loss. Then they could be adversely affected. And that would be a secondary impact. It's not directly related to your dredge and filling project, it's on the outside of the project. That's just an example that could be.

COMMISSIONER MIDNEY: Is the secondary impact usually less than the primary impact? I'm just not sure on a practical basis how common it is to have significant secondary impacts. Or is that a big part of the loss of wetlands or is that a small part?

MR. LENBERGER: It could vary. There's all kinds of permitting. Like a boat dock, you can impact hard bottom or sea grasses directly, you know, shading effects could affect sea grasses on side. So it depends on the project.

If you altered flow of water by diverting water on a project, I guess you conceivably can affect quite a bit of wetlands secondarily. Although I imagine the state would not allow that. They would -- state permitting has gotten a lot better, it has over the years, and they look at things like watersheds and flow ways. So that kind of impact would be less. But there still could be.

COMMISSIONER MIDNEY: I'm kind of at a disadvantage because I wasn't at the meeting on Tuesday. But when you're talking about allowing removal of exotic vegetation to count towards mitigation, is only allowing it for not dredge and fill, is that going to be any different from what the state agencies would be saying?

Is this something where the county is going to be restricting more than what the state says?

MR. LENBERGER: If the amendment gets approved, it would be more restrictive, but we still would have to be in agreement with the state, whatever the issue and the permits. The state would allow exotic removal to count for direct impacts to wetlands and secondary impacts to wetlands. This language here does not allow mitigation -- exotic removal to count as mitigation direct impacts to wetlands.

COMMISSIONER MIDNEY: I'm in agreement with in that.

CHAIRMAN STRAIN: Okay. Phil?

COMMISSIONER BROUGHAM: Just a comment. I think in my opinion there were some very convincing statements, I won't call them arguments, statements made at our last meeting on Monday regarding the data and the

reports that have been collected, which demonstrate or at least the testimony was to the demonstrate that the state has not been diligent in following through on adequate -- my words, adequately policing the permits that they issued. Therefore, there have been a lot of unintended consequences as a result of the state issuing permits.

And I for one am very reticent about this county giving up the rights to be more restrictive than the state, given the fact that the state agencies are being constantly trimmed back, their staffing is being reduced. And I think in my judgments you're seeing the results with less and less oversight on these permits, whether they be environmental or otherwise. And I firmly believe that. So just a comment.

CHAIRMAN STRAIN: Anybody else?
Diane?

COMMISSIONER EBERT: I agree with you 100 percent. If you go to -- how do I want to say this. If you go to the Big Cypress Basin where people have to go in for these permits and everything, they'll give anybody a permit on their land, and they'll modify them with really not having all their people here all the time. And the state is not following through on a lot -- they don't come down and look at any of this.

CHAIRMAN STRAIN: Anybody else?

COMMISSIONER VONIER: That's -- excuse me, Diane, that's not rural fringe district that you're referring to, is it? This is only refers to the rural fringe mixed use district.

CHAIRMAN STRAIN: This particular issue is only for the rural fringe, it's not for any other part of the county.

COMMISSIONER EBERT: Okay.

CHAIRMAN STRAIN: Anybody else?

(No response.)

CHAIRMAN STRAIN: Couple things. I did not hear any substantiated testimony on Tuesday that the state is not doing their job. I heard one person's opinion, and that varies just like everybody else's opinion. So I saw no evidence and heard no substantiated testimony, I just in the person's opinion that the state wasn't doing a good job in this regard.

Second of all, in 1999, for those who have been here in '99 when the Governor issued his order and demanded that we put a moratorium on the eastern part of the county and we address these areas, we had dozens and dozens of public meetings with the stakeholders involved, the property owners out there. That is the vetting that occurred at the time.

This was not part of that vetting. This was inserted between the Planning Commission and the BCC and to now say that we can't take it out because we had two meetings or three meetings on it as an LDC amendment that nobody reads in those fine prints. The evidence is look who isn't here today is not a fair way to expect it to be vetted to the stakeholders.

So I do not believe this was properly vetted. I think it is illegal in its substance and I think it is wrong. It is inconsistent with the way this board has led itself for years in trying to make sure all stakeholders had a fair say in things before we decide on them. And I don't see this being applied that way.

So, with that, I asked everybody else for comments --

COMMISSIONER HOMIAK: I agree with that reasoning.

CHAIRMAN STRAIN: Karen. And then we'll go into public speakers at this point.

Ray, do we have registered or not? If not it doesn't matter, you can still speak. So we'll just take the registered ones first.

MS. CILEK: Our first registered speaker is Bruce Layman.

MR. LAYMAN: Good morning. For the record, my name's Bruce Layman, senior ecologist with Stantec. I'm here in support of staff's originally crafted amendment.

For the record, I've been here for the past couple of times when the Planning Commission has been reviewing this amendment. I'm not representing anybody within the rural fringe misused use -- or mixed use -- sorry, about that, guys, misused district. So anyway, my presence here is not reflective of a grand announcement to the stakeholders within that district that this process was going on.

Two days ago when this amendment was before this commission, it was -- the County Attorney brought to light the two portions of the Florida Statutes that have bearing on this. And one of them -- well, without getting into the details, as the discussion went on, the comment was made that because one portion of the statute basically said it

regulates the amount of mitigation that you quantify, that because we are trying to suggest the type of mitigation, there was a distinction between the type of mitigation versus the amount of mitigation, therefore the statute does not nullify what the code is trying to do by saying mitigation as a type of -- I'm sorry, exotic eradication as a type of mitigation is allowable because it's not quantifying it, it's the type of mitigation.

But the other part of the statute that addresses the same issue does not distinguish between type and quantity of mitigation. It basically says if the local permit does not reconcile with the state permit, that the state permit controls. And the state permit issued by the Water Management District, they're bound by applying their basis of review plus the UMAM analysis that is in the state -- in the Florida Statutes.

Now, if you -- if they quantify a series of impacts and come up with a mitigation need and then they take the same basis of review and UMAM analysis and try to apply it based on exotic eradication only working for secondary impacts, not primary or direct impacts, you would end up with two very, very different amounts of mitigation. It would be a very different impact on the landowner. And I don't see that as being reconciled. That's two very different analyses.

If it's not reconciled, the statute's very clear, the state permit controls, which basically means unless -- unless the Water Management District changes the way they apply the basis of review and their UMAM analysis, you really can't reconcile the two permits. As a result, the state permit would control. So you're essentially keeping code in the LDC that has no regulatory bearing because it will get trumped -- well, almost all the time.

So anyway, that being said, I'm strongly in support of the original amendment which was to strike the portion of the code that we're considering. The code that's before you now where it's only addressing secondary impacts, it's still the same code. It's still regulating how you address deriving mitigation. So again, it would, based on what I heard from the County Attorney and based on my interpretation of the Florida Statutes, it would still -- the state permit would still control.

And as a side note, Mr. Midney, your question about the relative magnitudes of secondary impacts to direct impacts. Secondary impacts typically are a very, very, very small component relative to direct impacts. Five percent, you know, a very small component. So even though it's throwing you a bone, okay, we'll let exotic eradication count as mitigation for secondary impacts, in the scheme of things it's not going to mean a whole lot to the stakeholders. They're still stuck with a huge differential in the amount of mitigation that they would have to provide based on the code as it exists, versus the way that the state permit would be calculated. Thank you.

CHAIRMAN STRAIN: Bruce, to leave exotic removal as a form of mitigation, does that increase the potential for preservation or decrease the potential for preservation?

MR. LAYMAN: I'm -- well, ultimately it would be considered preservation. If you took exotic removal -- if you didn't allow exotic removal to count towards mitigation from a county perspective, it would be as if the exotics didn't even exist, so you would essentially be counting that same acreage as preservation, versus enhancement by exotic removal. If you understand where I'm going with that.

A given landowner doesn't have often time the luxury of preserving a bunch of land, because they simply don't own that much. Typically. I mean, if you had the luxury of owning thousands of thousands of acres and they were all wetland and you weren't able to develop them anyway, simply through the avoidance and minimization process of the state or federal government, maybe you could offset your impacts with preservation only. Most projects don't have that luxury.

CHAIRMAN STRAIN: Okay. And the rural fringe program is somewhat stalled. Would allowing this as mitigation potentially have the benefit of seeing the rural fringe move a little bit faster ahead possibly, whereas that program would create sending areas, which are more preservation and more environmentally positive, and then concentrate the development in receiving areas where it should be and where the surface areas are already mostly disturbed?

This program is not working as well as we had thought. And I don't know how much this bears on that. And I just didn't know if you had a feel for that or not.

MR. LAYMAN: Well, that's a good question, because the program has been in place for eight years and there's not been a single PUD approved in it.

CHAIRMAN STRAIN: Right.

MR. LAYMAN: Even in the boom years, which says something.

I've done a little bit of work on a project in the rural fringe a couple years back. Ultimately we got almost to

the 11th hour but the plug was pulled and it was not -- it did continue forward. So we went through some of this.

My feeling is that I don't -- I can't say for firsthand experience whether there's a project out there that considered moving forward on something and then realized, holy crow, our mitigation cost is going to be 10 times what it normally would and that's going to break the budget and we can't move forward. I don't know if there are any that are out there. But it certainly does set this district, this mixed use district, zoning district aside from any other district in the county because it's being treated differentially by this imposition of not letting the exotic removal count as mitigation.

I mean, you've --

CHAIRMAN STRAIN: Is it counted in the RLSA?

MR. LAYMAN: I believe it is.

CHAIRMAN STRAIN: Is the RLSA further out than the rural fringe?

MR. LAYMAN: It is.

CHAIRMAN STRAIN: So the RLSA has potentially more environmentally sensitive areas than even the rural fringe does?

MR. LAYMAN: I've not looked at that specifically, but that's possible, I mean.

CHAIRMAN STRAIN: Okay. Thank you.

Anybody else?

(No response.)

CHAIRMAN STRAIN: Okay, next public speaker? By registration.

MS. CILEK: By registration?

CHAIRMAN STRAIN: Yes. Who's registered? You said there were two.

MS. CILEK: I think one is coming up.

CHAIRMAN STRAIN: Okay, that's fine.

MS. CILEK: There are no more on my paper.

CHAIRMAN STRAIN: Okay. Brad?

MS. CILEK: Brad Cornell.

MR. CORNELL: Good morning, everyone, Mr. Chair and Commissioners. I'm Brad Cornell and I'm here on behalf of Audubon Florida and Collier County Audubon.

And I'd like to respond to some of what I've heard in your discussion and perhaps elaborate a little bit on what our discussion was on Tuesday.

First of all, I want to congratulate you. We have collectively gotten the attention of the state. I was at a meeting yesterday in Fort Myers with regulatory staff for the South Florida Water Management District, and after the meeting I was called aside and was asked what's going on in Collier County. So you have gotten their attention. And I think that's a good thing.

And if I may suggest, this is one of, I think, an important strategies for a local government to bring to the attention of the state, the state who may not be aware of the specific needs and situations of, let's say in this case, wetland protection for our own local public interests.

We have particular situations here because Collier County was over 90 percent wetlands originally. A lot of those wetlands were shallow seasonal wetlands. Those are the wetlands that have been disproportionately impacted by development both historically and currently under the permitting systems.

I do want to point out, Mr. Chair, that we have done a considerable amount of research at Corkscrew Swamp Sanctuary, our science staff has, and analysis of hundreds of state permits, environmental resource permits. They show a considerable trend, a significant amount of shallow seasonal wetland losses. Those are the wetlands that do not get protected under the state's permitting process. We have documentation to show that. I would be very happy to share that I have two reports, one of them's very long, one of them is only 11 pages. That's a little bit on the technical side, but it's very convincing.

And I shared that with the South Florida Water Management District staff in Fort Myers yesterday, and we've also shared this for the last two years with staff in West Palm Beach.

CHAIRMAN STRAIN: I would like that information. I'd like you to send it to Caroline so she can distribute it to the Planning Commission.

MR. CORNELL: I have shared it with staff. I don't think it's been forwarded on, perhaps --

CHAIRMAN STRAIN: If staff has it, maybe they could forward it on to us.

MR. CORNELL: I'll send it to staff again and ask them to forward that on.

I think you will be convinced by some of the problems. I don't think any of this is intentional on the South Florida Water Management District's part, I think it's inherent in the problem that is specific to south Florida. That is that the greater Everglades system as has a lot of shallow seasonal wetlands. Those are the ones that are particularly impacted by exotics, particularly melaleuca. I think we all understand that. If you look at the landscape as you drive across I-75 or up 41, that's where you see melaleuca. That's the problem when you have melaleuca, which we don't have in north Florida.

Then you'll see the regulatory staff discount the value of those wetlands, overly discount, overestimate the impacts on the assessments that they do under the UMAM assessments. And on the mitigation side, they overestimate the value of taking off those melaleuca. So that's the problem that we have.

We've been in a dialogue with the state to try and fix that. However, I think it's at least on a temporary basis until we achieve those adjustments and those fixes, I think Collier County is in every respect right in pointing these things out to the state. And one way to do that is to put this LDC or Growth Management Plan policy in your own regulations to point this out.

Now, relative to the state regulations 373.414, what is it (1)(b)4, that Bruce Layman just quoted to you, it is true that it reserves, apparently reserves to the state the power to regulate mitigation. Local governments have every power to regulate land use and protecting wetlands, as Heidi said on Tuesday. However, if you read that statute, it clearly contemplates and mentions and assumes that local governments may and do from time to time adopt regulations on mitigation that may be stricter than the state. When that happens, the statute says that the state's permit would rule unless you can reconcile those differences with the state.

I think this is an opportunity for us. We're not doing anything illegal. I respectfully disagree, Mr. Chair, this is not an illegal step for the county to take. It's contemplated in the statute. It may be strategically ineffective in terms of implementing, but it also sends a message to the state, which I'm telling you they're hearing. And I think it's an important message.

I think we ought to open up a dialogue to say we're losing wetlands and we're not happy about that. We want to have a dialogue with you, South Florida Water Management District, Department of Environmental Protection, on how we can better protect our wetlands. And this is what we think. One way is to reserve exotics clearing alone for only secondary impacts. That's why I suggested to you that we keep this policy and modify it as that.

I hope I'm making myself clear. I don't at all believe I am suggesting to you an illegal action. I think it's completely within the state regulations, and I think it sends an important message.

CHAIRMAN STRAIN: And I think the illegal part of that this is simply a decision by the attorneys who have weighed in on it. They're -- each attorneys are going to have different positions. And so I happen to have read it, and my limited ability to understand some of the legalese, I would tend to agree more with the attorneys who have weighed than it is improper or illegal to do. In comparison to Florida Statutes, I understand your position though, so -- Paul.

COMMISSIONER MIDNEY: Yeah, I think the word reconcile is very interesting. Because reconcile means an active process. It's not that the county or the one not in the state has no validity whatsoever. The word reconcile means that there's going to be some kind of dialogue, and that would open the door I think to saying that they may not be in agreement and they still might be reconcilable.

CHAIRMAN STRAIN: Okay, anybody else?

(No response.)

CHAIRMAN STRAIN: Thank you, Brad.

MR. CORNELL: Thank you.

CHAIRMAN STRAIN: The next public speaker, registered or otherwise.

Mr. Yovanovich, are you going to talk?

MR. YOVANOVICH: Yes, sir, if you don't mind. I didn't register --

CHAIRMAN STRAIN: Well, it wouldn't matter, would it? No, I'm just kidding.

MR. YOVANOVICH: No, it wouldn't.

For the record, Rich Yovanovich. And I do have one client who has recently had a project approved, Hacienda Lakes, that is directly impacted by this proposed regulation. And there are others out there that will be

impacted by a determination on whether the removal of exotics counts towards mitigation or not.

I think it's important to do just a brief history lesson back to 1999, as the Chairman indicated. Basically the rural fringe area and the Eastern Lands were shut down while we came up with appropriate regulations for lands that were out east. What ended up happening is we created two different areas. We created the stewardship lands, which were further east. And then we had that middle portion which is the rural fringe mixed use district.

Now the rural lands, the stewardship areas, had few property owners, and they took it upon themselves to develop regulations that they could support that would address the appropriate mechanism to allow development to go forward while at the same time allow for the preservation of important environmentally sensitive lands. And they came up with the concept of sending lands and receiving lands out in the rural area.

And when they came up with that concept, they also came up with a concept that was supported by environmental groups, that you could impact wetlands and you would apply the same standard for the impacted wetlands as you apply in the urban area, i e, you get credit for impacting -- or for removing exotics as part of the mitigation for impacting wetlands.

Now, you had that concept out there. Good concept. Few property owners. That concept was then applied to those many thousands of property owners in the rural fringe mixed use district that then had the same concepts applied to them, sending lands and receiving lands. Now, they were small number of property owners. This was a program that was implemented further east with a small number of property owners that made sense. So you had TDRs.

So sending lands became undevelopable lands. You changed the development standards. You said these are going to be preserves, and in return you're going to get as currency a TDR. Initially that didn't work and we changed it to where you got bonus units to hopefully stimulate the program. Because again, you're trying to compensate those people who formally had development rights that you took away from them by making them sending lands. And where they could take those TDRs is to receiving lands.

When this was going through the process, there was no prohibition of using exotic removal as mitigation. It was inserted, we all know how it became inserted. It was not vetted in front of the Planning Commission.

The development community became aware of what happened, and frankly the amendment you have from your staff was in fact proposed by the development community. So it came from some stakeholders. So that original language that you had was stakeholder language.

The stakeholders -- and with all due respect to us not being here, there has never been an exact day where we were going to hear this thing. And it kept moving around. There were days I was here, I had to leave. There were days Mr. Mulhere could be here, he had to leave. Today he can't be here, so I'm here. So we are here, and Bruce has been here for many of the meetings. So we are here to advocate language we as a stakeholder group advocated in the first place.

Now, I think you have a lot of legal issues with this language. One, I don't think there's any scientific justification for treating wetlands in the rural land stewardship area differently than wetlands in the rural fringe mixed use district. They were both part of the order to slow down development, or until we can address environmentally sensitive lands. They were all lumped together. I don't think you provided any scientific information or justification for saying removing exotics is okay for mitigation in the stewardship area but the removal of exotics is not okay in the rural fringe mixed use area. So one, I think you have an equal protection argument, you have no scientific basis for it.

Two, the purpose of the LDC is to tell the property owner what they can or can't do with their land. This does not do that. All it tells me is there's going to be some amorphous mitigation process out there if you impact -- primary impact a wetland in the rural fringe mixed use district. It doesn't tell me what my mitigation will be, it doesn't tell me what the process will be to determine it. It just says there's going to be something out there that you're going to have to pay for impacting wetlands, but we're not going to tell you what it is. So I think you have a vagueness problem, which I think is legally unenforceable. I think it tremendously impacts the TDR program.

I will tell that you in order for TDRs to come in, they've got to come into receiving lands. Receiving lands have got -- if they have got to impact, pay additional mitigation for impacting wetlands within that receiving area and also pay for TDRs, I will tell you that economically there's going to be a breaking point and people are not going to buy the TDRs. People aren't buying the TDRs right now. It's a fact. They don't justify the price that you have to pay today to get a TDR if you throw additional costs on there because you're saying you're going to impact receiving areas so you can bring those TDRs in, people are just not going to buy the TDRs, they'll scale back the impact, and you will

have harmed everybody in the sending areas who you gave them as compensation TDRs because you took away their development rights to protect the environment.

You have heard for years that county staff doesn't have the expertise to implement a wetland program. You have not been told what this program's going to cost, how many staff new people are you going to need to come up with a program and then implement the program. You've not been provided any of that data, and you have heard throughout for the many years that staff says they're not capable of doing it. They are going to need to hire new people. You haven't been provided any of that information. You should have that information before you decide to implement a program that's going to be costly to the taxpayers. And you haven't told us as developers what's it going to cost us in additional mitigation. You're just going to adopt a policy when nobody knows the fiscal impacts without any analysis.

There's an existing wetland permitting process when you go through the state. Everything's cyclical. Years and years ago, they didn't want county employees, they being environmental groups, didn't want county employees making these decisions, so they transferred everything up to the state for the state to make those decisions. Now they're unhappy with how the state's making decisions, they want to bring it back home, and we don't have any ability to regulate it back home.

So I ask you some questions as I'm leaving today. Why is the rural fringe mixed use district being treated differently than the stewardship area? There's no scientific basis for it.

Two, what is the standard that I go to tell my clients today when you -- if this gets adopted, that they will need to meet? It doesn't exist.

And three, I'd ask you to tell me what reconciled means. I don't think you all can do that. I think that's a difficult concept. I would be interested to hear what the Planning Commission thinks the term reconciled means. I'd be interested to hear what the County Attorney thinks the term reconciled means. I don't know what it means. I can't leave here today and tell my client what they need to do. I don't think Bruce can tell his clients what they need to do.

So we request that you go back with the language that is consistent with the rural land stewardship area, which is exotics can be used as part of mitigation. It would be treating similarly situated wetlands the same. It would be putting people in the rural fringe mixed use district on the same footing as those in the urban area and in the rural land stewardship area. It would be consistent with what we all thought was happening in the first place when this program was going into place. And it would be consistent with the science.

So with that, I ask that you go back to the language as originally proposed, which was to remove the prohibition on counting exotic removal as mitigation for lands within the rural fringe mixed use district.

CHAIRMAN STRAIN: Anybody have any questions?

(No response.)

CHAIRMAN STRAIN: Thank you.

Are there any other public speakers on this issue?

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

CHAIRMAN STRAIN: Okay, I guess the discussion then is for the Planning Commission to decide how to move forward with this particular amendment.

Paul?

COMMISSIONER MIDNEY: Yeah, I have a question. Why was it -- this is to staff. Why was it only applied to the rural fringe and not the RLSA?

CHAIRMAN STRAIN: In answering that question, if you know that answer, I'd like to know when then it was you decided that to insert it.

MR. LENBERGER: I don't know the answer for sure, but I can tell you this. The final order came down, we had to address the rural lands outside the urban area, and county staff worked on the rural fringe. And the rural lands owners took it upon themselves to write their own regs. So county staff was involved with the rural fringe.

But the rural lands, the owners out there wrote their own program. So the language here that county staff has is what they wrote for the fringe.

COMMISSIONER MIDNEY: That's interesting.

CHAIRMAN STRAIN: So you're saying the county staff wrote the language that has the removal of the exotics not to count as mitigation. Then why didn't they present it to the Planning Commission when this came up for LDC amendments for the rural fringe back when?

MR. LENBERGER: I was referring in general to the rural fringe, not the specific --

CHAIRMAN STRAIN: Let's talk about the specifics, since that's where the question was really coming from, since that's what we're discussing today --

MR. LENBERGER: The specifics, I can't answer that. The back-up data I gave you shows that it was added. The item was discussed by this board, clarification of that exotic removal. I wasn't involved, so I'm sorry I can't give you any history there, all's I can do is what I've read, and I gave you the information.

We did have consultants working, and I copied the page from the executive summary so you can see how those consultants were. But the language, from what I see, was added after the discussion of the Planning Commission. Then it went to the Board. That's when it appeared. I was not involved so I can't answer the specifics.

CHAIRMAN STRAIN: Do you think this language was vetted with any of the stakeholders, do you know?

MR. LENBERGER: Given the sort amount of time between the Planning Commission and when that language was prepared for the Board for their first hearing, which they actually didn't hear the item till their second hearing, I would say no, because I believe it was just a couple of weeks at the most.

CHAIRMAN STRAIN: Thank you.

COMMISSIONER SCHIFFER: Mark?

CHAIRMAN STRAIN: Yes, sir.

COMMISSIONER SCHIFFER: On that, could the language have been added at the request of the Planning Commission during the hearing?

MR. LENBERGER: The minutes which I did send you show the item, the one Brad Cornell came up for discussion talked about exotic removal, that was a requirement anyway. And about whether -- how you applied to exotics, it really wasn't really clear, just that it was discussed and that it would be clarified. That's all it had. It was very vague.

CHAIRMAN STRAIN: Unfortunately nobody on this board today was here on that board in '99 or 2000 or whatever year it was in. So we kind of lost the ability to be there.

Okay, anybody else have any questions?

Bill?

COMMISSIONER VONIER: Well, I sort of had a change of heart, because I think, listening to all this, I think we're making a mistake by creating a conflict. And I think that's going to come out and bite us down the road. And I think we should back off now because we are creating a conflict. And I think we shouldn't be walking into those waters blind, so to speak. So that's my feeling.

CHAIRMAN STRAIN: Thank you. Okay, anybody else?

COMMISSIONER EBERT: I'm going to ask Ray, were you here at the time, do you have any more to add to this?

MR. BELLOWS: I was here, but not involved in this issue. So I have no --

CHAIRMAN STRAIN: There's not too much -- a lot of history in the county, but it's not all on the same subject, unfortunately, so -- Phil?

COMMISSIONER BROUGHAM: Is there anybody on staff that was here and involved in this issue?

MR. LENBERGER: Yes. In the executive summary I gave to you, the Board hearing, it had the consultants that we hire, and one of the consultants was Bob Mulhere. And the only staff member I see is Bill Lorenz.

CHAIRMAN STRAIN: Okay. We've had more discussion, more presentation, more public involvement. We need to bring this to a resolution, if we can.

Is there any motion from anybody at this point in time?

COMMISSIONER MIDNEY: Yes.

CHAIRMAN STRAIN: Go ahead, Paul.

COMMISSIONER MIDNEY: I would like to move that we adopt the language that was presented to us today, which is that the exotic vegetation count towards mitigation for secondary impacts only, not dredge and fill.

CHAIRMAN STRAIN: Is there a second?

COMMISSIONER SCHIFFER: Second.

CHAIRMAN STRAIN: Second by Brad. Is there discussion?

COMMISSIONER KLEIN: Is that Mr. Yovanovich's position?

CHAIRMAN STRAIN: No, no. Paul is saying he's supporting the position that was established on Tuesday

for language change. The language that's in front of us is the result of that. And now he's saying he supports this language. And that's what the second is saying; is that correct?

COMMISSIONER SCHIFFER: Yes.

CHAIRMAN STRAIN: Okay. Now I'm asking for discussion. Does anybody have any discussion?

I mean, I certainly do not support this motion. I support staff's original recommendation to strike it, out of fairness in particular, out of lack of going out, proof that it went out to the stakeholders, secondary. And I just think it's the wrong thing to do.

If it can come back through an effort through the staff to do it if it's needed, to go through a stakeholder involvement process that is focused on the rural fringe, that's fine. But this didn't happen that way from all we can -- we have no proof it happened that way originally. I don't know that it did. And I certainly don't feel that it has, based on what we've heard, so --

COMMISSIONER KLEIN: I espouse your thinking, Mr. Chairman.

CHAIRMAN STRAIN: Okay, anybody else?

Go ahead, Brad.

COMMISSIONER SCHIFFER: First of all, it is the stakeholders that presented this thing to be there. So they're aware this is happening. And we haven't seen really much testimony. I mean, Rich's today is the first we've hear from Rich.

I mean, we could cure the problem --

COMMISSIONER HOMIAK: They wanted it removed.

COMMISSIONER SCHIFFER: They wanted it removed, then they're not in here telling us why.

COMMISSIONER HOMIAK: They just did.

COMMISSIONER AHERN: They just did.

CHAIRMAN STRAIN: They just did. He spent 20 minutes telling us why.

COMMISSIONER SCHIFFER: In Rich's mind. But anyway, I mean, are the stakeholders just represented by Rich, everybody?

MR. YOVANOVICH: Can I?

CHAIRMAN STRAIN: Well, no, no, we're going on with our discussion. No, there's no rebuttal to rebuttal to rebuttal, we'll just get done with it today. I mean, that's Brad's opinion on what he heard and he has absolute right to see it that way, so --

Is there any more? Phil?

COMMISSIONER BROUGHAM: Yes. I'm not a scientist and I haven't served on this board for more than six months. I wasn't here in 1999, except living in my house in Fiddler's Creek.

When I joined this board, maybe I mistakenly understood that we should rely upon sworn testimony put forth before this board by experts or non-experts or opinions. I've heard some testimony, my words, characterized as opinions. Well, everyone has opinions.

But I'm an amateur in a lot of these issues. I'm not a lawyer, and I rely upon what attorneys swear to in front of here. I rely on what I hear from county staff. I also give credence to what we hear from environmental people, from The Conservancy and so forth. I don't think they would be up here, quote, unquote, lying. They're expressing their opinion.

In my opinion, without actually seeing the reports that Brad alluded to and would make available to this commission, he has stated that there's evidence in those reports that the state has not been adequately administering their permits. And I for one have to give some credence to Brad's opinion on that. I don't know the distinction I'm trying to make here, but I for one don't have the time or inclination to go around and research law, I rely on the County Attorney for that. Nor research scientific findings and conclusions and modeling and so forth and so on. I don't know that that's a responsibility of the commissioners that sit here. So I rely upon testimony or opinions from people that are professionals in their line of work before this board.

Editorial is finished.

CHAIRMAN STRAIN: Paul?

COMMISSIONER MIDNEY: Yeah, with regard to your point, Mark, that there wasn't due process when it was adopted I guess back whenever that was, that may be true, but I think we are having due process now because it is an LDC amendment, everybody's aware of it. If they weren't aware before, they certainly are aware of it, and it's

coming before the Planning Commission now. So I don't agree with your point that it's not due process to have this considered the way it is.

CHAIRMAN STRAIN: Understood.

Anybody else? Melissa?

COMMISSIONER AHERN: I just wanted to follow up on Bill's comment. If you've ever had to go through the state permit process or deal with it at all, I think you would probably have a different opinion as to what they are or are not enforcing.

And to Rich's point, at this point we have no analysis from the county of how they're going to regulate this program, what it's going to cost and if that's going to be an additional burden as well.

So I think I agree with Mark, there's a lot of issues that need to be worked out before adopting.

CHAIRMAN STRAIN: Okay. And I think that wraps up the discussion. So we'll call for the motion. I'm going to ask that you signify by -- if you're in -- now, the motion on the table right now is for approval of the highlighted yellow document that's in front of us today.

All those in favor of that motion, signify by saying aye and raising your hand.

COMMISSIONER BROUGHAM: Aye.

COMMISSIONER MIDNEY: Aye.

COMMISSIONER SCHIFFER: Aye.

CHAIRMAN STRAIN: One, two, three in favor.

All those against, same sign.

COMMISSIONER HOMIAK: Aye.

COMMISSIONER EBERT: Aye.

COMMISSIONER KLEIN: Aye.

COMMISSIONER AHERN: Aye.

COMMISSIONER VONIER: Aye.

CHAIRMAN STRAIN: Aye.

Okay, it would be 6-4, so that's six to -- six against, I mean, three in favor. So the motion fails.

Is there a another motion?

COMMISSIONER AHERN: I'll make a motion to strike the language. I think that was staff's original?

CHAIRMAN STRAIN: Yes, staff's original request.

COMMISSIONER VONIER: Second.

CHAIRMAN STRAIN: Motion made to strike the language pursuant to staff's original request and seconded by Bill.

Now for discussion.

MR. LENBERGER: I just wanted to mention too, though, if you're going to do that, just also include all the other corrections and reformat we did.

CHAIRMAN STRAIN: Right. I believe that was the intent. We'll verify it, and I was going to do that. But thank you.

And Melissa and Bill, the comment is that there are other corrections that weren't effective in regards to just the exotic removal. Melissa, your motion was specifically to strike the original language proposed by staff to omit the exotic removal from the rural fringe. But do you accept the other needed corrections in this document?

COMMISSIONER AHERN: Yes.

CHAIRMAN STRAIN: Bill?

COMMISSIONER VONIER: Yes.

CHAIRMAN STRAIN: The second. Acknowledged by the motion maker and second.

Discussion?

(No response.)

CHAIRMAN STRAIN: All in favor of the new motion signify by saying aye.

COMMISSIONER HOMIAK: Aye.

COMMISSIONER EBERT: Aye.

COMMISSIONER KLEIN: Aye.

COMMISSIONER AHERN: Aye.

COMMISSIONER VONIER: Aye.

CHAIRMAN STRAIN: Aye.

And raise your hand please, so we -- one, two, three, four, five, six in favor.

All those against.

COMMISSIONER BROUGHAM: Aye.

COMMISSIONER MIDNEY: (Indicating.)

COMMISSIONER SCHIFFER: (Indicating.)

CHAIRMAN STRAIN: Three against. So it's the motion carries, the language is being struck. And we appreciate the time and effort everybody here today put in. Thank you for your input.

And with that, we'll move into the next item that we want to get for public attention -- from the public's benefit, is the dock issue that is up next.

MS. CILEK: There are -- Caroline Cilek for the record.

There are two LDC dock amendments. The first was provided in your packet and was sent out last week. And there's a new one in the packet that was distributed this morning. And you could pull them both out. And all of the changes are on -- well, the substance of changes are on Page 5 of both documents.

CHAIRMAN STRAIN: I would like to suggest too that because of some of the changes that this will need to come back again after it has been properly re-vetted to the stakeholders involved. Because obviously some of the changes are going to have a -- could have a substantial impact that we don't know about today.

MS. CILEK: Right. And as you'll see on the new LDC amendment passed out today, there is a section that's highlighted in blue under little 4.b. And this language is at the request of Commissioner Brougham. And he will be introducing this language.

CHAIRMAN STRAIN: And the next time a Planning Commission requests language to be introduced to the board we should continue as we always have in the past that the commissioner introduces it during the board hearing instead of staff bringing it forth as a possible staff accepted position. And I don't know, Phil's new so he probably -- that's a different --

COMMISSIONER BROUGHAM: That's what they informed me of --

CHAIRMAN STRAIN: Oh, okay, well, I --

COMMISSIONER BROUGHAM: -- that's what I'm going to do.

CHAIRMAN STRAIN: That's not how we usually -- yeah, but usually staff doesn't send it out as language already put into the document.

MS. CILEK: Right. We're both new. That will happen from now on. Today you have it before you and it's highlighted in blue so to separate it from that. And he'll take it from here.

COMMISSIONER BROUGHAM: I don't know if I'm allowed to.

CHAIRMAN STRAIN: Yeah. No, that's the way --

COMMISSIONER BROUGHAM: No, at the -- when we talked about this particular amendment the first time, I was not totally comfortable with the words -- wording that was in there, which basically stated that the petitioner shall demonstrate. And that's the word I had a quarrel with, compliance with subsection 5.03.06.J, if seagrass beds are present and so forth within 200 feet.

Subsequent to that, there was a meeting arranged by Caroline with Steve Lenberger, myself, Caroline, Nicole Johnson and Kathy Worley. Kathy Worley was The Conservancy scientist that testified before us in The Dunes petition on seagrasses. We met earlier this week and went around and around to some extent regarding where we could grab something of substance which would have a petitioner demonstrate that they've used due diligence in a seagrass survey.

And the language that you see in here was a consensus agreement, and I believe amongst everyone, that basically says what you can read here, a submerged resource survey, seagrass survey, shall be required for docks located in natural water bodies or along shorelines without seawalls. And the distinction there is if you have seawalls on each side of a waterway, it's normally a canal. Including those adjacent to rip-rap and water depth equal to or less than six feet measured at mean low water.

Surveys should be conducted during the months of June through August, which was a direct input from Ms. Worley as to that. If you have seagrasses present, they are going to show their little sprouts normally during that period of time. Shorelines completely within canals or seawall basins shall be excluded from having to perform this

survey.

And that's the substance of the language. I believe that it reflects scientific input and certainly satisfies my concern about what we're going to require a petitioner to demonstrate or not demonstrate.

CHAIRMAN STRAIN: During this meeting that was held between the environmental staff, the code writer for staff and two members of a private conservation group, did you have any other stakeholder representatives like Turrell and Associates who represent 90 percent of the dock presentations before the Board? Was any of their expertise asked for just in case it may have a different -- differing opinion or view than maybe the other organization did?

MS. CILEK: No, this language has not been vetted by any of the advisory boards or other stakeholders. It was sent out yesterday and is new language that was requested by Commissioner Brougham.

CHAIRMAN STRAIN: When you called up Nicole and her group, why wouldn't you call up Todd Turrell's group, why weren't they called?

MS. CILEK: The meeting was at the direct request and those who attended were at the request of Mr. Brougham.

CHAIRMAN STRAIN: Okay.

COMMISSIONER BROUGHAM: Shame on me?

CHAIRMAN STRAIN: Well, Phil, I think that the stakeholder, that both sides to be involved is a much more balanced way to approach it. That's the only thing I was --

COMMISSIONER BROUGHAM: Mark, I'm certainly not looking for imbalance in this. I wasn't comfortable with vagueness. And I've heard you say the same thing, vagueness is not good for this board. So okay, staff or anyone, tell me how a petitioner, we can request a petitioner to demonstrate compliance without being more specific. And so that was the genesis of my request.

Next time I'll say your request that we have, and I'm happy to go to a list of consultants, let's have this list of other people that might have a concern or input invited to the meeting. I didn't do so, so --

CHAIRMAN STRAIN: I would suggest that it might be easier just to limit with staff, as I do, I've had plenty of meetings with staff on various issues. And then when it comes to this meeting, the consultants that do show up and the people involved, we can see to what extent there are, and if there's not enough, we go out. And if it's a stakeholder issue we go back to the stakeholders.

COMMISSIONER BROUGHAM: Take your point. The issue here was in my opinion there's no one on staff that is a scientist who specializes in seagrass. That was the issue. Because, no harm, when I'm asking yourself about seagrasses and where they occur and et cetera, you know, I get some deferment because you're not an expert and you don't profess to be. And what we heard was evidence or testimony from an expert, so --

CHAIRMAN STRAIN: Okay. Phil, I'm just -- all I'm -- I mean, I'm back to where I'm trying to make sure there's a balance in the way things are presented, so --

COMMISSIONER BROUGHAM: No offense, no offense.

CHAIRMAN STRAIN: -- we just need to make sure at all times everybody that can be -- if we're going to open it up, we should open it up to everybody or both sides --

COMMISSIONER BROUGHAM: Well, I'll rely on staff to keep me on board with the proper procedures in the future, so --

MR. BELLOWS: For the record, Ray Bellows.

I thought of this as the first step. We'll bring it to your attention today for the CCPC direction. And the direction is to go back to get all the stakeholders. That was kind of the idea.

CHAIRMAN STRAIN: Yes. I think -- okay.

MS. CILEK: This is of substance, so this would be best -- be brought back through all of the advisory boards.

CHAIRMAN STRAIN: Okay, then I will refrain from trying to comment on the particulars of this request because I will wait for it to come back. But there may be others who may have comments. Anybody from the Planning Commission? This is going to come back to us. But do you have any comments today.

COMMISSIONER SCHIFFER: I do.

CHAIRMAN STRAIN: Go ahead, Brad.

COMMISSIONER SCHIFFER: And it's on Page 5, double ii up at the top. We're eliminating the

requirement that maximum boat length, that the facility can be 50 percent of the property line. So I guess we're getting rid of that as a requirement.

And again, the intent was in the early days these were all wharf docks and they wanted to restrict that. But I think that what we should do is restrict the dock facility to be no greater than 50 percent. So that means if you're alongside parallel with the seawall and you have one boat, you're 50 percent. If you're perpendicular, all of those perpendicular docks can exceed 50 percent.

MS. CILEK: If you look at the new amendment that was put forth this morning in the new packet, we've actually been working on this language. It's a tricky criterion. And what we're proposing to have is that -- so it's not -- which are not perpendicular to the waterfront. Instead -- sorry, just misplaced my LDC amendment -- rather it would be for single family dock facilities the configuration of the dock facility, which includes both vessel and dock that is parallel to the shoreline. So the nexus is the waterfront property and then what is parallel, part of the dock facility that is parallel to the shoreline shall not exceed 50 percent.

So I have three different diagrams to kind of illustrate how this would unfold. And we feel like tweaking this language, which is reflective of what's currently there, will help staff make sure that it is enforced the same way each time.

So if you take a look at this diagram, you'll see that the combination of two boats and a six-foot dock exceeds the halfway mark of a 60-foot lot. So it's 26.

COMMISSIONER SCHIFFER: Wait a minute. How many 60-foot lots are we going to find on canals?

MS. CILEK: We use just used a general lot width of 60 to show these because that's the smallest one. But it could be any lot that's larger, and you would have different setbacks for each one.

COMMISSIONER SCHIFFER: Yeah. I mean, you're being to go find the generic lot width is not 60 feet. They're all much larger. I mean, if you want to maybe give a variance for a 60-foot, that might make sense.

MS. CILEK: We're not asking that. We're just -- it could be 100 feet, and then 50 percent would be 50 feet, right. And you could say that, and this would actually meet that. Because we're -- if it was -- did I say 100 feet? So 50. So this would be fine, because it's 26 feet. Sorry. Lots of numbers.

I have a couple of --

COMMISSIONER SCHIFFER: My point is that you're trying to prove something based upon the smallest lot possible.

MR. BELLOWS: Correct.

COMMISSIONER SCHIFFER: And I'm concerned about something based upon the normal sized lot.

MS. CILEK: I think the numbers can be extrapolated to those larger lots. I mean, you would just --

COMMISSIONER SCHIFFER: Let's see the other.

MS. CILEK: Okay. So here there's an L-shaped dock. And so the configuration that we would be looking at was from one side of the boat, right here, and then all the way across until the end of this boat. So including the L shape. And this, this 25, I believe it says, would be what would be measured against the 50 percent of the lot.

COMMISSIONER SCHIFFER: Yeah. I mean, then maybe the wording here is confusing. Are you saying in ii that the boat dock facility can't be greater than 50 percent? Because --

MS. CILEK: No.

COMMISSIONER SCHIFFER: -- you're using the word parallel. Or are you saying that only -- because you're only referring to one type of dock, essentially the wharf dock, the one that's parallel.

MS. CILEK: Three different docks. The other one is -- and first off, if it didn't make the administrative criterion -- or didn't make the administrative approval, excuse me, it would come to the Planning Commission. So any of those that are over 50 percent.

Let say we have an angle dock. So in this case you would measure all the way across that area that is being taken up along the shoreline, which would be all of the dock.

CHAIRMAN STRAIN: In the case of a 60-foot lot this wouldn't work then.

MS. CILEK: No, because that is 37.

CHAIRMAN STRAIN: Right.

MS. CILEK: But it still could be 37 on an 80-foot lot and that would work. You would have three feet of room for 50 percent.

COMMISSIONER SCHIFFER: So maybe I'm -- okay, the wording of this says for single-family dock

facilities the configuration of the dock facility vessels and dock that is parallel to the shoreline. So you're not referring to the design of the dock being parallel, you're referring that the -- it is that dimension that is parallel. Okay, it's not really well written then --

MR. BELLOWS: We can fix it.

COMMISSIONER SCHIFFER: -- let's work on that, then. Because I've got -- because the last one you sent out said perpendicular docks --

MS. CILEK: I understand. I understand.

COMMISSIONER SCHIFFER: -- and then this one looks like you went to describe it the opposite. But --

MS. CILEK: We worked with Heidi on this and she did feel it was clear. Do you have any idea of what you would think would be clear if this is the type of --

COMMISSIONER SCHIFFER: Yeah. I just think for single-family lots, dah, dah, dah, dah, the configuration of the dock facility, parentheses, vessels and dock, shall be measured parallel to the shoreline and not exceed 50 percent. Okay.

So we, actually we're in agreement. Because what you're showing here is not the need, you're showing here that some on small lots are going to have a difficult time making it work, as they should. I mean --

CHAIRMAN STRAIN: So what you're saying, though, is they wouldn't make a difference whether it's perpendicular or not --

COMMISSIONER SCHIFFER: Right.

CHAIRMAN STRAIN: -- it's just the facility itself is more than 50 percent then you got a problem.

MR. BELLOWS: That's why we showed the three examples.

CHAIRMAN STRAIN: His way of saying it might be a simpler way for it to be understood. Basically, the facilities can't be more than 50 percent width of the lot, period.

COMMISSIONER SCHIFFER: Yeah.

MR. BELLOWS: Yeah.

CHAIRMAN STRAIN: Whether it's perpendicular upside down, or crossways, don't matter. I think that's a clarification, it would help.

Go ahead, Bill.

COMMISSIONER VONIER: I was concerned that we had totally forgotten about the dock that was going to be parallel to the shoreline. But what Brad says covers that.

COMMISSIONER SCHIFFER: Yes, we're covered.

COMMISSIONER VONIER: It covers everything.

COMMISSIONER SCHIFFER: Then my next question is iii, 30 feet, you moved it to 40 feet where the setbacks change, why?

MS. CILEK: Right. We actually just want to talk about this one in general. We were brainstorming ideas of how for large -- excuse me, docks that protrude pretty far out in the water, how to get them so that, you know, they're centered on the parcel, and that the mass of the boat, which we felt was something that was discussed at the last meeting, would be on that person's property rather than closer to someone else's.

So we wanted to gauge how you felt about this concept and then go into the feet number.

COMMISSIONER SCHIFFER: We're given 20 feet. We're allowed to do that now. And that's what everything was written for. So what you're saying is that as the dock gets 40 feet, which means administratively you've given them another 20, it's only at that point you start pulling it into the setbacks --

MS. CILEK: Because it is an extension, they're probably going to be quite a couple feet over the 20 to begin with, that's why they're coming in.

COMMISSIONER SCHIFFER: And the most you can give in the administrative is 40, correct?

MS. CILEK: Correct.

COMMISSIONER SCHIFFER: Okay. So theoretically, a 60-foot dock --

MS. CILEK: Is halfway.

COMMISSIONER SCHIFFER: -- would have 20 more feet of setback on each side or --

MS. CILEK: Uh-huh.

So at the 40-foot level we sort of did the numbers and we felt that that was the -- at that protrusion level they could actually have a boat out there. At the 30 it was a little restrictive in length, even having a boat and a dock up

there was getting really crunched. And when we proposed the 30 we hadn't done the numbers yet, we hadn't crunched numbers.

COMMISSIONER SCHIFFER: So the concept is, though, on that typical 100-foot lot, at least typical in my district. The -- actually what would start to happen is the setback would start to increase such that you'd have to -- the 50 percent would even be trumped by the setback increase.

MS. CILEK: Yes. Well, 50 percent would be one criterion. This would be another, that if you're over a certain threshold. It's kind of like a wedding cake, kind of goes up --

COMMISSIONER SCHIFFER: The 40's fine. If it was any smaller, it would really start to constrict, but --

MS. CILEK: It would. And we talked to Heidi about it, and she was a little concerned that it might be very restrictive. And first we want to see if you guys even gauge your idea on it, and then talk about the footage.

COMMISSIONER SCHIFFER: All right. I'm good with that.

CHAIRMAN STRAIN: The only question -- go ahead, Phil, I'm sorry.

COMMISSIONER BROUGHAM: I'd like some comforting words regarding the -- what's being proposed, which is an administrative approval. And which would not come -- granted, would not come before the Planning Commission.

And if I'm understanding correctly, if we were to go forward and this were to be adopted, then staff would be reviewing the petitions for boat dock extensions. And if in your judgment all the criteria was met then you would grant the administrative approval. Is that -- am I understanding that correctly?

MS. CILEK: I don't know if it's our judgment, but if the dock was laid out and met the criteria --

COMMISSIONER BROUGHAM: If you find that all the criteria, the primary and the secondary were met, then you'd grant the administrative approval; is that correct?

MS. CILEK: They have to meet all of them.

COMMISSIONER BROUGHAM: All of them. What concerns me is that in the past recent history we've had a number of boat dock extensions requests come up here where -- and I'm sorry, I don't have the exact quotes, but where I believe staff has stated the criteria has been met, whether it be primary or secondary, and then in the hearings before this board we found quite to the contrary, particularly in the area of undue hardship, et cetera, et cetera, et cetera. And that concerns me a bit that we're losing some of our oversight there. Not to be overly critical of staff. But I believe that's happening.

And that concerns me that some issues that this board has picked up on and actually rejected boat dock petitions or extensions might have gone through if this amendment goes forward. And just a question. I would like some rationale behind it.

MR. BELLOWS: I think I can give you some assurance. If there's a boat dock that doesn't meet any of the criteria or one of them, it automatically goes to the Planning Commission.

Two, the ones that were denied recently had variances associated with them. They would automatically come --

CHAIRMAN STRAIN: None of those would qualify for the administrative review because it would have been kicked out because they don't meet the minimum criteria.

COMMISSIONER BROUGHAM: What if a variance was not associated with it?

MR. BELLOWS: If the variances were not associated with it and with the limitation we're trying to impose to keep them to be the minimalist type of boat docks that everyone would have assurance that there aren't any real issues, then those would be something that, based on previous direction from the Planning Commission, is something that we thought that you'd want not to be bothered with.

But if it was a long dock exceeding the limits that we've outlined, then those would automatically come to --

COMMISSIONER BROUGHAM: Don't misunderstand, I'm all for having government get out of way where appropriate and to make life easier for the residents of the county, and within certain boundaries. But we've had oversight on boat dock extensions and variances for years, or historically. And if we're going to give up that prerogative to staff, then I for one would like some assurance that there are at least criteria or additional criteria that -- or considerations that staff will bring to some of these and say, whoops, you know, I remember precedent in the past where this was an issue before the planning board so perhaps we shouldn't approve it, perhaps it should go.

I don't know what I'm asking for, I'm just uncomfortable in losing what oversight we've had in the past on this, in view of the recent ones.

CHAIRMAN STRAIN: But I know you're new on the board, but we have asked staff repeatedly to look at the simpler boat dock extensions and not bring them before us because it was such a costly burden for the public to have to go ahead and hire experts to come in with all kinds of studies and things on a boat case that was so slam dunk it really didn't make any sense them force them to spend the money and time to come here.

COMMISSIONER BROUGHAM: I have no disagreement with your statement.

CHAIRMAN STRAIN: Okay, well that's all that this -- that's all that this is alluding to, Phil. That's all that this was -- and then the examples that were recently used, neither one would apply to this, because both of them had setback violations, which they couldn't even come in here for. So they'd be back before this board anyway, because staff couldn't have done them.

That's what I think the purpose was. We started this years ago, trying to get this in the works.

COMMISSIONER BROUGHAM: I'm not trying to be argumentative. I agree with the spirit of what this is trying to accomplish. My concern is in the past, within the last six or eight months, irrespective of whether a variance was applied or in conjunction or not, there have been primary and secondary criteria that the staff has agreed that the petitioner has met that we disagreed. And that's --

CHAIRMAN STRAIN: Phil, I didn't recognize anything you've said as argumentative. I'm simply trying to tell you the history that you weren't here for. I wasn't arguing with you.

COMMISSIONER BROUGHAM: No, I accept the history.

CHAIRMAN STRAIN: Okay.

COMMISSIONER SCHIFFER: Mark, a question.

CHAIRMAN STRAIN: Go ahead.

COMMISSIONER SCHIFFER: And, Phil, one of the things I was going to ask at the time we vote, which obviously is next time, is that out of courtesy, that maybe staff could send us electronically, no, don't waste paper, just, you know, as they approve them just send them to us, just so we can just, you know, no authority, I nothing other than just look over your shoulder.

MS. CILEK: Oh, for those that are approved administratively?

COMMISSIONER SCHIFFER: Yeah, just for awhile until we tell you to cut it out, you know. But --

MS. CILEK: I'll let Ray speak to that. That's a process --

COMMISSIONER SCHIFFER: But you're going to have an application and you're going to have some sort of a judgment letter. So I mean, just copy us on that when it's done, with the understanding that we can't do anything other than watch it. And if we have a problem we could bring it up on our agenda someday.

COMMISSIONER BROUGHAM: That's my only concern. And it may be a false concern, that's all. I'm all for simplification where it doesn't lose proper oversight.

COMMISSIONER SCHIFFER: And the other thing is I've looked at Phil's language, and I'm comfortable with that. I think, I'm not sure if the industry's going to have a problem with it. It does kind of set boundaries stating that don't measure anything deeper than six feet and stuff like that. May save people money wasting time measuring stuff.

So other than you have to do it between -- in the summer months could be a problem for somebody coming down in the winter trying to get a boat dock permit. But other than that, I'm fine with that.

CHAIRMAN STRAIN: Okay.

MR. BELLOWS: Mark?

CHAIRMAN STRAIN: Yes, sir.

MR. BELLOWS: I have one suggestion in regards to Brad's concern and Phil's concern. If an administrative boat dock extension is approved by staff, we could put it on the next CCPC consent agendas just to show you what has been approved by staff.

CHAIRMAN STRAIN: Don't put it on consent, but do it as just regular information on the staff report. Don't do it consent because then we have to vote on it, so.

COMMISSIONER SCHIFFER: And Ray, I'd suggest just send an email out. Don't even make it cost money, I mean.

MR. BELLOWS: Okay, just an email.

COMMISSIONER SCHIFFER: Just keep it cheap. And anybody's who's curious can peek in and look over your shoulder. Because if you send it to the meeting, what if we don't have a problem with it, we'll start discussing it

--

MR. BELLOWS: That's true.

COMMISSIONER SCHIFFER: -- if we do develop a problem with it, we'll -- and we're not shy, so any piece of paper presented will get our interest, so.

CHAIRMAN STRAIN: Okay, do you have any registered public speakers?

MS. CILEK: I believe so. I believe there are speakers. None of them have registered.

CHAIRMAN STRAIN: Okay. I always ask registered because they'll be the first ones up. So members -- anybody, members of the public that wish to speak to this? Is there anybody here that wants to address the boat dock issue?

It is going to be coming back to us, it is going out for vetting, so that could take two or three years.

Hi, Tim.

MR. HALL: Good morning. For the record, Tim Hall with Turrell Hall and Associates.

I apologize for my appearance, I got off of a plane to come here and I didn't have time to do a lot of clean-up. But I wanted first off to kind of complain a little bit about the short notice on some of the new language that went in. You guys have already done that, so I'll leave it go.

We are, in the industry, in terms my business and people that we work with in favor of the staff's position trying to create this administrative process for the easier single-family dock projects. And we've been trying to work with staff in terms of the language, and specifically with the yellow configuration of the dock and the dock length, boat lengths and correlation to the shoreline. And I think the way that they have it now, meaning the overall width of the facility parallel to the shoreline being under 50 percent and the provisions that they have in there for the length are good or acceptable to us.

The only thing I wanted to make sure is occasionally when you guys are talking it sounds like these are set in stone criteria for any BDE. And we wanted to make sure that it's in there that these are, if you meet all of these criteria it's in association with the administrative process. If you don't meet them, then you come back to the board. It doesn't mean you can't get the BDE. It just means you have to come to the board. That has kind of gotten fuzzy a few times.

And then since I'm here, I'd like to make a couple of comments associated with the additional language related to the submerged resource surveys. Generally the state requires surveys to be done between March and October. And in a lot of waterways that earlier time frame can be important because you'll get grasses that will grow as the water starts warming up, and then they'll die when the rainy season starts. So if you wait until the middle of summer when the rains may have started to do your seagrass surveys, you could actually not see those.

Paddle grass is the one that specifically when we do our surveys in May in Clam Bay, we'll find evidence of paddle grass. And if we wait until August, it's all gone. So you should be aware that a longer time frame is what the state allows. And in some cases that's important in terms of finding that.

And I don't understand what the limitations were associated if it's only in natural or rip-rap shorelines. There are a lot of submerged resources that can grow in sea-walled canals as well. Oysters, sponges and seagrasses will all grow next to a seawall just as easy as they will next to a shoreline. So the fact that you're limiting it here could result in more impacts than your anticipating.

COMMISSIONER BROUGHAM: If I might, can I just comment on that. It might be helpful the next time around also that we invite Kathy Worley to come. And just to your point there, your question there, observation there, Tim, this lady specifically stated to us in her opinion that the grasses are prevalent during that period and that's why you see that language in there --

MR. HALL: That's a time frame --

COMMISSIONER BROUGHAM: -- that's contrary to what you're saying to us.

MR. HALL: It's a time frame, the June to August is a time frame that's associated with a specific grass, Johnson seagrass.

COMMISSIONER BROUGHAM: All right.

MR. HALL: But there are other seagrasses that we have here that may not be as appropriate a time frame.

In general it's fine. That's the center of the time frame that the state allows. But when you get areas that can be affected by freshwater or temperature drastically during, you know, the March, April time frame versus the July, August time frame, you can have grasses that will only grow in the early part --

COMMISSIONER BROUGHAM: Just for an observation, I would think we'd want to modify this language then to be more conservative than restrictive in terms of calendar, based on what you're saying.

MR. HALL: The other thing that is a potential impact to homeowners or to people trying to permit these is if they get a permit submittal in or BDE submittal in in September, then under this language they would have to wait until July before anything could be done with that, or before final approval could be made. Extending out the time frames to allow the October to March time frames, which is what the state allows, would then not be as onerous a burden on them in terms of the time frames.

CHAIRMAN STRAIN: I think it's important that you get your thoughts together with staff when this gets vetted and gets out to everybody and any, like the boating association and other people who are involved in it, so everybody's working from the same playing field and understanding of this. So I think that would be a good point --

MR. HALL: I apologize, I am a little scattered. I just saw this an hour and a half ago. So I'm trying to get caught up.

CHAIRMAN STRAIN: Thank you, Tim.

Go ahead, Brad.

COMMISSIONER SCHIFFER: Tim, when you're looking for grasses, the grasses that have died off, do you have evidence that they were there? I mean, do they disappear?

MR. HALL: In some cases. Paddle grass is very difficult. It's very ephemeral. It will come and go rapidly. With some of the other ones, the shoal grasses and all, you can find evidence of the root masses that are still there, even though the leaves aren't. So the answer I guess would be yes and no, it's very site dependent.

I just think, you know, as far as the state's concerned and as far as submerged resources go, we're not only talking about seagrasses, although that is the one that seems to get the most press. But there are a lot of other resources that could be present that, you know, can be in any waterway. So I'm uncomfortable limiting this I guess to not include the seawall portions, especially given that those sea-walled areas are the ones where we need those resources the most.

CHAIRMAN STRAIN: Thank you. Are there any other public speakers on this matter?

COMMISSIONER EBERT: Yes.

CHAIRMAN STRAIN: I see.

Strange person, never met this person before.

Welcome back, Donna, it's good to see you.

MS. CARON: Donna Caron, for the record.

I just wanted to say first of all, I agree with Tim on the seawalls. It was something that I was going to bring up according to this language. You know, taking out seawalls is not a smart move when it comes to seagrasses or any other sensitive materials. Or excluding them, rather.

But my main reason for being here actually rather echoes what Phil's concerns were. I've been -- I was a part of the board for seven years and I monitored it for probably 10 or 12 years. And I would safely say that of all the boat docks that have come before this board, 99.9 percent of them have been made better by the judgments of this board. And I think just turning things back over to staff is not a wise move.

We have had numerous things, and long before you were here, Mr. Brougham, many, many instances, and I am not talking about the recent ones, where staff put through the -- or criteria was presented to staff, staff said okay, it's fine by us. And it came to this board and this board has found numerous things to make it better and make it better for neighborhoods. And that's the whole point of having this board here. And what you should be doing, I think.

When the Board of County Commissioners turned over this responsibility to the Board, it wasn't so that this board could then turn it back over to staff. That's my opinion. Thank you.

CHAIRMAN STRAIN: Thank you, Donna.

Okay, are there any other public speakers on this matter?

Okay, well that will -- you got further direction to go forward. We'll wait for the next round.

We have a choice now. We can try to get these done say within the next hour for the remainder of them, or if we don't think we can accomplish that we ought take lunch and give the court reporter -- well, regardless, we'll take a break in a few minutes after we discuss it.

What's the feelings of this board? I think the kenneling one I've got some issues with but I think they can be discussed rather rapidly. And hopefully they'll make sense so we can resolve the issues quickly. But --

COMMISSIONER EBERT: Ten minute break.

COMMISSIONER SCHIFFER: Yeah.

CHAIRMAN STRAIN: Just a short break?

Let's just take a break. Is 10 minutes okay? We'll take a break to 12:15 and we'll resume at that time.

(A recess was taken.)

CHAIRMAN STRAIN: Okay, Cherie's back, we're all good to go.

Brad?

COMMISSIONER SCHIFFER: On the last issue, Ray, along with the legislative strike-through and underline, could you send a clean copy so that we can read it without the strike-through and underline, because --

MS. CILEK: For the dock?

COMMISSIONER SCHIFFER: For the dock. For next time.

MS. CILEK: Actually, if you look in the packet for today, I believe there's one included. And typically there is. Unfortunately, in your packet that came last week there wasn't. But yes.

CHAIRMAN STRAIN: What she's saying is everybody gets it but you, Brad.

COMMISSIONER SCHIFFER: Well, everybody in the -- I always go to the legislative --

COMMISSIONER BROUGHAM: Particularly if it's boat dock related.

COMMISSIONER SCHIFFER: I'll look a little more carefully.

CHAIRMAN STRAIN: Okay, next one, because I know there's staff members here to address it, we'll move right into the kenneling definitions. It will be 1.08.02. And there's two or three people from staff here to help us get through this today.

MS. TOWNSEND: Good afternoon.

CHAIRMAN STRAIN: Good to see you again.

MS. TOWNSEND: Thank you. Amanda Townsend, your Director of Domestic Animal Services.

Just to bring you back up to speed, this amendment comes to you as a result of a public petition from a person who had a code violation as a result of having more than three dogs in a residential single-family area. The Board directed staff to put a stay on enforcement on that portion of the kenneling definition within the LDC and to do something to revise the LDC to accommodate folks like the petitioner.

We've brought you forward changes in the definition of kenneling here. And I know there have been some concerns. When we talked in May, animal services was working on a process to revise our animal control ordinance, and your process was a little ahead of ours. And I think we may have caught up with you, and we may be able to give you a few reassurances that I didn't have available for you in May that where code enforcement may no longer be involved in mitigating nuisance from multiple animals congregating in one area, domestic animal services should be, provided that our amendments to the animal control ordinance move forward, should be able to step in and provide for both public safety as well as ensuring proper animal care and mitigating nuisance.

I can give you some specifics on the revisions to the animal control ordinance if you're interested or I can answer questions.

CHAIRMAN STRAIN: I think I had emailed staff of a concern I saw that was inconsistent with our Land Development Code, which is what this board primarily has to abide by. And that is in the quantity of animals allowed in certain zoning districts by right by zoning.

I just wanted to make sure that the paragraph -- and it has nothing -- and this board's purview doesn't go over code of laws. But since it was presented to us, and that's only the excerpt I read from the one that you all discussed, it didn't seem to except out those species of 10 or more animals that could be allowed by the zoning ordinance.

And if they are, I would suggest that your oversight and yearly inspections and all that not abide. I think that is burdensome to rural landowners, especially agricultural districts, both the Estates and the agricultural area. And I would hope that you can have an exception for those types of zoning elements.

MS. TOWNSEND: Yes, sir. And in fact the definition that we've shown you here of animal related entity does except out bona fide livestock operations. And I understand if there's a concern to except out fowl as well, that I could suggest to our ordinance revision subcommittee and our advisory board that that language be added in. I doubt that seriously that they would have any trouble with that.

CHAIRMAN STRAIN: I would suggest even in a broader brush maybe you take a look at it as excepting out that which is allowed by zoning, in regards to, for example, fowl.

In the Estates you're allowed to have a series animals, not just fowl, but there is a list in the zoning ordinance that you can have livestock. But you know what, it's not even 10 livestock. So there it might be appropriate.

But I think if you address it to the zoning ordinance as the hierarchy, that would save a lot of trouble maybe on the part of code enforcement as well as part of your department running out and doing things where people were permitted to have them from their zoning ordinance alone.

So that was my -- that's my suggestion. If you could take a look at it, that would be helpful.

MS. TOWNSEND: I will put that language just as you've said, excepting out that which is allowed by zoning, forward to our subcommittee. I'm sure they won't have a problem.

CHAIRMAN STRAIN: It would sure be helpful. Thank you.

Anybody else have any issues with kenneling?

Go ahead, Brad.

COMMISSIONER SCHIFFER: First of all, I'm in favor of the way this is zoned. I think three was a good number. So show me how we protect the animals. For example, last night on the news there was in Buckingham in Lee County a story about the neighbors can't sleep because there's 10 German Shepherds in the yard next door. The night before that was a lady who was hoarding animals, and here they are, she's starting to stick them in cages in the backyard. And it, you know, just downhill. There's a tipping point with the number of animals that does not have a happy ending.

So how will we control that in Collier County?

MS. TOWNSEND: What we're proposing in the changes to the animal control ordinance are -- would be to provide DAS regulatory oversight any time someone congregates more than 10 animals of the same species in a given space at a certain location.

In a residential area that would be a complaint driven process only. However, if that person were required to hold a business tax receipt or in other way had a 501(C)(3), you know, had some other sort of commercial -- was commercially established, that would be a proactive effort on our part.

COMMISSIONER SCHIFFER: I'm not afraid of people who are breeders in kennels. I'm really afraid of like the hoarding situation and stuff.

So there would be no way -- I mean, a lady has six dogs and then she has seven dogs and then she has -- I mean, where's the line drawn and how does it get to the point where it's stopped before the dogs are the one that gets hurt by this?

MS. TOWNSEND: Of course all of those animals are required to be licensed and vaccinated. And so there's a financial disincentive to have a large number of animals, and there's also a financial disincentive to have a large number of unsterilized animals, because -- which of course produce more. And that's how you get into the hoarding kind of situation. A licensing fee, for example, for a cat or a dog who is sterilized is \$10. But for one who's unsterilized it is \$60.

So, you know, our -- that's one of the ways we help people keep their population down. And this will -- the changes to the animal control ordinance will actually provide us with additional regulatory oversight that should help with the problems you're talking about.

COMMISSIONER SCHIFFER: Like what? Because what your answer is that the person won't have that many animals because the licenses and the vet care will be too expensive. But they probably aren't doing that, so --

MS. TOWNSEND: Absolutely. And we work these cases on a continual basis. We have a number of those kinds of cases going on right now. It's a -- it is extremely resource intensive. But it's a matter of continuing to apply pressure to the animal owner to keep their population down and to assure that the animals are receiving proper care.

COMMISSIONER SCHIFFER: When is your ordinance coming into effect?

MS. TOWNSEND: We're on schedule to have a first reading at the first meeting in September.

I wanted to add one other thing that may add some comfort. Is that in addition to the changes to the animal control ordinance, we will also be bringing forward a resolution that will lay out a schedule of penalties that should remove discretion from animal control officers and ensure a certain amount of enforcement happens when there are violations.

COMMISSIONER SCHIFFER: And these violations would be what? Let's -- the person has -- let's say they have 10 animals in the house and they do have 10 licenses. So there's nothing going to happen to them until the animals start to -- the care starts to slip and then somebody reports them and you come in and -- or what?

MS. TOWNSEND: As well as ensuring proper animal care, the animal control ordinance already provides for mitigating of nuisances such as sanitary nuisance or barking or any other kind of objectionable noise. And of course the noise ordinance does as well. So I think as far as mitigating nuisance, the controls are already in place.

COMMISSIONER SCHIFFER: In the Buckingham example, the county was there frustrated because they have no limit in their regulations.

And how would we handle the barking? What happens? I've got these 10 German Shepherds living next to Mark. How does Mark get to sleep at night? Because they do like to bark.

CHAIRMAN STRAIN: .45.

(Laughter.)

COMMISSIONER SCHIFFER: And see what that brings.

MS. TOWNSEND: We don't recommend that.

COMMISSIONER SCHIFFER: Which is another point. See what that can bring out in the community if we have too many dogs around. But go ahead.

MS. TOWNSEND: Any time there's a violation there are two ways in which a person can be cited, which obviously is a disincentive to allow the behavior of the animal to go on.

Number one, the animal control officer can witness the violation. And we have a lot of instances of noise complaints in particular often coming from birds where we have to do quite a bit of monitoring. And we're able to park a few houses down, roll down the window, see if we can observe the nuisance, that sort of thing.

The other way that we can establish that a violation has occurred and issue a citation is when we receive affidavits of complaint from two neighbors within the vicinity that where the story matches, if you will. And we can cite on that as well.

COMMISSIONER SCHIFFER: Okay. But in this case it would be easy. Drive up to the house next door, the dogs are barking. So what happens? How is that protected? How's that neighbor -- I mean, anything happen immediately or is he -- you take him before the magistrate or what happens?

MS. TOWNSEND: Generally speaking, we will -- and here again, we're coming forward with a schedule of penalties for violations, so that's going to be spelled out how many chances someone gets or that sort of thing.

But when we get to the point where we've established a clear violation, we can issue that person a citation, they can choose to appeal it to the special magistrate if they so desire.

CHAIRMAN STRAIN: By the way, does anybody have any questions about what we're here to discuss today, which is strictly the definition for kenneling on Page 3, which is only one sentence?

That was my fault to get you off on tangents. I apologize. But because so much was provided, it -- we had to --

COMMISSIONER SCHIFFER: Here's the thing we're missing. That definition was a smart way to control how many animals you have. Because they define that if you have more than three animals, you are a kennel. And that brings code enforcement in that people have an illegal kennel once they have that fourth animal. So it is a way of controlling the number of animals. A very good way.

COMMISSIONER HOMIAK: A lot of the homeowners associations in condos don't allow even three. And that's the majority of what is in area anyway. It's -- you're talking about somebody who has room for six dogs can't have them.

COMMISSIONER SCHIFFER: Hopefully.

CHAIRMAN STRAIN: The other thing, though, the board did order -- I mean, Board set a policy. They wanted the change. So we can debate about whether that was good or bad. But the point is it's going to change whether we debate about it or not. And I think that we probably need to look and see what is the best definition pursuant to their direction that we can send them. And that's kind of where we're at with 1.08.02 on Page 3.

Is that a -- is that -- does that get the definition to a point where we can send it to the Board with a recommendation to approve or is there more tweaking needed to it?

COMMISSIONER SCHIFFER: My comment on that is the Board, I think they're right, a guy with four little dogs, it isn't fair. Because, you know, I can have three Mastiffs maybe, and that's not fair.

But the way we came to the conclusion -- what we did is, the solution was we're not going to put a limit on the dog numbers. In other words, we went from three to unregulated. And I'm not so sure. I mean, maybe we should have put a -- you're allowed, you know, 100 pounds of mammals or something and that would have been the solution.

But --

CHAIRMAN STRAIN: But I think the LDC is going to remove the requirement. But we've had the acknowledgment from staff that the requirement is going to be not only in the code of laws but it's going to be strengthened in the code of laws with further refinement that would actually tighten it up probably better than what a three sentence definition would do in the Land Development Code.

So in the end I think we're going to be better off. And the Land Development Code sticking strictly to uses, which is what our objective is, by defining a kennel as a use as shown here, really takes the burden of how many and the quantity off and puts it on the operational aspects, which is more what the code of laws could address.

So I think this is a good way to go. I think that we've had plenty of testimony today to indicate that the right change is being made in other directions. In the end I don't think we've lost anything by it, Brad.

COMMISSIONER SCHIFFER: When does -- yeah. I mean, I'm not a big fan of people having multiple dogs. And we discussed before the pack mentality. And I've seen some disasters. I'll step away from that.

There is one other thing in here that limited the number of dogs that could be used for security purposes in commercial, industrial. So we're just going to throw that away too and -- because it is very common in some fenced-in industrial areas for people to bring dogs in at night as security, and that --

CHAIRMAN STRAIN: Does this prohibit that from happening?

COMMISSIONER SCHIFFER: This does not regulate it. A guy can bring in, you know, 50 dogs and put them in a yard.

CHAIRMAN STRAIN: No, more than 10 he'd have a problem with the Amanda's department.

MS. TOWNSEND: He'd be subject to regulatory oversight at a minimum.

COMMISSIONER SCHIFFER: Okay, he brings in nine. Nine Dobermans is a problem.

MS. CILEK: And they'd have to be registered to the owner, and hopefully they'd be registered to that property as well. So people would have to really know where those dogs are coming from, who owns them, what the purpose is.

MS. TOWNSEND: We have contemplated in animal control ordinance revisions addressing the commercial use of dogs for protection or guard dog kind of commercial entities. In our discussions we haven't come to that topic yet, but it was floated when we sort of were looking at our scope of work.

So I can bring back a recommendation from the Planning Commission to our ordinance revision subcommittee that perhaps that should be addressed in the animal control ordinance.

COMMISSIONER SCHIFFER: That would be good.

The other thing is since it looks like it's going to be approved, could we hold off the effective date of this until you have the effective date of your regulations?

MS. CILEK: It just so happens that this amendment as well as Amanda's work will coincide to go toward the BCC in September, the first date, September 11th. So they will go together.

COMMISSIONER SCHIFFER: That's good.

CHAIRMAN STRAIN: Then they'll be matched together. That's a good idea. Good. About time the code of laws is coordinated with the Land Development Code. We just found out where it wasn't, and so at least something is. Okay.

Does anybody have any other questions?

(No response.)

CHAIRMAN STRAIN: Any -- no public speakers? Okay.

Is there a motion in regards to the definition that's on Page 3.

COMMISSIONER HOMIAK: I'll make a motion to approve the definition as written.

CHAIRMAN STRAIN: Motion to approve as written by Ms. Homiak. Is there a second?

COMMISSIONER AHERN: Second.

CHAIRMAN STRAIN: By Melissa.

Discussion?

(No response.)

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

COMMISSIONER HOMIAK: Aye.

COMMISSIONER EBERT: Aye.

COMMISSIONER KLEIN: Aye.
COMMISSIONER BROUGHAM: Aye.
COMMISSIONER AHERN: Aye.
COMMISSIONER MIDNEY: Aye.
COMMISSIONER VONIER: Aye.
CHAIRMAN STRAIN: Aye.

Anybody opposed?

(No response.)

CHAIRMAN STRAIN: Motion carries 9-0.

COMMISSIONER SCHIFFER: Wait a minute, I'm opposed.

CHAIRMAN STRAIN: Oh, you're opposed. I'm sorry.

COMMISSIONER SCHIFFER: My dog. I've got to live with my dog. I don't want to talk about it later.

CHAIRMAN STRAIN: Eight to one, Brad is opposed.

Thank you both. Appreciate your time today.

Okay, where do you want to go next?

MS. CILEK: Okay. Take a look at our agenda. I will find mine. Actually, let's stick with what we had after kenneling, which was in the packet from last week, which is 4.06.03, landscaping requirements for vehicle use areas and right-of-way. That's the first of the three.

And this was reviewed probably last month. And at your request I met with NABOR, the president of NABOR, Mr. Poteet, and discussed with him what this amendment outlined, which is a change from 180, 60, and then the last one is 180 days to one year. And that's the grace period for the first two sections that a business has the opportunity to come into a use that has ceased. They have that grace period before they have to bring up the site features into to code compliance.

And he relayed that one year was a good balance and he liked the amendment.

CHAIRMAN STRAIN: That's good. Thank you for going back to him.

Anybody have any questions?

COMMISSIONER SCHIFFER: I do, Mark.

CHAIRMAN STRAIN: Go ahead, Brad.

COMMISSIONER SCHIFFER: One thing is looking at the evidence you've given us, the time on the market and stuff like that. I mean, you could see that it's growing and growing, even since the second quarter, 2010. So do you think the one year is the appropriate date? I mean --

MS. CILEK: Yes. Actually, these are from December. I think the trends are leveling out now so that these are not as accurate as they were when this was first submitted. I apologize for that.

But yes, both Mr. Poteet from NABOR and CBIA, Collier Building Industry Association, supported the one year. It's a balanced approach because they want to come into business that are also keeping up their site features. Because those businesses around you reflect your business.

COMMISSIONER SCHIFFER: Okay, so especially the chart at the bottom that shows we have quite a few projects that are really over 22 mon -- I mean, they're long on the market.

MS. CILEK: Right. If you look at that table, actually, those are very large box stores. And those tend to be kind of exempt from this criteria. They're more in PUDs, they're more connected to other buildings. And this provision really gets to those that are stand alone buildings.

Because if one unit goes vacant, then you have to account for the other units that are still being occupied, and so this provision isn't brought into the process as much.

COMMISSIONER SCHIFFER: All right. Essentially when a building becomes nonconforming it's because the regulations have grown past the regulations that existed when it was built, correct?

MS. CILEK: That can be one way, yes.

COMMISSIONER SCHIFFER: What's another way, I mean?

MS. CILEK: Off the top of my head --

COMMISSIONER SCHIFFER: They took out the landscaping? I guess they could have.

Okay, I mean, I'm a fan of a little more time, but, I mean, we're in an economy where buildings are out there for more than a year. And it's a major -- it's the loss of value. If you all of a sudden have to put in the things that are

referenced here, it's the value of the property diminishes the day after that year.

MS. CILEK: Well, we are jumping from 60 days, 180, 90 days, to one year, consistent with a lot of other provisions in the neighboring communities. And it's supported by the community.

COMMISSIONER SCHIFFER: What do you mean neighboring communities? What time frames do they have?

MS. CILEK: Well, when we were doing our research we often look around and find out what other counties are doing. Collier is, you know, it's own independent. But I'm saying that one year for nonconforming is pretty consistent across the board. 180 is rather a short time period.

COMMISSIONER SCHIFFER: What is Lee county's time frame?

MS. CILEK: It's been a while since -- I'm not going to speak to the exact year. But I recall that this was consistent with what other counties are doing as well.

COMMISSIONER SCHIFFER: So it's one year in Lee County?

MS. CILEK: I'm going to speak to the exact year. But we'll say that one of our goals is to make sure that we're, you know, relative to other areas.

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

COMMISSIONER SCHIFFER: No. I mean, it would be nice to make it longer. It's not going to hurt the community to give people a little more time to get vacant buildings back on the market. That's one of our major problems is commercial vacant buildings being held out there.

CHAIRMAN STRAIN: Well, I'm satisfied. Our instruction was for staff to go out to some of the stakeholders and get their opinions. Both the primary business community representatives have expressed this as fine. They're in agreement with the amendment. I'm not sure we need at this time to extend it. But maybe if it comes back and there's a problem we can always look at extensions in the future.

But it's harder to take away than it is to give, so we ought to be careful how much we give, and then if we have to give more that might be a better opportunity in the future to do it. Right now this is better it was, thought, Brad, we ought to get this off the table and running.

COMMISSIONER SCHIFFER: But it was -- there is a task force. Too bad Diane left. The economic recovery task force, this was the major problem with people coming online is that these buildings aren't useful because of the major work they'd have to do to bring them into the current codes.

MS. CILEK: Right. And I know in the introduction that that is where this amendment comes from, is from the economic task force, and this is their recommendation. And I think it provides a balance. I mean, the economy isn't going to be this way forever. And in the future this code will still be in place, unless there's an LDC amendment. But --

CHAIRMAN STRAIN: To shorten it, yeah. If in the future if it got -- we'd be back to where the old --

MS. CILEK: Yeah.

CHAIRMAN STRAIN: Okay. Anybody else?

(No response.)

CHAIRMAN STRAIN: There's no members of the public. Anybody want to make a motion then?

COMMISSIONER SCHIFFER: Well, if I make a motion, it will be for a longer time period, so let's try that.

COMMISSIONER AHERN: I'll make a motion.

CHAIRMAN STRAIN: Okay, Melissa.

Oh, did you want to make a motion, is that what you said?

COMMISSIONER SCHIFFER: No, it would be for a longer time period. So if somebody thinks 12 years, they should jump in quick. I said 12, one year, one year.

CHAIRMAN STRAIN: Melissa, go ahead.

COMMISSIONER AHERN: I'll make a motion to approve it as written.

COMMISSIONER EBERT: I'll second.

CHAIRMAN STRAIN: Seconded by Diane. Discussion?

(No response.)

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

COMMISSIONER SCHIFFER: Aye.

COMMISSIONER HOMIAK: Aye.

COMMISSIONER EBERT: Aye.
COMMISSIONER KLEIN: Aye.
COMMISSIONER BROUGHAM: Aye.
COMMISSIONER AHERN: Aye.
COMMISSIONER MIDNEY: Aye.
COMMISSIONER VONIER: Aye.
CHAIRMAN STRAIN: Aye.

Anybody opposed?

(No response.)

CHAIRMAN STRAIN: Motion carries 9-0.

Okay, let's move on to the PUD 10.02.13, planning unit development procedures.

MS. CILEK: This one was reviewed on Tuesday. And at the direction of Brad we went back and reorganized it.

CHAIRMAN STRAIN: In the future, I think you're well aware now that Brad likes codes and organization. He spent a long time doing these things, so I have a feeling you may want -- benefit in getting together with him earlier than later, so --

MS. CILEK: This one was actually done by another individual. And I should note that much of this will be actually removed and put in the administrative code. And then it will be in a whole new form. But will still -- still needs to go forward.

CHAIRMAN STRAIN: Brad, I think you were the only one that had issues with this last time. You fine with it now?

COMMISSIONER SCHIFFER: Yeah, I am. Actually, I'm still looking for it. It was in today's packet, right?

MS. CILEK: It is, yes. And I kept in the strike-through language just so you could see what was coming out. That will go, in the final form.

COMMISSIONER SCHIFFER: Have you found it yet?

That's good. You did it. It's good.

CHAIRMAN STRAIN: Okay, is that a motion to recommend approval, Brad?

COMMISSIONER SCHIFFER: Yes, it is.

COMMISSIONER VONIER: Second.

CHAIRMAN STRAIN: Seconded by Bill.

Discussion?

(No response.)

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

COMMISSIONER SCHIFFER: Aye.

COMMISSIONER HOMIAK: Aye.

COMMISSIONER EBERT: Aye.

COMMISSIONER KLEIN: Aye.

COMMISSIONER BROUGHAM: Aye.

COMMISSIONER AHERN: Aye.

COMMISSIONER MIDNEY: Aye.

COMMISSIONER VONIER: Aye.

CHAIRMAN STRAIN: Aye.

Anybody opposed?

(No response.)

CHAIRMAN STRAIN: Motion carries 9-0.

Let's move on to 6.06.01 and 6.06.02, system street requirements, sidewalks, pathways.

MS. CILEK: If you look on Page 3 at the bottom, the recommendation to include per manufacturer specifications, which was a recommendation on Tuesday, has been added.

And we looked at the section again and we said how else can we better organize this. So what we did is we moved on Page 4 a section to kind of create an overall umbrella under F that sort of guides how people will utilize the 2.F dot --

CHAIRMAN STRAIN: Brad's not going to like that.

COMMISSIONER SCHIFFER: No.

CHAIRMAN STRAIN: I'm just kidding.

COMMISSIONER SCHIFFER: Don't wait for me, I still haven't found the background.

CHAIRMAN STRAIN: Oh, you haven't found that one yet? Here.

COMMISSIONER SCHIFFER: Next time staple them for me.

MS. CILEK: Well, yes, I actually think that's a good idea. I'm also suffering from the paper everywhere.

COMMISSIONER SCHIFFER: I don't think it -- when I look at mine, I don't think it has anything to do with mitigation, so we're in trouble.

MS. CILEK: No, not this one.

CHAIRMAN STRAIN: Brad, you want to see my copy?

COMMISSIONER SCHIFFER: I got it.

COMMISSIONER VONIER: I got him.

CHAIRMAN STRAIN: Thanks, Bill.

Does anybody have any questions, comments?

(No response.)

CHAIRMAN STRAIN: If not, there is a motion to recommend approval?

COMMISSIONER SCHIFFER: I'll recommend approval.

CHAIRMAN STRAIN: Is there a second?

COMMISSIONER AHERN: I'll second.

CHAIRMAN STRAIN: Recommended by Brad, second by Melissa.

Discussion?

(No response.)

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

COMMISSIONER SCHIFFER: Aye.

COMMISSIONER HOMIAK: Aye.

COMMISSIONER EBERT: Aye.

COMMISSIONER KLEIN: Aye.

COMMISSIONER BROUGHAM: Aye.

COMMISSIONER AHERN: Aye.

COMMISSIONER MIDNEY: Aye.

COMMISSIONER VONIER: Aye.

CHAIRMAN STRAIN: Aye.

Anybody opposed?

(No response.)

CHAIRMAN STRAIN: Motion carries 9-0.

The last one up is Section 10.02.03, submittal requirements for SDPs. That again was one we heard on Tuesday. There's -- may was changed to shall.

COMMISSIONER EBERT: And that was it, wasn't it?

CHAIRMAN STRAIN: Then there's some reformatting in the last page, number four.

Looks good.

COMMISSIONER SCHIFFER: Move to approve.

CHAIRMAN STRAIN: Made by Brad, seconded by --

COMMISSIONER AHERN: I'll second.

CHAIRMAN STRAIN: Melissa.

Discussion?

(No response.)

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

COMMISSIONER SCHIFFER: Aye.

COMMISSIONER HOMIAK: Aye.

COMMISSIONER EBERT: Aye.

COMMISSIONER KLEIN: Aye.
COMMISSIONER BROUGHAM: Aye.
COMMISSIONER AHERN: Aye.
COMMISSIONER MIDNEY: Aye.
COMMISSIONER VONIER: Aye.
CHAIRMAN STRAIN: Aye.

Anybody opposed?

(No response.)

CHAIRMAN STRAIN: Motion carries 9-0.

Thank you, we got through it all.

Couple setbacks, but we'll get through them all. Thank you very much, Caroline.

MS. CILEK: We'll be back in July.

CHAIRMAN STRAIN: In when?

MS. CILEK: We will be back in July.

CHAIRMAN STRAIN: The 19th of July I believe is our next meeting.

So with that, that wraps up today's meeting. Is there any new business?

COMMISSIONER BROUGHAM: Can't we just have an informal get-together between now and July 19th?

CHAIRMAN STRAIN: Oh, sure, off the record without a public meeting, we do that all the time, yeah.

That would be fun. The paper would have a heyday with something like that.

Okay, with that, is there a motion to adjourn.

COMMISSIONER AHERN: So moved.

CHAIRMAN STRAIN: Melissa. Seconded by --

COMMISSIONER KLEIN: (Indicating.)

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

COMMISSIONER SCHIFFER: Aye.

COMMISSIONER HOMIAK: Aye.

COMMISSIONER EBERT: Aye.

COMMISSIONER KLEIN: Aye.

COMMISSIONER BROUGHAM: Aye.

COMMISSIONER AHERN: Aye.

COMMISSIONER MIDNEY: Aye.

COMMISSIONER VONIER: Aye.

CHAIRMAN STRAIN: Aye.

We're out of here. Thank you all.

There being no further business for the good of the County, the meeting was adjourned by order of the Chair at 12:45 p.m.

COLLIER COUNTY PLANNING COMMISSION



MARK P. STRAIN, Chairman

June 21, 2012

ATTEST:
DWIGHT E. BROCK, CLERK

These minutes approved by the Board on 7-19-12, as presented _____ or as corrected .

TRANSCRIPT PREPARED ON BEHALF OF GREGORY COURT REPORTING SERVICE, INC.
BY CHERIE' NOTTINGHAM