

TRANSCRIPT OF THE MEETING OF THE
COLLIER COUNTY PLANNING COMMISSION
LAND DEVELOPMENT CODE
Naples, Florida
June 19, 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 1:00 p.m. in REGULAR SESSION in Building "F" of the Government Complex, East Naples, Florida, with the following members present:

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

ALSO PRESENT:

Heidi Ashton-Cicko, Assistant County Attorney
Caroline Cilek, Growth Management Division/Planning & Regulation
Ray Bellows, Zoning Manager

CHAIRMAN STRAIN: Okay, welcome everybody. I would say back from lunch for the afternoon meeting, but it's a whole different meeting.

So with this, I'll announce it's the continuation of the Land Development Code meeting that we started, I don't know, a long, long time ago.

We have an agenda in front of us with a specific number of LDC amendments that we were supposed to discuss at the time of our last planning commission meeting but we ran out of time and we continued it to today.

So with that in mind -- first of all, I believe there's at least one, maybe two people here specifically for the exotic issue. And that is the one we'll start with so that we can get you done. And if you want to leave, you'll have the opportunity to do so.

So with that in mind, Steve, I guess you want to steer us to the right direction? We'll go from there.

MR. LENBERGER: Good morning. For the record, Stephen Lenberger, Growth Management Division, Stormwater and Environmental Services Department.

A few things. First, I just want to turn your attention to the amendment itself. There's one little citation in here that I noticed was wrong, so it needs to be corrected on Page 4.

COMMISSIONER BROUGHAM: Which amendment, Stephen?

CHAIRMAN STRAIN: Well, first of all, we're doing 3.05.07.F.4.d.

MR. LENBERGER: The Rural Fringe Exotic Vegetation Removal Mitigation.

COMMISSIONER BROUGHAM: That's in the back. That's in the second packet that you should have.

COMMISSIONER KLEIN: That I should have.

CHAIRMAN STRAIN: It's under a tab that says 3.05.07.H.1.g.

COMMISSIONER EBERT: What?

MR. LENBERGER: There was initially an error that said H, and it was corrected later on to subsection F. So I don't know how it's in your book, but it is under subsection F now.

CHAIRMAN STRAIN: But the tab is --

MR. LENBERGER: But the tab may be H.

CHAIRMAN STRAIN: H.1.g. 3.05.07.H.1.g is what the tab is in the book. But if you don't have the tab in the book, it's just 3.05.07 on the amendment request written out by staff, so -- okay.

MR. LENBERGER: On Page 4 of the amendment there's just a minor citation that needs to be corrected.

And down under three, rural fringe mixed use district, little letter b where it says wetlands, and you go all the way over to the right side where the citation says -- on the paragraph, it says 3.05.07(B). That should be (C). (C) is the reference to the rural fringe preservation requirement. (B) is the urban. So the correction has to be made.

(At which time, Commissioner Schiffer enters the boardroom.)

CHAIRMAN STRAIN: Let the record show Brad Schiffer showed.

And for that matter, we better do a quick -- since this is a new meeting and we officially have a court reporter, why don't we do a roll call.

COMMISSIONER HOMIAK: Mr. Eastman is absent.

Mr. Vonier?

COMMISSIONER VONIER: Here.

COMMISSIONER HOMIAK: Mr. Schiffer?

COMMISSIONER SCHIFFER: I'm here.

COMMISSIONER HOMIAK: Mr. Midney is absent. Ms. Ahern is absent.

Mr. Strain?

CHAIRMAN STRAIN: Here.

COMMISSIONER HOMIAK: Ms. Homiak is here.

Ms. Ebert?

COMMISSIONER EBERT: Here.

COMMISSIONER HOMIAK: Mr. Klein?

COMMISSIONER KLEIN: Present.

COMMISSIONER HOMIAK: And Mr. Brougham?

COMMISSIONER BROUGHAM: Here.

CHAIRMAN STRAIN: Thank you.

Sorry, Steve, but I forgot this is the second meeting today.

MR. LENBERGER: No problem.

Since our last meeting we had on this, and it's been quite a while, you had asked me to provide you with some information, and I did regarding the history of the amendment.

Basically the amendment went to the Planning Commission with the rural fringe amendments 2003-2004. The requirement -- or the prohibition of using exotic vegetation removal to let out -- to count as mitigation was not in your packet.

The item was discussed in the minutes, and I did give you the minutes of the meeting. And it says the item was discussed and there would be a sentence added for clarification, but what that sentence was was not brought out in the minutes.

When the item was -- went to the BCC afterwards, the prohibition of using exotic vegetation removal as mitigation was in the amendment, and I gave you the materials for that, sections of the verbatim minutes and also the agenda item and executive summary, pertinent pages.

Also, since the time we last heard the amendment, we were provided information regarding the statutes. It would be -- let me turn to that, please -- Chapter 373-414 regarding additional criteria for activities and surface waters and wetlands, which I emailed you and I think Caroline also provided to you.

There was also a Florida Attorney General advisory legal opinion which I forwarded to you as well. It was provided by some of the speakers, and it's dated December 6th, 1994. Interesting, it's about a decade before actually the rural fringe amendments were finalized.

You asked Heidi to take a look at that, the Florida statutes, and I believe she's going to speak on that today. And there are some public speakers. There's at least two here, three now. And however you want to proceed.

CHAIRMAN STRAIN: I'd like to hear Heidi's comments on it first, if Heidi's prepared.

MS. ASHTON-CICKO: Well, the question that was presented to me was under Section 3.05.07. And it's on your Page 6, the change to subsection D, which removes exotic vegetation removal. And the issue presented was whether or not the county could have more restrictive vegetation removal requirement than the state.

So I took a look at that issue and my conclusion is that the county -- we have the full authority to prohibit touching wetlands in any way. We can establish that through our comprehensive plan primarily.

But once we allow the owner to impact the wetlands, we're pretty much subject to the state and federal permitting requirements. And that authority for that is under Section 373.414.1.(b)4. And it essentially says that our wetlands mitigation has to be reconciled with the state when there's a conflict, so --

CHAIRMAN STRAIN: I'd like to read one sentence in that section so everybody who may not have seen it understands what it says.

It's under paren 18. Once the department adopts the uniform mitigation assessment method by rule, the uniform mitigation assessment method shall be binding on the department, the water management districts, local governments and any other governmental agencies, and shall be the sole means to determine the amount of mitigation needed to offset adverse impacts to wetlands and other surface waters and to award and deduct mitigation bank credits.

I believe that's the section that you're --

MS. ASHTON-CICKO: Actually, the section that I'm looking reads: If mitigation requirements imposed by a local government for surface water and wetland impacts of an activity regulated under this part cannot be reconciled with the mitigation requirements approved under a permit for the same activity issued under this part, including application of the uniform wetland mitigation assessment method adopted pursuant to subsection 18, the mitigation requirements for surface water and wetland impacts shall be controlled by the permit issued under this part.

And the permit they're referring to is the state permit.

CHAIRMAN STRAIN: Good. Both of them say the same thing.

Anybody else?

(No response.)

CHAIRMAN STRAIN: Okay, are there any questions on this issue? It's the removal of on Page 6 the one sentence under D. Anybody have any questions, comments?

(No response.)

CHAIRMAN STRAIN: Let's go to the public speakers.

Ray, anybody registered or are we just going to call them out? Doesn't matter to me.

MS. CILEK: Yes, we have two registered public speakers. And the first --

CHAIRMAN STRAIN: They'll go first. Okay.

MS. CILEK: -- is Bruce Layman.

MR. LAYMAN: Hi. For the record, my name is Bruce Layman. I'm a senior ecologist with Stantec, and I'm here in support of the proposed amendment.

It sounded to me as if what we just heard here was that the code as it's written is in conflict with the state statute, and as a result would get trumped by state statute. So what I'm saying really may not matter much, but I'll do it anyway, if that's okay.

CHAIRMAN STRAIN: Go right ahead. At least the record in this particular case will be clear.

MR. LAYMAN: Yes, yes.

When you heard this amendment previously, I stood up and spoke and reflected that I believed that the code is in conflict with the Growth Management Plan and referenced a couple sections. Andy Woodruff did the same. For the sake of time, I don't want to restate those arguments, but instead I'd like to touch on two other issues.

As this amendment has moved forward, we've heard testimony, we've heard questions and answers, and it occurred to me that there may be a hesitation to remove the portion of the code because there might be a perception that by removing it you're basically going to open the door to rampant wetlands impacts in the rural fringe area. And I'd like to suggest that this isn't the case.

This zoning district actually has one of the greatest levels of wetland protection in the county, irrespective of the particular segment of code that is being proposed to be removed. When the Transfer of Development Rights Program was established, and I'm grossly paraphrasing here, the county basically said over here there's some environmental resources of significant value. We want to protect them. They've got nice quality wetlands, they've got listed species, we want to protect them. Let's call those sending lands and discourage development there. And over here in this area, these resources aren't quite as good, let's encourage development here. We'll call them receiving lands.

I mean, again, that's a very gross generalization.

But basically what it did was the program itself set up hey, it's protecting the really good stuff and allowing development to occur in the not so good stuff.

But on top of the Transfer of Development Rights Program the LDC says well, in addition, if you have a good quality wetland, you can't impact it. Don't even think about it. And on top of that, if you see a listed species in it, a wading bird, for instance, you can't impact those either.

So as I said, the level of wetland protection in this district is one of the highest in the county. And it's not going to -- at least my opinion would be that it would not result in rampant wetland impacts with approval of this amendment.

Let's see, where are we here?

The second issue I'd like to address is the manner in which this code was approved or adopted, but also to what the adoption of this code means to the stakeholders within the rural fringe.

Traditionally wetland mitigation plans primarily were composed of -- or are composed of enhancement activities to wetlands as mitigation. And that's primarily by removal of exotic vegetation.

There are also other mitigation types: There's creation of wetlands and there's also preservation of wetlands. The preservation of wetlands is traditionally pretty successful, but it may not be very cost effective because you need so many acres of preserve wetlands to offset the impact to a wetland. It's not very cost effective.

The enhancement activities are likewise very successful, and they're more cost effective.

And then there's the creation. It's the most costly, but it's also the least successful mitigation type statistically. As a result, the agencies really don't like creation too much. In fact, the Corps of Engineers even puts it in writing saying, priority-wise we want to see you use a mitigation bank first. If you don't use a mitigation bank, do enhancement on-site or off-site. And if you don't do enhancement, then last resort do creation. They really don't like it.

So basically this code, by not allowing exotic eradication to count as mitigation, you're basically relegating the owners at the rural fringe to use the most costly, the least successful mitigation type and the least desired mitigation type that's out there.

You might say, well, have them go to a mitigation bank, buy credits and avoid all this nonsense. Well, unfortunately mitigation banks also use wetland enhancement through exotic eradication to generate their credits, in addition to creation and preservation. But they don't distinguish these credits were generated using enhancement, these credits were generated using creation. So there's really no way, if you take it to the letter of the law, to be able to go to a mitigation bank to offset your wetland impacts.

So it's a significant burden on the stakeholders of the rural fringe by keeping the segment of code in the LDC that's currently there that's proposed to be removed.

As Steve mentioned earlier, looking at the transcripts from 2003, 2004, the EAC didn't review the code as it's currently in the LDC. This body did not see the code as it's written in the LDC. It did discuss the topic, but the code wasn't actually generated until the Planning Commission hearing was over, but before it went to the Board of County Commissioners.

So it went to the -- it was -- the code was generated, put into the amendment, went before the County Commissioners, it was reviewed without discussion and approved unanimously.

One striking thing when you look at the transcript is there was no input from the regulated community at either -- well, no input from the owners within the rural fringe or the consulting community during the Planning Commission meeting or the Board of County Commissioners, which begs the question were they even aware of it. So -- which is a big question. Because it has significant impacts on the stakeholders within the rural fringe mixed use district.

So it's for these reasons previously stated, comments about the inconsistency between the Growth Management Plan and the code, the significant level of wetland protection that the code already offers, irrespective of the particular segments that's proposed to be removed and the lack of full review during the adoption process back eight years ago, it's for these reasons I'm in strong support of the amendment as it's proposed. Thank you.

CHAIRMAN STRAIN: Thank you.

Next speaker?

MS. CILEK: Our next speaker is Jeremy.

MR. FRANTZ: Afternoon. Jeremy Frantz with The Conservancy of Southwest Florida.

There were two issues that came up since the last meeting that I didn't get a chance to talk to staff about, unfortunately.

The first is just a reference that I think is wrong, and the very last section on the very last line there's reference to the county's submerged marine habitat regulations, and it points to 5.03.06.I. But it should read J. 5.03.06.J.

The other change that was made was to section 3.G.i(B), and it reads -- or it did read: Prior to issuance of any final development order that authorizes site alteration, the applicant shall demonstrate compliance with A and B above.

The reference to A and B above was a broken reference. There was no B above.

If you go back to the GMP policy where the language was taken from, which is actually in this amendment packet, it's 6.2.5. The reference that was lost was to a requirement that created preserves used as mitigation should be encumbered by permanent conservation easements. And rather than simply striking that reference, we'd like to see the original reference incorporated back into the policy.

Getting back to the issue of exotics clearing as mitigation, I did see the material that was sent out, and it did bring to mind that The Conservancy's initial concerns about this amendment were related to the mitigation incentives, and that it's kind of brought to light that there are two separate issues here: There's the ability to apply exotics clearing to mitigation, and also the incentives, the density incentives that they received for that mitigation. I think that those issues can probably be separated here and would like to see at the very least that maybe that -- the incentive is lost if the exotics clearing is applied to mitigation.

CHAIRMAN STRAIN: Caroline, do you have any -- let's take his points one at a time under the Page 5 under B. Do you have any issues with incorporating the original language?

MS. CILEK: I'm going to let Steve speak to that, if that's okay.

CHAIRMAN STRAIN: Sure.

MS. ASHTON-CICKO: If you could also refer us to the page where he's proposing the change? Because frankly, I couldn't follow what he was saying.

CHAIRMAN STRAIN: Page 5, I believe. And it's number (sic) B from the bottom. Second paragraph up

from the bottom, isn't it, Steve?

MR. LENBERGER: Where it refers -- correct, it's under --

CHAIRMAN STRAIN: Line 44, 45.

MR. LENBERGER: -- 44. Well, it's struck -- it's G, new G.b on the second paragraph up from the bottom of Page 5.

And A is referencing the loss of conveyance volume, which is out of the comp. plan. The comp. plan also talks about loss of wetland function, which is under G above it, that there'll be -- in order to result in no net loss of wetland function.

And there -- the conservation easement is a requirement, and it's required in another section for all preserves. Are you talking about for the mitigation area, Jeremy?

CHAIRMAN STRAIN: You want to get back to the speaker, Jeremy, until we finish this so we get it all on record, not like what happened last time.

MR. FRANTZ: Yeah, it refers to the mitigation area specifically. The GMP language was 6.2.5(6). And what it was referring to read -- it was subsection three, it read: Protection shall be provided for preserved or created wetland or upland vegetative communities, offered as mitigation by placing a conservation easement over the land in perpetuity. It goes on.

CHAIRMAN STRAIN: Okay. Now, you got documents in front of you we don't have.

MR. FRANTZ: It is the document that you have. I'm sorry. I'll --

CHAIRMAN STRAIN: I'm getting lost, you need to --

MR. LENBERGER: Actually it's on --

MR. FRANTZ: On Page 2.

MR. LENBERGER: -- in the comp. plan on Page 2. The last -- the bottom part, six, mitigation. Number three, below (6). It says: Protection shall be provided for preserved or created wetland and upland vegetated communities offered as mitigation by placing a conservation easement over the land in perpetuity.

It's interesting that that language is not in the LDC.

CHAIRMAN STRAIN: How did that happen, Steve?

MR. LENBERGER: It's not even in there at all.

CHAIRMAN STRAIN: I know. And if it's in the GMP, then --

MR. LENBERGER: It would still be required. But we should put it in the code too. So I would agree with Jeremy that we will have to add another line and reference it in there, the conservation easement requirement.

CHAIRMAN STRAIN: Does this open up any problems that don't already exist?

MR. LENBERGER: No. The comp. plan language is pretty specific, so -- I'll have to add that, that paragraph in the comp. plan, and reword it in the LDC form, if need be.

CHAIRMAN STRAIN: Okay. Good catch, Jeremy, thank you.

Caroline?

MS. CILEK: Yes, and I can speak to his second comment regarding the bottom of Page 6. I should be J. And I'm 99 percent sure that's correct, it should be J.

CHAIRMAN STRAIN: Okay. So staff hasn't got any problems with those two corrections?

MR. LENBERGER: I don't. I haven't checked the J.

CHAIRMAN STRAIN: Well, you can --

MR. LENBERGER: But Caroline said it's fine.

MS. CILEK: I'll make sure, but I'm pretty sure. It's after the boat dock section.

CHAIRMAN STRAIN: Okay, anybody else in the public? Brad, did you want to say something?

MR. CORNELL: Good afternoon, Mr. Chair and Commissioners. I'm Brad Cornell and I'm here on behalf of Collier County Audubon Society and Audubon Florida, which owns Corkscrew Swamp Sanctuary.

I've spoken to you a couple of times about this recently, and we're here to advocate keeping the policy as it is. In other words, we strongly believe that prohibiting exotics clearing as mitigation is an important at least temporary tool to protect Collier County's local wetlands, particularly shallow seasonal wetlands.

Audubon has done a significant amount of research on the local wetlands here that support wood storks at the Corkscrew Swamp Sanctuary and lots of other wading birds and wildlife. And we have analyzed hundreds of environmental resource permits: The State Wetland Destruction Permit that is issued by the DEP or the South Florida

Water Management District.

Our research is summarized in a couple of different reports. The most succinct one is the one I'm holding here. And I've shared that with staff and I'm happy to share it with you all if you would like. It's an analysis of 17 representative ERP's that all demonstrate significant shallow seasonal wetland losses. And this is despite having been approved for permits by the state. And these are all in Southwest Florida, by the way.

This research and analysis to us indicates that there are problems with the way the state is implementing its own regulations that are supposed to be protecting wetlands. State regulations as well as federal and local are -- protect wetlands. There's no net loss policy. That no net loss policy is somehow being violated. And we have the data to show that.

And how could this be? Well, there are a number of factors. One is that South Florida is predominantly wetlands. It's the greater Everglades. It's very difficult to find a large parcel to develop any kind of project without having significant wetland impacts. I think we all understand that.

And it's also the case that the shallow wetlands, as I had mentioned in our research shows, that's where the heavy impacts are, that's where we're getting unmitigated losses. Shallow wetlands is where the exotics are, particularly melaleuca, which is the subject of our advocacy on this.

And you have to understand that when the state and any agency that has a regulatory program is doing permitting, they aren't looking at acres of wetlands. So if a project destroys 100 acres of wetlands, you've got to replace that with 100 acres of wetlands. It's all done on functions, wetland values. And when you start to assess values, you have to use some sort of scientific tool. The tool that is prescribed is the Uniform Mitigation Assessment Method, which we've heard discussed already. That tool is a very powerful tool. It's not perfect, but it is very useful.

However, we have discovered in our analysis that the state, and the federal government for that matter, are not using it properly. They are missing the values of shallow wetlands, particularly shallow wetlands that have exotics on them. This is an important value. They still grow fish, they still hold water, they still protect from flooding, they still recharge aquifers. Just because they have melaleuca doesn't mean that those values have disappeared. State regulators tend to undervalue those wetlands and they overvalue the mitigation value of clearing them, if you understand my equation here. I think I've tried to illustrate this in the past.

So that's how we get to state permits that allow losses. In South Florida we have so much melaleuca, so many shallow wetlands and so many projects that impact wetlands. Much more than in North Florida. All you have to do is look at mitigation bank credits and you'll realize that the credit values up north are much higher than south. They sell a lot more credits in the south because of this inequity and this problem.

So the UMAM rule I also want to point out does not preempt local government from having a stricter policy on mitigation. If you read the rule, and we heard it read today, that particular sentence, it's talking about the amount of mitigation. So they preempt local government in determining how much.

We're here talking about what kind, the type of mitigation, whether we should allow exotics clearing alone to count as compensation for destroying complete wetlands. Should clearing exotics compensate for destroying a wetland? We think that's not right, you at least have to do some hydrologic restoration. That's not the way it's being implemented. And so the UMAM rule, if you read it, does not preempt local government from stricter type of mitigation regulation. So I want to underscore that.

So based on the no net loss policy and the laws that we have nationwide and the current faulty implementation of UMAM by the state, Collier County needs to at least temporarily be prohibiting exotics clearing -- you know, exotics only clearing as mitigation until the state can address their shortcomings in applying UMAM. And we're working with them. We think we have some very useful tools, notably a tracking tool that uses an Excel spreadsheet. We think that they can fix these problems and we are having that dialogue, have been.

But in the meantime, Collier County's interest is served, the citizens are served by having a policy that at least temporarily prohibits exotics clearing. That's where the wetland losses are happening when you count wetland loss, wetland clearing as mitigation.

So that's the bottom line. We have losses, we've demonstrated it, our research shows it, and this is a way to prevent that, at least for the time being until the state can do a better job.

Thanks very much for considering that.

CHAIRMAN STRAIN: Thank you.

Okay, is there anything, Steve, you want to add to it?

MR. LENBERGER: For the record, Stephen Lenberger.

In the mitigation incentive, there is one criteria under -- on Page 6, on top where it says mitigation incentives. If you go down to B, it does talk about create enhanced and restore wading bird habitat to be located near wood stork and their other wading bird colonies in the amount that is equal to or greater than 50 percent of the on-site native vegetation preservation acreage required or 25 percent of the overall project size, whichever is greater.

But it doesn't talk about seasonal shallow wetlands. So I just -- just to bring that to your attention that it is there.

It also -- similar language is in the comp. plan as well on Page 3 of the amendment under mitigation incentives.

CHAIRMAN STRAIN: Thank you.

Comments from the Planning Commission?

(No response.)

CHAIRMAN STRAIN: Okay, I think we have two things to consider besides the motion, besides the -- whether the striking of that sentence stays in or out. One is to make sure that whatever motion is made it incorporates the corrections suggested on Page 5.B and on Page 6, number six where the L goes to J.

So is there anybody here wanting to make a motion at this time?

MR. LENBERGER: May I intervene?

CHAIRMAN STRAIN: Go ahead.

MR. LENBERGER: Also, the correction on Page 4, 3.B, the citation.

CHAIRMAN STRAIN: Yeah, thank you.

MR. LENBERGER: Thank you.

MS. CILEK: I also just checked -- Caroline Cilek for the record -- and it is J.

CHAIRMAN STRAIN: Okay. Anybody from Planning Commission?

COMMISSIONER SCHIFFER: Well, I'm going to vote against it, so you don't want me to make a motion.

CHAIRMAN STRAIN: I don't know what you're making a motion for, so do whatever you want. I mean, whatever you guys want to do, I'm -- I mean, as far as I'm concerned, the state law is clear. If we disagree with the way the state's handling itself, well, then when the state changes the statutes, that's when we can change the way we do things. And right now I disagree with a lot the state's doing, since our new governor has been in place. But we have to abide by the laws of the land.

COMMISSIONER VONIER: May I hear Heidi read that again, please, the interpretation?

COMMISSIONER EBERT: Heidi, where are you?

MS. ASHTON-CICKO: Yeah, in reviewing this I read a lot of cases, I read HEO's, I read a lot of review articles, and they all came to the same conclusion, which was that you can prohibit touching the wetlands, but if you allow them to be touched, then you have to defer to the state.

So there may be other avenues to approach what Mr. Cornell is attempting to achieve, but based on the question that was presented to me, I don't believe that we can be that more restrictive.

COMMISSIONER VONIER: Is it quantity or type? Do they -- Mr. Cornell referred to the type of wetlands; did you not, Brad?

COMMISSIONER BROUGHAM: Functions.

MR. CORNELL: Yes, if I may, Brad Cornell, for again, for the record.

There are two state statutes that are governing here that Heidi has brought to your attention. One of them is 3.73.414 sub-paragraph 18, which is the UMAM statute. And the UMAM statute clearly says that UMAM reserves that the state reserves to itself the power to regulate the amount of mitigation, but not the type. The type is --

COMMISSIONER VONIER: Excuse me. Heidi, is that true?

MS. ASHTON-CICKO: Well, I'm not sure if I understand what his statement is, because I don't really know all the technical details of wetlands and the different types. However, I can tell you that if we're going to allow those wetlands to be touched, then we essentially have to defer to the mitigation of the state is what my research indicated. Now, whether we determine that whether we want to do a comp. plan amendment and say certain types can't be touched, then that needs to be analyzed as a separate comp. plan amendment. Because I don't know what kind of property rights issues we would have, so we would have to explore the pros and cons of that, not necessarily through the LDC plan process.

Did I answer your question with a long-winded answer?

COMMISSIONER VONIER: Thank you, Brad.

CHAIRMAN STRAIN: Phil?

COMMISSIONER BROUGHAM: I'm still looking, Brad, if you could stay up there. I'm struggling with this just a little bit.

The proposed LDC amendment change is to allow removal of exotic vegetation to count towards mitigation for impacts to wetlands.

And I think if I understand your point is if this amendment passed and we allowed someone to go in and remove exotic vegetation, as I think I heard Heidi say, once we allow it, allow exotic vegetation to be removed, then the state basically seeps in. And then we're at the mercy of the state.

You're shaking your head, but let me finish. If I'm confused, I think I am. And I think you made the statement that the state is not utilizing the UMAM modeling appropriately, so there's the crux of the problem?

MR. CORNELL: The crux of the problem is that the state is improperly using the methodology to assess values, UMAM. They're not doing it properly. So they're missing important values. That's where the losses are occurring. Our research shows that.

And the statute issue is that, what Heidi was referring to, is as soon as you allow an impact to a wetland, then she's suggesting that you're subject to whatever the mitigation outcome is and the permitting process from the state rather than local.

COMMISSIONER BROUGHAM: Okay.

CHAIRMAN STRAIN: But there's more to be added to that. First of all, this isn't all of Collier County, it's a very small fraction of Collier County called the rural fringe. Everywhere else in Collier County can use exotic mitigation as a basis for -- I mean exotic removal as a basis for mitigation.

Somehow this got added to the code inadvertently between the Planning Commission and the BCC back when it was initiated, which I would consider unfairly since it wasn't a stakeholders represented issue.

Brad is opining that he doesn't feel the UMAM is handled properly. Well, anybody that's an environmentalist is probably going to opine that on the other side of the coin the developers and people who have to deal with these rules are probably saying it's being administered too strictly. So it just depends on who you talk to and who you listen to.

I don't know of any court case where they said UMAM is being used improperly to the extent that you seem to believe it is, Brad. You've just got some statistics that you believe rationalize that. That's great, take it to the legislature and have them change the rules. I think that's the --

MR. CORNELL: We are. We're working on that.

CHAIRMAN STRAIN: When they get changed, I think Collier County can consider violating it -- not violating Florida statutes and abiding by the statute. Until then, we are in violation of Florida statute.

I don't see how -- because you assume it's not being handled properly it automatically means we can take that approach and accept it. I'm not there.

MR. CORNELL: They're local wetlands that we suffer the brunt of the impacts, not the state, not Tallahassee. So it seems logical and it's been done in other countries that you have stricter wetland protection rules than the state does because of these various types of things.

The state doesn't really understand wetlands. As I said, we have more wetlands per acre in Collier County than they do in Tallahassee, in Leon County. So, you know, they don't understand that it's very difficult to protect our wetlands down here. We need every help we can get. And Collier County has a role to play, and that's what I'm suggesting.

And it's certainly, you know, reasonable to say well, we should be deferring to the state. But I'm saying to you our research shows deferring to the state is giving us loss of wetlands. And we've shown it. I can share the reports with you.

CHAIRMAN STRAIN: I don't disagree with you that the state certainly isn't working as well as it could with counties like ours. But I don't see how we can decide that we don't want to defer to the state in this matter when the state statute indicates what it does in regards to jurisdiction, what can be used for mitigation. Once you accepted a destruction of wetlands, this is the method that the state has decided can be used and it's clear that local jurisdictions can't violate that. Unless your legislation or your proposals come forward and work.

MR. CORNELL: Unless you have -- I think the language is unless you can reconcile the differences between the local regulations and the state permit. If you can reconcile those differences, I think one way to do that would be to have a dialogue with the South Florida Water Management District or DEP and say we have a particular problem here, we would like to make an arrangement to have no exotics clearing only. And maybe exotics clearing with hydrologic restoration, sure, but not just exotics clearing, we don't want to have that as mitigation, and make that the reconciliation. Because that's the way the statute reads.

CHAIRMAN STRAIN: And that's not illogical. I just don't know if it's the cart before the horse.
Brad?

COMMISSIONER SCHIFFER: Brad, remember last time we were here we wanted you to kind of add unless. Why didn't that happen?

MR. CORNELL: It could. And I was surprised that the unless disappeared. I thought that was a good idea.

And if I were to finish that sentence, unless -- prohibit exotics clearing as mitigation unless it's for secondary impacts only. Secondary impacts being not dredge or fill of wetlands but rather, you know, if you've lowered the groundwater level and now a wetland, shallow wetland is no longer a wetland, it's because the water table is too low. That's a secondary impact.

COMMISSIONER SCHIFFER: So Steve, can we add that? What's your thought on that?

MR. CORNELL: Exotics clearing for that is logical. I would be fine with that.

COMMISSIONER SCHIFFER: And it's compromised. It's in the middle.

MR. LENBERGER: The state statute dictates the mitigation criteria methodology that the local governments have to follow by, so I don't know if we can do that.

Brad was right, it does say reconcile I think on the Attorney General's opinion.

MR. CORNELL: And it's in the statute as well.

MR. LENBERGER: In the statute, right.

So that's an interesting thought. But I don't have a clear answer for you, I'm sorry.

CHAIRMAN STRAIN: Phil?

COMMISSIONER BROUGHAM: Yeah, I didn't want to spark a debate. I was looking for clarification so that I think that I understand the issues.

And I accept what you say, Mark, this is not county-wide. It says rural fringe mixed use district. And correct me if I'm wrong, but isn't that where probably most of the wetlands would exist?

CHAIRMAN STRAIN: Rural land stewardship district is probably where most of the wetlands in the county exist, not certainly in the --

COMMISSIONER BROUGHAM: So what's this fall, second?

CHAIRMAN STRAIN: I don't know, I haven't done an analysis that way. There's a lot to -- there's ROMA's to be considered, areas that were considered ROMA's that are outside the rural fringe, there's areas along the north end, all over. I mean, Mirasol was an area of large -- but those aren't part of the rural fringe, so --

COMMISSIONER EBERT: Yeah, Olde Cypress.

COMMISSIONER BROUGHAM: Well, I am not a fan of deferring to the state. The state is cutting back on everything known to man, and I'm not a fan of deferring to the state to do much of anything. I think it's our responsibility.

COMMISSIONER SCHIFFER: Mark?

CHAIRMAN STRAIN: Yes, sir, Brad.

COMMISSIONER SCHIFFER: Could we ask this to come back with the wording that Brad had on there? I hate to do it on the fly. It would be much more -- it's much better if we see it.

We were going to -- that was supposed to happen anyway, so --

CHAIRMAN STRAIN: Well, I mean, I don't know why -- if there's no motion, then I guess it has to come back. But I'd just as soon try to get a motion struck here today. If you know what language you think is right, try for it.

COMMISSIONER SCHIFFER: Brad, can you say it again? Unless?

MR. CORNELL: Retain the language and add: Unless mitigation is for secondary wetland impacts. And that'd be it. Secondary would be defined as not direct, not dredge and fill.

COMMISSIONER SCHIFFER: Okay. Then my motion would be to remove the strike-through, add that

wording and accept all the other scrivener issues that this thing had.

CHAIRMAN STRAIN: Okay, is there a second?

COMMISSIONER VONIER: I'll second.

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

Discussion?

(No response.)

CHAIRMAN STRAIN: I am strongly opposed to this because it is inconsistent with the Florida statutes. And while I'm not saying we defer to the state, we have to defer by the overall statutes. And the fact in how this got into place is so vague, and maybe not even vague as intentionally, who knows, added at a time when the stakeholders who are the property owners out here were not allowed to properly participate is wrong. This board has stood up for stakeholder participation on every amendment we've ever made and every issue we have, and this omitted that process. And so until it goes back through the right process, I am not in favor of it and I will support the striking of it and not support the motion that's on the table now.

Is there any other discussion?

COMMISSIONER SCHIFFER: Well, what I'd like to do is get you to kind of -- I think after this is over we could talk to staff about how that happened. We've caught that before. This isn't the first time.

CHAIRMAN STRAIN: Right. And each time we've acknowledged it's wrong.

COMMISSIONER SCHIFFER: But I think the anger of that probably shouldn't blur looking at what this is. If the state criteria is going to trump it anyway, then what difference does it make?

CHAIRMAN STRAIN: Well, the anger is not where I'm coming from. The point is that the stakeholders were not involved. In any case, whether it's an environmental concern or a business concern, it's wrong. If we're going to treat everyone fairly, all of the stakeholders ought to be involved every time an action is present that regulates their land. And this wasn't done that way, Brad, and I'm -- I will not support something --

COMMISSIONER SCHIFFER: How long has this been in the code?

CHAIRMAN STRAIN: Well, look at the rural fringe. It's probably been there since the rural fringe was initiated. But look how lax or let's say lack of activity we've had in the rural fringe. This could be part of the reason.

COMMISSIONER SCHIFFER: Steve, have people honored this? And --

CHAIRMAN STRAIN: Has there been any development that's honored this?

MR. LENBERGER: We have not had any development orders impacting wetlands in the fringe since the --

COMMISSIONER SCHIFFER: Okay, so nobody stepped up to this and we're saying they wouldn't have to now.

I don't know, I think with the wording in there we end up with a proper mitigation by removing the exotics. Two good things.

CHAIRMAN STRAIN: Okay, well, there's been a motion made to retain the language, not accept the strike-through and add some clarification to it. It's been seconded. We've had discussion.

All those in support of the motion, signify by saying aye -- better do that by raising hands. All those in support, please raise your hands.

COMMISSIONER SCHIFFER: (Indicating.)

COMMISSIONER VONIER: (Indicating.)

COMMISSIONER EBERT: (Indicating.)

COMMISSIONER BROUGHAM: (Indicating.)

CHAIRMAN STRAIN: One, two, three, four in favor.

All those against?

COMMISSIONER HOMIAK: (Indicating.)

COMMISSIONER KLEIN: (Indicating.)

CHAIRMAN STRAIN: (Indicating.)

CHAIRMAN STRAIN: Three against. Motion carries 4-3.

MS. ASHTON-CICKO: May I request a modification of your language if you're going to proceed with that?

CHAIRMAN STRAIN: Sure.

MS. ASHTON-CICKO: Because I'd hate to recommend something that, you know, isn't really going anywhere.

CHAIRMAN STRAIN: Go ahead.

MS. ASHTON-CICKO: I would suggest that you add also: And unless it is reconciled with the state or federal permit.

CHAIRMAN STRAIN: Can you read the whole thing then? I'm not quite sure --

MS. ASHTON-CICKO: So it would read: Exotic vegetation removal shall not constitute mitigation unless it's for secondary impacts only, (not dredge and fill), and unless it is reconciled with the state permit.

Does that work?

COMMISSIONER SCHIFFER: What does reconciled in that case really mean?

MS. ASHTON-CICKO: Well, under the -- well, you know, it's the state statute that says that our permit has to be -- our mitigation requirements or whatever we're going to require for mitigation has to be reconciled with the state's permit. So that would open the door. So I don't know enough about how the permitting part works, but that would open the door that, you know, whatever entity or agency or state or county employee wants to work with the state to attempt to reconcile the permits, it just opens the door, in my opinion.

COMMISSIONER SCHIFFER: As the motion maker --

CHAIRMAN STRAIN: Well, let's make sure Caroline understands it right, because she's the one that's going to have to put it into language.

Can you read back what you think Heidi just indicated? Or can anybody on staff?

COMMISSIONER SCHIFFER: Heidi.

MR. LENBERGER: Not word-for-word.

COMMISSIONER EBERT: Heidi.

CHAIRMAN STRAIN: Read it again. I mean, you're not the one writing the code, these people are going to write the code. I want to make sure that everybody understands what you're trying to say so the motion's clear.

MS. ASHTON-CICKO: Well the language would stay in under D. So it would read exotic vegetation removal, period. Exotic vegetation removal shall not constitute mitigation unless it's for secondary impacts only, (not dredge and fill), and unless it is reconciled with the state permit.

CHAIRMAN STRAIN: Okay, is that the language, Brad Schiffer, that you're going to support?

COMMISSIONER SCHIFFER: I mean, I think it has to be reconciled with the state. The state trumps us on this issue, right?

CHAIRMAN STRAIN: That's my understanding of it.

COMMISSIONER SCHIFFER: So, you know, whether we want to reconcile or not, that's just a cute gesture, it has to be reconciled.

COMMISSIONER BROUGHAM: But it's no harm.

COMMISSIONER SCHIFFER: Doesn't hurt.

So as the motion maker, I accept.

COMMISSIONER VONIER: I'll accept.

CHAIRMAN STRAIN: Let's make sure there's no other changes. Heidi's still discussing.

We're all set with that language, Heidi?

MS. ASHTON-CICKO: It sounded fine to me. I don't know if Mr. Cornell still has an issue with it.

CHAIRMAN STRAIN: Mr. Cornell isn't the lawyer, you are.

So Bill, did you accept it as the second?

COMMISSIONER VONIER: Yes, I did.

CHAIRMAN STRAIN: Okay, now, does any of the motion makers change their position based on the clarification of the language?

COMMISSIONER SCHIFFER: You mean the voters?

CHAIRMAN STRAIN: The voters. I'm sorry, the voters who supported the motion.

COMMISSIONER BROUGHAM: Not I.

COMMISSIONER VONIER: I said what I --

CHAIRMAN STRAIN: And Diane, you're fine?

COMMISSIONER EBERT: Good.

CHAIRMAN STRAIN: Anybody else on the other side change their mind?

Okay, four to two -- or four to three. The motion still carries. That's the language that will go forward to the

BCC.

MS. ASHTON-CICKO: Well, let me ask you a question, Mr. Chair, because Mr. Lenberger said he's going to add a whole new paragraph in here. You know, I would recommend you see it again in final form.

COMMISSIONER EBERT: Yes.

CHAIRMAN STRAIN: Okay. Well, then bring it back to us in final form. You know the intent of the board based on the motion.

So then we'll do a final sign-off in final form.

MS. CILEK: That's fine.

Can I bring it back on Thursday if it's ready?

CHAIRMAN STRAIN: Yeah, that's fine. That's great.

MS. CILEK: Great.

COMMISSIONER BROUGHAM: Do it quick before it changes.

MS. CILEK: And Heidi, will you work with us to make sure we understand what reconciled is on a staff level?

MS. ASHTON-CICKO: I won't be here, so good luck.

MR. LENBERGER: I'll work with you on it.

CHAIRMAN STRAIN: Okay, now, let's -- Steve, you want to finish up anything you've got while you're here?

MR. LENBERGER: I believe that was it.

CHAIRMAN STRAIN: Okay, good. Thank you for those of you who have participated in this. We will move on to number one on the agenda, which is the administrative adjustment. It's Section 9.04.08.

MR. LENBERGER: 9.04.08.

COMMISSIONER SCHIFFER: I have a question for --

CHAIRMAN STRAIN: Go ahead, Brad.

COMMISSIONER SCHIFFER: -- Caroline.

We have in our packet for Thursday an administrative adjustment thing too. Is this the same one, or --

MS. CILEK: There are only three amendments scheduled for this coming Thursday. And that includes the kenneling definition, the 4.06.03 landscaping vehicle use one, as well as the boat dock amendments. So there's only three.

COMMISSIONER SCHIFFER: Why do I think that's --

MS. CILEK: This is on the agenda for today, which would have been June 7th.

COMMISSIONER SCHIFFER: Okay.

MS. CILEK: We haven't made any changes since then. I do have some updates, however.

COMMISSIONER SCHIFFER: That's good. It's just me.

CHAIRMAN STRAIN: Okay.

MS. CILEK: Well, since this amendment has been moving forward, we've received some input from community members on questions with it and have also got some direction from the County Attorney's Office to revisit this concept and come back with something that is already established elsewhere in the county.

So I believe at this time we're going to revoke this amendment. I still think the concept is going to be discussed at the board level to say there is a need for something like this. But at this time I don't know if we're going to pursue this language.

And the community member who made comments, they're very good comments, but I don't know if I'm going to work to fix them if this amendment as it is written isn't going to move forward.

COMMISSIONER BROUGHAM: Is that Mr. Pires' letter?

MS. CILEK: Yes, it is.

CHAIRMAN STRAIN: So instead of trying to correct the amendment by looking at Mr. Pires' critique, which, you know, it's -- certainly he hit some good points, you're going -- you're not withdrawing the amendment, are you?

MS. CILEK: I think we're withdrawing the amendment in this language form. But the concept we really want to bring forward and say this is a need. I believe the author Nick will be speaking to the need for something like this and will be coming back with something that is in existence elsewhere in the state to proceed with this type of

concept of an administrative type procedure.

CHAIRMAN STRAIN: Well, we've been waiting for this for a long time. I mean, this was discussed before Nick took the reigns of that office. It was discussed years prior to Joe Schmitt leaving. And it's been watered down tremendously from what I anticipated seeing, and it keeps getting watered down. Maybe we ought to revisit it as its whole and see -- I mean, I don't agree with you, it's becoming a bigger problem than anybody anticipated, but we need something.

MS. CILEK: I agree. And I don't believe the intent is at all to let it go. The concept remains and is important.

CHAIRMAN STRAIN: But I'm worried about what the alternatives would be. So I guess maybe we'll have to wait and see. Because some of the alternatives may not be something this board weighs in on, and I'm concerned about that.

MS. CILEK: Sure.

COMMISSIONER SCHIFFER: Mark, I have a comment too on that.

CHAIRMAN STRAIN: Go ahead.

COMMISSIONER SCHIFFER: Caroline, I'm really from a designer's standpoint using a code not comfortable with any kind of a system where you blur the requirements for setbacks and stuff like that. You know, obviously we've had some after-the-fact situations that we want to be compassionate with. But if designer A goes by the straight regulation and designer B becomes very good at, you know, stretching it through these processes, that's not fair. And Collier does have codes that should be able to be read and should be crystal clear. And this ordinance just -- this fuzzes the edges.

And so what is the real setbacks? Is the real setback what's in the code or is the real setback the fact that I can hire an attorney or make up a story and get a better setback?

So I think I would be careful of preconstruction, you know, methods of changing setbacks.

We do have things that are allowed to go past the setbacks, so if there's more things you want to add to that, that makes sense. But anybody reading the code any time of the day should be able to read the same thing.

MS. CILEK: Comments noted. Thank you.

CHAIRMAN STRAIN: Okay. Well, if we're going to bypass that one, let's move on to 10.02.03.B.1.b I think it is in the book. That's the tab. It's submittal requirements for SDP plans.

MS. CILEK: Oh, would you mind doing the next one, number two on the agenda, which is 10.02.13?

CHAIRMAN STRAIN: Oh, I'm sorry, I --

COMMISSIONER EBERT: His fingers just flipped too much.

CHAIRMAN STRAIN: -- went to the wrong 10.02.

MS. CILEK: That's okay.

CHAIRMAN STRAIN: You're right. I did that so I could mess Cherie' up on all the numbers she's got to type.

10.02.13.F. And this one is planned unit development procedures.

MS. CILEK: Yes. And we reviewed this amendment on the 17th last month, and you requested that we come back with some information on the funds that had been distributed to the --

CHAIRMAN STRAIN: There's a lot of money out there.

MS. CILEK: And in your packet was a spreadsheet. I don't believe there are a lot of concerns with the actual language of the amendment, but if you do have questions, there have been a couple tweaks welcomed as questions. But mostly I think you were interested in the future process for this.

And we have Amy Patterson here to answer any questions related to the funds. But most of these decisions will be decided by the board. And this is one step in that process.

CHAIRMAN STRAIN: So if I'm not -- if I'm reading this right, there's about \$600,000 paid to date based on these programs.

Is that money in some kind of account or fund where you intend to now refund it to these projects that have paid it? Is that how it works?

MS. PATTERSON: Amy Patterson for the record.

The money is in its own fund. And whether or not it will be refunded has not been discussed yet. There was an item brought to the board a couple of months ago by one of the people on this list, asking for their commitments to

be removed, which opened up the greater item. And the board gave some direction as to how they wanted staff to proceed, first addressing a method by which these developers could remove the commitments, either from their PUD's or from agreements. There are only a couple on the list that are agreements. And then to notify the property owners of the potential revised language and the process by which they could follow to request the removal of the commitments. And then third, the potential refund of any of these dollars.

Oh, I'm sorry, and the first was to suspend collection. So these funds are no longer being collected at this time.

CHAIRMAN STRAIN: And you said the potential refund. How did -- was that -- do you have any language prepared for that?

MS. CILEK: That was not included in the amendment, because they haven't made that decision yet, so --

CHAIRMAN STRAIN: Okay, but they are considering, because it seems highly unfair to have collected this money from those that were willing to pay and then all of a sudden give it all back to those that aren't willing to pay. I mean, as much as I know we need our money, I hate to see -- I see the unfairness of that.

MS. PATTERSON: That's a concern that has been raised by at least one or two commissioners.

CHAIRMAN STRAIN: Well, now we're talking \$600,000. That's a lot of money. But it's in an account that's not been earmarked for any use in Collier County but affordable --

MS. PATTERSON: Right.

CHAIRMAN STRAIN: -- and so therefore it's not part of the budget, per se.

MS. PATTERSON: No. And there's no -- there was a resolution that set out the guidelines pertaining to that money. However, there is no plan to spend the money. And in order for them to access the money, they would have to have a plan approved by the board.

CHAIRMAN STRAIN: Thank you.

Anybody have any questions?

COMMISSIONER SCHIFFER: My questions are only on the formatting of the thing.

MS. CILEK: Sure.

COMMISSIONER SCHIFFER: But what it is, essentially we have three different types of change we're going have. Let me find where it's listed.

We're going to have substantial, insubstantial and minor, correct? And we're --

MS. CILEK: Yes, I believe so.

COMMISSIONER SCHIFFER: So when you -- the way you have it organized under E, for example, E.1 -- well, E explains it. And then you go to sub number 1.

MS. CILEK: And E on what page, please?

COMMISSIONER SCHIFFER: Page 1. E is the category in which these all occur under. And then it's broken down to 1 is substantial changes now. It used to be something else.

Two is insubstantial changes, okay. And then 3 is substantial change procedures, which I think should be under 1.

So I would move item number 3, line 12 on Page 3 to occur under 1. Four is insubstantial changes. I would move that to be under 2.

MS. CILEK: Okay.

COMMISSIONER SCHIFFER: And then make -- and then language changes, by the way, I would move number 5 to be up in that introductory sentence on E. And then I would make 6, 3. And -- because you see, what you've done is you've set up three categories, and then you just started listing stuff. Some stuff is the category, some stuff is how to do something in a category.

So in terms of the hierarchy of code -- you know, code's not just the list. Where things are placed and what they're on is pretty important. So I would recommend looking at that.

MS. CILEK: This was revised in connection with the administrative code, which is currently being worked on by staff. And I think your suggestions are good.

And Heidi reviewed this, so as long as she's fine with the restructuring, then that sounds like a good plan.

COMMISSIONER EBERT: So you'll rewrite it and bring it back?

MS. CILEK: Yeah. I'll bring it back on Thursday, if that's okay.

CHAIRMAN STRAIN: Yeah, let's just try to get -- we've been kicking these few around way too long, so

let's try to finish it on Thursday then.

MS. CILEK: That sounds good.

CHAIRMAN STRAIN: Anybody else have any other comments or changes to this piece?

(No response.)

CHAIRMAN STRAIN: Okay, let's move to the next one.

MS. CILEK: Great.

The next one is 4.06.02, buffer requirements. And this one was reviewed last month on the 17th. And we discussed modifying on Page 6 the acreage requirements. And I worked with Nick, the author, and we sort of found a balance of what we thought would be appropriate for this section.

COMMISSIONER BROUGHAM: And the only changes you've made are the highlighted changes?

MS. CILEK: Yes.

COMMISSIONER BROUGHAM: It seems pretty straightforward.

CHAIRMAN STRAIN: Anybody have any questions on 4.06.02, buffer requirements?

COMMISSIONER EBERT: No.

COMMISSIONER SCHIFFER: No, I was good with it.

CHAIRMAN STRAIN: Is there a motion to approve it as --

COMMISSIONER VONIER: So moved.

CHAIRMAN STRAIN: -- modified and changed?

By Bill. Is there a second?

COMMISSIONER BROUGHAM: Second.

CHAIRMAN STRAIN: By Phil.

Discussion?

(No response.)

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

COMMISSIONER SCHIFFER: Aye.

COMMISSIONER KLEIN: Aye.

CHAIRMAN STRAIN: Aye.

COMMISSIONER VONIER: Aye.

COMMISSIONER EBERT: Aye.

COMMISSIONER BROUGHAM: Aye.

COMMISSIONER HOMIAK: Aye.

CHAIRMAN STRAIN: Anybody opposed?

(No response.)

CHAIRMAN STRAIN: Motion carries 7-0.

COMMISSIONER BROUGHAM: Yay, we got one.

CHAIRMAN STRAIN: One.

MS. CILEK: One is good. One is good. We're making progress.

COMMISSIONER VONIER: What's next?

MS. CILEK: Okay, next one is 6.06.01, street system requirements.

And this is coming back to you following a discussion about sidewalk concrete thickness. And following our meeting, staff went back and reviewed it thoroughly. And what we realized was that what we had proposed was actually existing language, but it was very convoluted and hard to understand.

So what we'd like to do today is to clarify what the code actually says and to include the small removal of an option. And I can explain that.

But the overall goal here is just to make this simpler to understand at this point.

CHAIRMAN STRAIN: Okay. You said you could explain something?

MS. CILEK: Yeah. The one change is on Page 3. And you'll see under 1.A that we're striking four inches thick. Then there's some specifications. And be constructed over a compacted four-inch lime rock base. That's an option, and we're just removing that option. Because it's not utilized.

And then as proposed last time, we are removing the specifications, because they are consistent with FDOT standards. And that is illustrated in the first sentence which says that all sidewalks shall be designed and constructed

in accordance with the latest FDOT design standards.

CHAIRMAN STRAIN: Anybody have any questions?

COMMISSIONER SCHIFFER: I'll make a motion.

CHAIRMAN STRAIN: Well, before you do, I got one -- go ahead, Diane.

COMMISSIONER EBERT: Well, pathways.

MS. CILEK: I'm going to ask Reed to come up and join me.

COMMISSIONER EBERT: Thank you. He needed the exercise anyway.

COMMISSIONER BROUGHAM: Okay.

COMMISSIONER EBERT: Reed, could you please explain on Page 4 the asphalt pathways. The six-inch stabilized subgrade, which is not a problem, can you please explain to me, because I don't -- type S-3 asphaltic concrete?

MR. JARVEY: It's called asphaltic concrete. For our purposes, it's asphalt.

COMMISSIONER EBERT: Okay. But they --

MR. JARVEY: S-3 is a type of asphalt. It's what's used on roadways. It has a structural --

COMMISSIONER EBERT: Stronger?

MR. JARVEY: Yeah, years ago we used -- typically it was a Type 3, which was almost like a veneer. It really had no structural value to it but it had a wearing surface.

Type S-3 has a structural surface to it and a wearing surface. And so it's almost universal in the use now, except for maybe in the Superpave and some other things that they do, super highways. But it is the standard asphalt for roads and pathways.

COMMISSIONER EBERT: Perfect. Thank you kindly.

CHAIRMAN STRAIN: Go ahead, Bill.

COMMISSIONER VONIER: What does the structure come from, gravel?

MR. JARVEY: I don't actually know, but yes, it's gravel and there's asphalt, oil.

COMMISSIONER SCHIFFER: It comes from the base we're reducing.

CHAIRMAN STRAIN: Anybody else have any questions of Reed?

(No response.)

CHAIRMAN STRAIN: Reed, I've got one.

On Page 3 we refer to the brick paver sidewalk must be installed for a four-inch thick compacted lime rock base and sand cushion.

What -- I mean, I know what a sand cushion is, but can you tell me what somebody would assume a sand cushion must be, based on that?

MR. JARVEY: I mean, the construction of pavers is --

CHAIRMAN STRAIN: Requires sand, right. Is it a quarter inch thick sand or is it three inches of sand or is it two inches of sand? I think we need to put something there because someone will come in and put a quarter inch of sand there and say there's a sand cushion.

So what is -- do you know what the spec is? I do know it's required, but I don't know how much.

MR. JARVEY: I don't remember. Unless Caroline can remember from all the various discussions.

CHAIRMAN STRAIN: Brad?

COMMISSIONER SCHIFFER: The think we do in the building code to escape this is we put as per manufacturer's specification. And then that punts it. So each manufacturer could have a different spec. You can't come up with one that would cover them all.

CHAIRMAN STRAIN: That's fine with me. I don't -- does that work for staff?

MS. CILEK: I believe so. So we would add language that says and same cushion per -- or would it not be necessary in this?

COMMISSIONER SCHIFFER: As per -- you know, I mean, pavers are going to be manufactured by somebody. I can't think of natural pavers that --

MS. CILEK: Definitely.

MR. JARVEY: After the sand cushion put as per manufacturer's recommendation.

CHAIRMAN STRAIN: Yeah, that would work.

And then Caroline, the only other question I had is under your fiscal and operational impacts, number three, it

says: The change to subsection 6.06.01.F, which I think you're referring to on the next page, but that's 60.60.2.F.

MS. CILEK: I'm sorry, you are correct. My error.

CHAIRMAN STRAIN: Should it be a two?

MS. CILEK: Yep.

CHAIRMAN STRAIN: Okay.

Other than that, that's all I've got to say. Anybody else?

(No response.)

CHAIRMAN STRAIN: Is there a motion?

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

CHAIRMAN STRAIN: Subject to the changes --

COMMISSIONER SCHIFFER: Subject to the notations.

CHAIRMAN STRAIN: Second?

COMMISSIONER EBERT: I'll second.

CHAIRMAN STRAIN: Ms. Ebert seconded.

All those in favor, signify by saying aye.

COMMISSIONER SCHIFFER: Aye.

COMMISSIONER KLEIN: Aye.

CHAIRMAN STRAIN: Aye.

COMMISSIONER VONIER: Aye.

COMMISSIONER EBERT: Aye.

COMMISSIONER BROUGHAM: Aye.

COMMISSIONER HOMIAK: Aye.

CHAIRMAN STRAIN: Anybody opposed?

(No response.)

CHAIRMAN STRAIN: Motion carries 7-0.

MS. CILEK: Two. Progress.

CHAIRMAN STRAIN: Now we're down to the last one. 10.02.03.B.3. That's submittal requirements for site development plans.

MS. CILEK: Yes. We spoke about this one last month as well and there was a request, actually if you turn on Page 4, to modify little four, iv. And we modified B, which dealt with the reconfiguration to a preserve or conservation area.

What we did was to identify items that would be significant when you have a reconfiguration to a preserve or conservation area. So these things would trigger a significant change.

CHAIRMAN STRAIN: And how do you decide if it is significant? Because in every paragraph you say: The following may be considered significant changes. So who makes the decision and what criteria ought to be determined if it shall be or may be?

MS. CILEK: Right, so staff will be looking at these, all of these different criteria that are outlined. And you can see they're kind of -- transportation, then stormwater/engineering, utilities, environmental. So the staff will be looking at those. And if these are triggered, then that will pull it into being either a more reviewed amendment or possibly a full amendment.

CHAIRMAN STRAIN: Well, then it isn't a may, it's a shall.

COMMISSIONER BROUGHAM: It's a shall.

CHAIRMAN STRAIN: The following shall be considered significant changes. That way staff's not making an arbitrary decision. May means you can make a decision. If A is triggered, it may be, but it's not.

So wouldn't you mean the following shall be considered significant changes?

MS. CILEK: Let me discuss that with staff before I make that large decision.

CHAIRMAN STRAIN: Okay. So you want -- Thursday?

MS. CILEK: Yeah, Thursday. It's a -- just I want to have a discussion before I go ahead and okay that.

And as you'll see, we had a couple other revisions as well, and we rewrote ii.I, double I.

COMMISSIONER EBERT: Where are you?

MS. CILEK: Page 3, just in the front. We just made things a little clearer. We worked with Heidi to do that.

CHAIRMAN STRAIN: Okay.

COMMISSIONER BROUGHAM: Mark, wouldn't --

COMMISSIONER VONIER: You have may on that page, too.

COMMISSIONER BROUGHAM: Yeah, that's what I was going to say.

MS. CILEK: Yeah, it's consistent throughout.

COMMISSIONER BROUGHAM: On 3.B.i, or 3.B.1, and 2 and 3.

CHAIRMAN STRAIN: What were you -- did you have more?

COMMISSIONER BROUGHAM: No, I was just agreeing with Bill that may be is also included on Page 3

--

CHAIRMAN STRAIN: Gotcha.

COMMISSIONER BROUGHAM: -- and we were talking on Page 4. So I would assume that the same comment would hold over.

MS. CILEK: Yes, it's used for every single one.

COMMISSIONER BROUGHAM: Okay.

CHAIRMAN STRAIN: Caroline, on Page 4, Roman numeral iv.B. In B you've got a bunch of separated things that would be considered significant changes. Reconfiguration to preserve a conservation area which is used as a buffer for neighboring use, semi colon. Then you go on: The reconfiguration contains an area with listed species.

Wouldn't those -- and I'm surprised Brad didn't point this out -- be structured as sub-letters to B?

MS. CILEK: They could be. That's just a matter of they're all part of that.

CHAIRMAN STRAIN: You don't have an "or" until the third line up from the bottom of B. So does that mean all the other things have to apply before you reach the "or"?

MS. CILEK: No, it's any of those.

CHAIRMAN STRAIN: Okay. I just think it might be clearer if you're going to reformat -- maybe either reformat it or put or's in between each one so we know it can be any of those that trigger it instead of all collectively together.

MS. CILEK: Okay.

CHAIRMAN STRAIN: You can do that by Thursday, right?

MS. CILEK: You bet.

COMMISSIONER EBERT: I have a question.

CHAIRMAN STRAIN: Go ahead, Diane.

COMMISSIONER EBERT: I have a question.

Same area. It says: The following may be considered significant changes.

We just had something which was Parklands, which is still coming back, they were talking about one set of buffer and you're going to have preserve against preserve there.

So are you saying this is going to be significant changes?

MS. CILEK: Are they reconfiguring the buffer? Or are they just --

CHAIRMAN STRAIN: Well, they're coming in for a whole new PUD, so whether it's significant or not on that particular case, it doesn't matter, they're coming in --

MS. CILEK: That's separate.

CHAIRMAN STRAIN: Yeah, they're all --

MS. CILEK: That's a PUD amendment.

CHAIRMAN STRAIN: -- they're coming in for a whole PUD amendment.

That would trigger a PUD amendment. That's what they're doing, they're giving us the PUD amendment.

MS. CILEK: It would never see this section of the code.

COMMISSIONER EBERT: Okay. All right.

CHAIRMAN STRAIN: And I think that wraps up all of the issues for today, doesn't it?

MS. CILEK: It does. I have some to bring back to you on Thursday.

CHAIRMAN STRAIN: Hopefully we'll be done with them on Thursday. Kind of like that Scotch tape that sticks to your fingers.

MS. CILEK: Just a quick overview, we had the portable storage container community meeting for the Estates last Wednesday, the 13th. And I'll be bringing that amendment back in July. A lot of information to compile

and comments to compile.

So as requested by Mr. Gaddy, that will be coming back. So if we get all done on Thursday, that would be great, but I will be back in July.

COMMISSIONER BROUGHAM: You might inform the board how many people were there.

MS. CILEK: There were 27. It was a really good meeting.

CHAIRMAN STRAIN: Good. I'm glad that would happen. That's a good thing, yeah.

MS. CILEK: It was a great opportunity for people to provide input on the amendment and their ideas, and hopefully there will be some people who come out as well in July for the CCPC meeting.

CHAIRMAN STRAIN: Okay, on your kenneling definition that you have as an update but that's going to be in front of us on Thursday, did I copy you with that e-mail I sent to Heidi?

MS. CILEK: Yep. And I've been working on it.

CHAIRMAN STRAIN: Okay. Because I think that's going to be very, very important. Because that will have a huge impact on the Estates if that Code of Laws change is made by Animal Control so that every 10 or more animals in the county of the same species have to be registered and then inspected yearly by -- that's crazy. You're going to have to hire a whole staff just to keep track of something like that, plus there would be fees associated with it. So I'm not sure where that came from, but it doesn't seem like it's logically written. Oh, I only saw an excerpt, so maybe there was more to it.

MS. CILEK: Sure. And Amanda will be here to answer any questions. But just to keep in mind, that's only if there is a nuisance complaint made. So it's not that they're regulating anyone who has that. Just that there's a nuisance --

CHAIRMAN STRAIN: But nuisance complaints are done anonymously. So that means I could sit in (sic) a phone and dial in every agricultural parcel in Collier County and file a complaint anonymously over thousands of them, and that means all these inspectors run out and create jobs for themselves, which is wrong. We should --

MS. CILEK: I understand.

CHAIRMAN STRAIN: So no, I think that somebody needs to interject that that particular way of approaching the kenneling question certainly opens a Pandora's box of other problems for Collier County, and the Estates residents I know will open a -- a problem for.

MS. CILEK: Well, I spoke with Amanda and she'll be here. And we have a couple ideas for how to amend that so that it won't inhibit the fowl --

CHAIRMAN STRAIN: Well, before they would enact something like that, I'd hope they would do the same thing you've done with the storage containers is go out to the people mostly involved and try to have a public meeting so that everybody knows what's coming down.

MS. CILEK: That's a good recommendation.

COMMISSIONER SCHIFFER: Mark, you're referring to a part of the administrative code that has something? Or is that something that was there --

CHAIRMAN STRAIN: No, that's just the part of the Code of Laws that they're trying -- in order to fix the kenneling issue, they went to Animal Control who is under the Code of Laws, and they I guess proposed to fix --

MS. CILEK: Currently --

CHAIRMAN STRAIN: -- but since they're in the Code of Laws, their fix would bring the Code of Laws into play on that issue.

COMMISSIONER SCHIFFER: But we don't see that fix. I haven't --

CHAIRMAN STRAIN: That's why I'm concerned. It's in our packet.

COMMISSIONER SCHIFFER: And so we're relinquishing or causing something to go free, and you say there's another section of code that's going to cover it. How come we wouldn't see that section to help us in our judgment on changing this section?

MS. CILEK: I did and --

CHAIRMAN STRAIN: It's in our packet.

COMMISSIONER SCHIFFER: It is in our packet?

CHAIRMAN STRAIN: Yeah. In fact, if you read the staff report to the packet, it lays out what --

COMMISSIONER SCHIFFER: It's in there. But I just -- the only thing I saw is the one page just changing the kenneling.

MS. CILEK: Yes. I gave an excerpt and explained what was going on in the process.

COMMISSIONER SCHIFFER: Okay, I'll read it.

MS. CILEK: But I will definitely bring those documents for you on Thursday, or I can e-mail them out as well, if that would help.

They're still proposed. They're still working drafts, so --

CHAIRMAN STRAIN: My question, though, was the excerpt that you showed me may -- there may be more to it. I was hoping there was. That's why I sent you the emails that my goodness, you know, this could take on a greater picture than we imagine.

And if it's exempting certain uses or certain types of zoning in the county, that would certainly help. But it didn't say that in the part that I saw.

MS. CILEK: Right. Amanda is writing that for her constituents, so we're working on it. I talked to her yesterday, and Ray as well. It's -- staff is definitely discussing that issue.

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

One of the things we wanted to try to fix is we don't want to regulate through a definition in the LDC. So in the effort of trying to come up with criteria it was deemed where is the best place to regulate the animals. And Animal Control seemed to be a logical choice. But I understand your concern and we will look into that.

CHAIRMAN STRAIN: Well, you know it conflicts with the zoning. So you've got an LDC who's saying one thing in regards to raising of animals, now you've got a Code of Laws that would be in direct conflict.

MR. BELLOWS: Definitely. And the attempt was not to supersede the Estates or any other zoning district that has specific criteria on the number of animals that could be allowed on the property.

CHAIRMAN STRAIN: Okay, thank you.

Anybody else have anything?

(No response.)

CHAIRMAN STRAIN: We'll make a motion to continue this to Thursday afternoon after our regularly sessioned meeting. Is there a motion?

COMMISSIONER KLEIN: So moved.

CHAIRMAN STRAIN: Made by Barry. Seconded by?

COMMISSIONER SCHIFFER: I'll second.

COMMISSIONER VONIER: Second.

CHAIRMAN STRAIN: Brad.

All in favor, signify by saying aye.

COMMISSIONER SCHIFFER: Aye.

COMMISSIONER KLEIN: Aye.

CHAIRMAN STRAIN: Aye.

COMMISSIONER VONIER: Aye.

COMMISSIONER EBERT: Aye.

COMMISSIONER BROUGHAM: Aye.

COMMISSIONER HOMIAK: Aye.

CHAIRMAN STRAIN: Anybody opposed?

(No response.)

CHAIRMAN STRAIN: This meeting's continued.

MS. CILEK: Thank you.

There being no further business for the good of the County, the meeting was adjourned by order of the Chair at 2:19 p.m.

COLLIER COUNTY PLANNING COMMISSION



MARK STRAIN, Chairman

These minutes approved by the board on 7-19-12 as presented or as corrected .

Transcript prepared on behalf of Gregory Reporting Service, Inc.,
by Cherie' R. Nottingham.