

August 2, 2012

TRANSCRIPT OF THE MEETING OF THE
COLLIER COUNTY PLANNING COMMISSION
Naples, Florida
August 2, 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
Philip Brougham (absent)
Diane Ebert
Karen Homiak
Barry Klein
Paul Midney
Brad Schiffer
Bill Vonair

ALSO PRESENT:

Heidi Ashton-Cicko, Assistant County Attorney
Ray Bellows, Zoning Manager
Thomas Eastman, Real Property Director, CC School District

CHAIRMAN STRAIN: Good morning everyone. Welcome to the August 2nd meeting of the Collier County Planning Commission. If you all please rise for the pledge of Allegiance.

(The Pledge of Allegiance was recited in unison.)

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

COMMISSIONER HOMIAK: Mr. Eastman is absent. Mr. Vonier?

COMMISSIONER VONIER: Present.

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 is absent.

CHAIRMAN STRAIN: Right. He had told us last week, so.

***Okay, addenda to the agenda. Do we have any changes from staff? Ray?

MR. BELLOWS: Yes, we have a request from the applicant of 9.B to be moved up to 9.A.

CHAIRMAN STRAIN: We'll keep going on the way it's scheduled. It's too late to make changes and I'm sure there are people here for the docks. And if it takes too long so be it.

Anything else, Ray?

MR. BELLOWS: That's it.

CHAIRMAN STRAIN: Okay. Anybody on the panel?

(No response.)

CHAIRMAN STRAIN: No.

And what's the LDC amendments? We're not done with them. So when is the next round of those coming forward?

MR. BELLOWS: I have on my agenda that we have LDC amendments coming on the 16th, August 16th.

CHAIRMAN STRAIN: Okay.

Planning Commission absences. Does anybody know if they are not going to make it to the August 16th meeting?

COMMISSIONER VONIER: I will not.

CHAIRMAN STRAIN: Okay. Anybody else?

(No response.)

CHAIRMAN STRAIN: We'll still have a quorum.

***Approval of minutes. We don't have any.

***BCC recaps, Ray?

MR. BELLOWS: Yes. On July 24th the Board of County Commissioners heard the PUD amendment for Parklands, and that was approved five to zero. No changes from the CCPC recommendation.

CHAIRMAN STRAIN: That's GL Homes?

MR. BELLOWS: Yes.

CHAIRMAN STRAIN: Good, good.

Go ahead, Brad.

COMMISSIONER SCHIFFER: Ray, they also, on the LDC, said they were going to put together the architectural review committee, remember, that we suggested, this board?

MR. BELLOWS: I believe they are working on it but I don't have an update on that.

COMMISSIONER SCHIFFER: Who is handling that with --

MR. BELLOWS: Caroline.

CHAIRMAN STRAIN: Does that mean that they took this Board's advice and went --

COMMISSIONER SCHIFFER: Yes.

CHAIRMAN STRAIN: Good, good. That's the right thing to do. I'm glad that was done. Excellent.

***Chairman's report. On the 16th -- Steve, thank you for this beautifully big book. We really wanted it.

This is just one issue, on an ST permit, right? He's not here. He's lucky he got out before -- I don't think we've ever had an ST permit with that thick of a background information on it.

MR. BELLOWS: There he is.

CHAIRMAN STRAIN: Thanks for the book, Steve. You want to give us heads up on anything we should be concerned about, since you went to so much trouble to give us a four-inch thick three-ring binder on an ST application?

MR. LENBERGER: For the record, Steven Lenberger, Growth Management Division. Product's gone very smooth. It's got an approval by the EAC. So I don't see any hang-ups. The analysis for the project's in the engineering report in that binder. There is a separate CD which I will deliver, will get delivered with the staff report in the regular materials.

CHAIRMAN STRAIN: Okay.

MR. LENBERGER: That is a number of references to the different materials made in that binder and it's included on the CD.

CHAIRMAN STRAIN: So we not only have to -- when we read the binder, we, every time those references hit up, pull the CD up to see what it is specifically saying.

MR. LENBERGER: Actually, there are -- some of the tabs it just references the CD.

CHAIRMAN STRAIN: Okay.

MR. LENBERGER: It's pretty easy actually to follow.

CHAIRMAN STRAIN: Okay. That's quite a load you've provided us with. Do we have any other items that day, Ray, on the 16th?

MR. BELLOWS: Yes, we have a presentation of the Collier County inventory of shelter space availability, emergency management. That's, I believe, Mike Bosi's part of that presentation.

CHAIRMAN STRAIN: We should be able to handle the day, thank you.

***Okay, that takes us to the first consent agenda item. It's 8.A, BDE-PL20110002669, the Toler boat dock extension. Are there any comments, concerns from the --

COMMISSIONER EBERT: No.

CHAIRMAN STRAIN: Recommendations for approval from staff or the paperwork from staff?

(No response.)

CHAIRMAN STRAIN: Okay. Is there a motion to approve or -- yeah, I'm assuming it's approve, since there's no objections.

COMMISSIONER SCHIFFER: I'll do it, Mark.

CHAIRMAN STRAIN: Okay, Brad.

COMMISSIONER SCHIFFER: I move we forward with a recommendation that the summary shows exactly what we did at the hearing.

CHAIRMAN STRAIN: Is there a second?

COMMISSIONER VONIER: Second.

CHAIRMAN STRAIN: Made by Brad, 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 AHERN: Aye.

COMMISSIONER MIDNEY: Aye.

COMMISSIONER VONIER: Aye.

CHAIRMAN STRAIN: Aye.

Anybody opposed?

(No response.)

CHAIRMAN STRAIN: Motion carries 8-0.

I can't see on the other side. Is our nameplates in front?

MR. BELLOWS: Yes.

CHAIRMAN STRAIN: Okay. Wanted to make sure.

***We'll go to our advertised public hearings. The first item up is BDE-PL20110000644, the Helsel boat dock extension. It's on the Isle of Capri.

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: Disclosures on the part of the Planning Commission.

(No response.)

CHAIRMAN STRAIN: Okay. This is a rare one, we didn't have any.

With that we'll go to the presentation.

Who is --

MR. THOEMKE: Good morning. My name is Kris Thoemke. I work for Coastal Engineering Consultants, representing the client, Mr. Ron Helsel, who's also here.

CHAIRMAN STRAIN: Kris, I didn't recognize you. I was asking --

MR. THOEMKE: I got older.

CHAIRMAN STRAIN: Well, we all have, yeah. I honestly didn't recognize you. Quite a few years. Good to see you again.

MR. THOEMKE: It happens. Thank you. Just to give you an -- okay.

MR. BELLOWS: Do you have a map?

MR. THOEMKE: Well, that's fine, but I can use this.

MR. BELLOWS: Whatever one you want.

MR. THOEMKE: Just to give you an overview of where this is on the Isles of Capri, it's just as you come onto the Isles of Capri, a road coming in. The project area is here. Probably can't see my thumb. The project area is right here where my thumb is.

CHAIRMAN STRAIN: You'll need to use the mike, the portable mike if you go there.

MR. THOEMKE: Is that better?

CHAIRMAN STRAIN: Yep.

MR. THOEMKE: As you come onto the Isles of Capri -- and you -- just to give you an idea of what it looks like, a little bit closer aerial there, this is off of the most current aerial from the Property Appraiser's website. Let me adjust this.

This is the -- Mr. Helsel's property right here. These are pilings from an old dock that was destroyed in Hurricane Wilma. And this is county land right here, Blue Heron restaurant. This is obviously a dead-end waterway. And what it looks like on the ground at this point in time is something like this. This is Mr. Helsel's property and you can see, just give you an idea what the area looks like.

I know you've reviewed our application, or hope you have, I assume you have. Our plan is to construct a dock that meets the DEP requirements because we have to be mindful of those as well in terms of what is allowed. This is in an aquatic preserve so there are other restrictions. We went out and did a detailed bathymetric survey of the area, also located a seagrass bed which we had to avoid, and came up with a dock proposal that will also meet the DEP's criteria for depth, which is, you can't go any lower than minus four feet mean low water.

This dock as designed -- the actual dock length is 29 and a half feet, which is about a half foot shorter than the previous dock that was there, which was the big pilings came out to about 30 feet. And then the boat is on the outside of that in order for depth purposes, and it would be on a lift.

On your drawing that you have, just so that it's clear, the depth values that you see there are in a datum called NAVD. You subtract 1.62 feet to reach a mean low water on that. So those -- and we have to use the NAVD datum for DEP because that's what they require.

The staff report that you have, and we worked with Mike Sawyer on this, we meet the criteria for this. Staff has recommended approval, and we would request that you approve it, although I do understand that there has been a couple of e-mails from a neighbor which I'm not quite sure how to address some of the comments in there, and so I'm not really sure exactly what issues might exist. But we believe that this dock in this configuration meets the criteria of the county and also the state and request that you permit it. Or approve it.

CHAIRMAN STRAIN: Thank you, Kris. Okay, questions from the Planning Commission?
Brad?

COMMISSIONER SCHIFFER: Kris, one thing is, the water is deeper where the old dock was, why didn't you keep it in that area and why didn't you make it a perpendicular dock, which looks like there's that before.

MR. THOEMKE: The old dock, as far as we can tell, was not a legally permitted dock. It also did not meet the side setback criteria. And in its size it probably wouldn't even have been allowed by DEP. So we couldn't go back and recreate that dock. We put the dock in the location it's in so we meet the setback criteria. The DEP has setback criteria as well as the county. And so this dock meets all of those criteria combined.

The reason that we don't have the boat perpendicular is due to depth issues. With the boat on a lift you need about a foot or so underneath the hull of the boat for the lift to sit because it's not a good idea for the undercarriage of the lift to sit on the bottom, it's not good for the cables. So we allowed enough room so that the boat at mean low water could be safely -- come up off the lift and go back on again.

COMMISSIONER SCHIFFER: But could you push this over towards the west a little more, because if we have seven and a half feet, you are 22 to the dock but you have no dimension to the nose of the boat, so -- but because the concern is you will be blocking a good bit of the view of the neighbor to the east. So is that as far west as it could be and meet all the setbacks?

MR. THOEMKE: The county setbacks, yes, I believe so.

COMMISSIONER SCHIFFER: It's county --

MR. THOEMKE: Without a variance -- we could get a variance.

COMMISSIONER SCHIFFER: But the county setback is seven and a half feet, so, I mean, looking at that --

MR. BELLOWS: Yeah, 15 feet.

MR. THOEMKE: It's 15 feet, I believe.

COMMISSIONER SCHIFFER: It is 15?

MR. THOEMKE: Yeah.

COMMISSIONER SCHIFFER: Oh, never mind.

CHAIRMAN STRAIN: Michael, will you verify that?

MR. SAWYER: For the record, Mike Sawyer, project manager for the project. It is 15 on the side lot.

COMMISSIONER SCHIFFER: And is the nose of that boat at about 15?

MR. SAWYER: I believe so, yes.

COMMISSIONER SCHIFFER: Okay. So he can't push it any further to the west.

MR. SAWYER: Not in the current configuration.

COMMISSIONER SCHIFFER: Okay, then, the next question is what do you need such a large platform, the terminal platform for?

MR. THOEMKE: That is what the applicant would like, that is what the DEP allows. It's a 10 by 16 foot area. With the boat also on the end of the dock like that you need more than a three or four foot wide area to safely access the boat and service the boat lift and make that safe. So we need something wider out there for the state ingress and egress to the vessel.

COMMISSIONER SCHIFFER: Okay. Thank you. I'm done.

CHAIRMAN STRAIN: Anybody else?

Go ahead, Bill.

COMMISSIONER VONIER: I couldn't tell from the picture, does the home to the east have any shoreline? Are they on the water or is their property totally landlocked?

MR. THOEMKE: I can't give you a 100 percent accurate answer to that question. I can show you -- I believe you are talking about this property here.

This is county land, and this may be shoreline here, but as you can see it's filled in. There's probably a question as to when that filling in occurred relative to the creation of this area. This whole area is fill, there was

actually a channel through this area back prior to around 1940, I know the channel existed. So the ownership of there is something I can't answer. That would be something you would have to probably talk to the applicant. I think their representatives are here, they might be able to shed some light on that question. But I don't know what else to tell you.

COMMISSIONER VONIER: All right. Thank you.

MR. THOEMKE: Okay.

CHAIRMAN STRAIN: Anybody else? Kris, as a follow-up to that question, we're used to seeing riparian lines on some of our docks, especially ones that are more questionable. This particular one, where is the riparian line that would give us an indication of that house that Bill just pointed to and the rights they may have to access the water?

MR. THOEMKE: Riparian lines are a touchy issue, a difficult issue. The state has not -- there's no statute in state law that specifically defines how riparian lines are established other than it says that it can be mutual agreement of two neighbors or by a Court of competent jurisdiction. So riparian lines are not set, preset by anybody.

In this particular instance, I assume you are talking about the riparian line on the east side?

CHAIRMAN STRAIN: Yes.

MR. THOEMKE: That would be something that we can make the contention -- if we make the contention that they have no waterfront rights then the riparian line could be an extension of the property like. Had there been a marked channel in this area it could have also been perpendicular to the marked channel back to those. Those are the two common ways in which riparian lines are set. That doesn't mean that's the only way.

This is an unusual situation in that you have a dead-end area. The property to the east is, it's unknown as to where -- how much waterfront rights they have because I'm not sure who owns that land. That land seaward of the county land naturally accreted, but that doesn't necessarily mean that it belongs to -- as I understand it it doesn't necessarily mean it belongs to the property owners, it could belong to the state because it depends on what caused the accretion to occur.

CHAIRMAN STRAIN: Kris, let's go back to the basic question.

MR. THOEMKE: Okay.

CHAIRMAN STRAIN: Are you under the contention that that property has no riparian rights?

MR. THOEMKE: I don't have an opinion as to whether it does.

CHAIRMAN STRAIN: In one of your previous statements you said that the riparian lines could have been set by a mutual agreement between the property owners. Did you get an agreement with that property owner setting a riparian line?

MR. THOEMKE: We have not discussed that with the property owner, did not --

CHAIRMAN STRAIN: That would have been vital to today's process, as far as I'm concerned, to just at least have that courtesy to go to your neighbor and say here is what I'd like to do, do you have any objections. If not, would you mind giving us consent. Then it would have made my job a lot easier as far as reviewing this from that aspect. And I think that is important, the riparian line for not only them but the potential riparian line for Collier County.

We recently had a boat dock application that had a dock situated at the end of a canal, similar to what you've got here. And if you were to give rights to any of the other properties you're already going by 42 feet out of a 118 feet because part of that end is already cut off by the restaurant. You're down to, what, 60, 70 -- let's see -- 80 feet. I just want to make sure that everybody's rights are protected, including the county's, in regards to the property. And I'm not saying yours is right or wrong, I just want to make sure the others are understood.

MR. THOEMKE: We have thought about that recently and there is one potential scenario that might work. This is not the only one. But in this scenario here, if this corner lot has waterfront rights, as I understand the Land Development Code sets the riparian line between the county and this property owner at a 45-degree angle. I found this -- language for this in the LDC. The property -- the riparian line here does not necessarily have to be 45 degrees. The intent of riparian law as I understand it, is to give everybody access to the water. That would include this property here, the Blue Heron, the county's land, this property owner, they form basically the cove there.

So if we set this angle at 30 degrees, we would still meet the setback criteria from the riparian line for this dock. This owner has access to the water. They have their issues to deal with obviously with the land that's there, but that's not an issue that is a factor to us. But this provides this property owner access, it provides the county access and

also the Blue Heron's should they need that. They all have the right to have it. So this solution is one that would work.

CHAIRMAN STRAIN: Yes, that does work. I just don't know, though, since you have not had any conversation with the one house to, as you have said previously, to find a mutual agreement for a riparian line.

MR. THOEMKE: Yes.

CHAIRMAN STRAIN: Okay.

COMMISSIONER SCHIFFER: Mark?

CHAIRMAN STRAIN: Go ahead, Brad.

COMMISSIONER SCHIFFER: But we do show on a survey from a licensed surveyor the riparian line is coming straight out, so --

MR. THOEMKE: Yeah, we have changed that since then because we -- when we did that, we were under the impression, initial impression that that property did not have waterfront rights because there is a 1962 aerial that seems to indicate that there was, it was landlocked at the time. So in the event that it does have waterfront rights, this would be a solution, that riparian line we're willing to change if that's what we need to do.

We're not trying to be unreasonable, we're trying to come up with a solution here. Our thinking has evolved as we have gone through this and we found out about potential objections, which we found out about a week or so ago.

COMMISSIONER SCHIFFER: So the riparian line on the survey, ignore that?

MR. THOEMKE: Assuming that that property has waterfront rights then we would have to change that riparian line if that's what it -- if that would be a mutual agreement between the two property owners.

COMMISSIONER SCHIFFER: Thank you.

CHAIRMAN STRAIN: Okay. Kris, you've got a boat that has a two-foot draft that's going to go in that location and you want one more foot for the lift, correct?

MR. THOEMKE: Yeah, we'll also have the motor down too.

CHAIRMAN STRAIN: Well, it's two-foot plus an -- let me read it. The proposed vessel has a draft including the motor of approximately two feet, plus an additional foot of depth is required for the boat lift. So you totally need three feet, right?

MR. THOEMKE: Give or take a few inches, yeah.

CHAIRMAN STRAIN: Three feet occurs 10 feet offshore, or 12 feet, why are we going 42 feet? You could have done this whole thing without a variance to the boat dock -- without a boat dock extension. I'm just wondering why you are going so far out. We have a lot of applications that come in and they plead to get to just three feet of water.

MR. THOEMKE: Please keep in mind you have to subtract 1.62 feet from the numbers on this drawing to get to mean low water. So you don't get 10 feet off the dock, you are not getting -- you only have about a foot and a half of water.

CHAIRMAN STRAIN: So the mean low water is your -- okay. If that's, I don't remember seeing that differentiated on other boat dock applications but I understand then. You are farther out because you keep pushing to get to a depth but if you -- so you would need 1.6 plus three, so 4.6 would be the minimum that you would be looking at.

MR. THOEMKE: Right. And that's -- the landward edge of the boat is right around there.

CHAIRMAN STRAIN: Okay. I have a question for staff but then I'll wait to get to them.

Anybody else have any questions?

Brad?

COMMISSIONER SCHIFFER: Just to understand. You know, the NAVD is a number based on -- I mean why is high tide, low tide, mean tide, a different number than you show on the drawing. In other words, on the plan itself you show some datum.

MR. THOEMKE: Yes.

COMMISSIONER SCHIFFER: And you are saying that's the NAVD datum?

MR. THOEMKE: Right. DEP requires us to submit -- we submit this application to DEP as well. And in the upper left-hand corner of the drawing that we submitted there is a thing called tidal information, which shows you how to make the corrections for the various tide stages, the mean high water, the mean tide and mean low water.

COMMISSIONER SCHIFFER: Okay. So my question is, and I saw the data, what is that you are actually measuring then? In other words, is it based on some benchmark somewhere and --

MR. THOEMKE: It's based referenced to a benchmark. This is a standard that's used throughout the state to -- in surveying. I'm not a surveyor so I'm not sure I can explain this to you as a surveyor would. But there is a benchmark that is used, and we use a unit that -- called an RTK unit, Real Time Kinematic Unit, which collects very accurate data on depth and we reference this to the benchmark and then all the information is posted in this datum called NAVD. It relates to mean low water by correcting it for 1.62 feet.

COMMISSIONER SCHIFFER: Okay. Yes, that is -- but what have we been looking at in the past, then when we see datum? I thought it was low water datum.

MR. THOEMKE: I don't know.

COMMISSIONER AHERN: Is the benchmark in NGVD and now you're just converting it to NA --

MR. THOEMKE: NGVD is another benchmark like NAVD. The state went from using NA -- went from using NGVD to NAVD several years ago. So it's like the NGVD. I have no idea what other applicants have brought to you in the past. But this is the standard way we have been doing it for years and years and years.

COMMISSIONER SCHIFFER: Okay, good. Understand, thank you.

COMMISSIONER AHERN: I think there -- other applicants are converting it probably and showing us the actual.

CHAIRMAN STRAIN: That's what -- I just know the three -- most of our applicants are trying to get to the depth that you've gone past. But I understand your reasoning.

Anybody else have any questions?

(No response.)

CHAIRMAN STRAIN: Okay. Thank you.

Staff report?

MR. SAWYER: Again, for the record, Mike Sawyer, project manager for the petition. You've got the staff report, revised date July 12th. Our analysis has indicated that the applicant meets four of the five primary. And with regard to the six secondary it fails to meet two of those criteria. There is also one of the secondary criteria that are not applicable in this case. I'm here for questions.

CHAIRMAN STRAIN: Brad?

COMMISSIONER SCHIFFER: And Mike, this one would fit under our administrative program, correct?

MR. SAWYER: Quite honestly, because that has been changing, the amendment has been changing over time, quite honestly I can't quite answer that. I don't believe it would, simply because with the current criteria it is missing one of the primary and two of the secondary.

COMMISSIONER SCHIFFER: Okay. All right.

MR. SAWYER: So, I mean -- and we've got those criteria being revised again. I'm not sure if this would or not. I would have to guess that it probably would not.

COMMISSIONER SCHIFFER: Okay.

MR. SAWYER: This would probably come to you anyway.

COMMISSIONER SCHIFFER: Then the question is, what's your thoughts on this large terminal platform? One of the things we've done and always done in the past is to prevent unnecessary docks, especially when it's an extension.

MR. SAWYER: Correct. And we did find that it did not meet that criteria. It is -- while it may meet the state criteria as far as allowable decking area, it exceeds what we would consider the minimum needed for safe ingress, egress and maintenance.

COMMISSIONER SCHIFFER: I guess, Kris, is there a problem if we cut that down? I mean, everybody would like it. People come in here and they'd, you know, put a basketball court down there if they could, but --

MR. THOEMKE: Understand. I would like to maybe have the client address that so that he can tell you his thoughts on that.

MR. HELSEL: So I understand then your goal would be to just cut down the square footage of the dock?

COMMISSIONER SCHIFFER: Right.

MR. HELSEL: Okay. As long as the dock still stays in an L configuration we can cut some off that inside corner.

COMMISSIONER SCHIFFER: And that's where we'd cut.

MR. HELSEL: Okay. All I'm worried about is, you know, I've got 80 year old parents getting on and off a boat. Once I'm down there they have to be able to go out to the end of the dock and step into the boat.

COMMISSIONER SCHIFFER: Correct.

MR. HELSEL: You're going to have -- if you cut me down to four feet at the end it's going to be tight because of where the boat may be in the lift. I think that dimension that we have on there is 10 feet?

COMMISSIONER SCHIFFER: You have 16 foot of depth that I don't think you need. Let's -- the 10 feet wide is fine, it's just how much of that inside corner can we cut out.

CHAIRMAN STRAIN: Why don't you take it to the next -- the first -- the piling back, so you go instead of 10 by 16, it would be 10 by eight.

MR. HELSEL: That's acceptable.

COMMISSIONER SCHIFFER: Okay. Thank you.

CHAIRMAN STRAIN: Any other questions of staff?

(No response.)

CHAIRMAN STRAIN: Mike, could you turn to -- I got a staff report without pages on it, maybe it's not the report. Actually it's the secondary criteria, could you turn to number four? And I probably should have called you before the meeting to check this so I'm sorry I didn't get a chance to.

Number four says whether or not the proposed facility would have a major impact on the waterfront view of the neighboring waterfront property owners. The facility should not have a major impact on the view of either property owner. And it says consistent, the proposed dock does not protrude into the water further than adjacent docks. Okay.

The question is asking for the dock facility, it refers to facility. We have separate definitions for dock and dock facility. A dock facility includes the boat and the lift and all of the other items. Your answer only says the dock.

Do we know what the dock facility, in order to answer this question accurately, is for length on the other side, the one that you are referring to? But the answer that you provided to the question doesn't answer the question, I don't believe.

MR. SAWYER: With regard to this particular criteria, basically if you look at the decking area itself, the decking area is fairly consistent with the adjacent docks that are already within this area. The issue would be whether the lift and the vessel itself being placed on the end of it increases that viewing area.

There certainly is an argument to be made that it would increase the visibility of that vessel simply because it's being lifted up. Any of the other docks in that area can certainly have a vessel at the end of those existing decking areas, so --

CHAIRMAN STRAIN: So the neighbor next door, do you know what the total dock facility length is? That's the question, because that's what the -- that's the --

MR. SAWYER: It's approximately 31 feet.

CHAIRMAN STRAIN: That's the dock.

MR. SAWYER: That's the dock itself.

CHAIRMAN STRAIN: But what about the dock facility?

MR. SAWYER: The dock facility would include whatever vessel they chose to moor at the end of that existing decking area or that existing dock.

CHAIRMAN STRAIN: Let's go back. The question, do you agree that it refers to the facility and not just the dock?

MR. SAWYER: I think, honestly I think you would have to look at it both ways. And since you would be able to have a vessel at the end of each of those existing dock areas that would be at least the same size as the lift and the vessel being proposed in this case, all things being equal, this one is approximately the same distance either with -- if you look at just the decking area, or if you look at any potential dock facility, which would be the decking and a potential vessel at the end. All things being equal --

CHAIRMAN STRAIN: You are going in a direction I'm not trying to go.

MR. SAWYER: I'm sorry.

CHAIRMAN STRAIN: I just simply want to know what is the neighbor next door authorized for the dock facility for distance from the shore. The 31 feet doesn't represent that, the 31 feet represents only the dock. And we're

trying to compare the dock to the requested dock facility and we should be comparing a dock facility to a dock facility.

And honestly, I'm not sure it's going to have any bearing on the whole thing, but just to be accurate I just wanted to understand for the record what the approved facility dock length was next door. And we don't have that information, is what it boils down to.

MR. SAWYER: Correct. What we do have is the distance for that decking area, which again is fairly consistent with what the request is for. Again, they can put whatever vessel would actually fit, and we basically, as staff, we look at it as well as we can.

CHAIRMAN STRAIN: No. And I understand, Mike, I think though if we -- and I apologize for not calling you and giving you a heads up before today's meeting. I should have done that because then you could have been prepared with any kind of research needed to answer the question better.

But I would have, when we answer these questions if we pay attention to the -- because we do have -- we have adopted different definitions for dock and dock facility. And if we're going to ask a question for a facility then it ought to be responded with a facility comparison not just a dock comparison. And that's all I was trying to get to.

MR. SAWYER: I would certainly agree.

CHAIRMAN STRAIN: That's the only point I was trying to make so in the future we can have that information and be more accurate.

MR. SAWYER: We'll provide it.

CHAIRMAN STRAIN: Melissa?

COMMISSIONER AHERN: Mike, on the same lines, the house two doors down, is that a covered area for the -- and then next to that it looks like a large platform. Is that -- and then --

MR. SAWYER: I believe that is accurate.

COMMISSIONER AHERN: But it is covered out to the 35 feet?

MR. SAWYER: It definitely looks that way, yes.

COMMISSIONER AHERN: Okay. Thank you.

CHAIRMAN STRAIN: Any other questions of staff?

(No response.)

CHAIRMAN STRAIN: Thank you, Mike.

Is there any public speakers, Ray?

MR. BELLOWS: Yes, we have two speakers, Rocky Scofield to be followed by Craig Woodward.

CHAIRMAN STRAIN: Craig, you look a lot like Mark.

MR. WOODWARD: Right, right.

CHAIRMAN STRAIN: So everybody knows, Mark and Craig Woodward are twins.

MR. WOODWARD: That's correct, that's correct, he's my brother. I don't usually admit to that in public.

CHAIRMAN STRAIN: No, you're better off not to.

MR. WOODWARD: Craig Woodward. I'm an attorney from Marco Island, and I'm here representing the neighbor to the east, the one that we've been talking about for a while. The neighbor to the east, Doctor Wasserman and his wife, own the property and it's -- I'm going to show you a photograph that was taken on Tuesday, a couple of days ago.

This photograph was taken on Tuesday by Rocky, who is here. And you can see where -- you can see they have a davit here on the property and they have water that runs from the seawall here all the way over to the rock, riparian, the rock embulkment (sic) there by the park. And this photo was not taken at high tide, it's kind of hard to see, but you can actually see the growth line. The water is much higher when the tide is up.

Our client was not mentioned at all in the petition, and it looks sort of intentional. They mention property to the south, which is the restaurant all the way across the bay, and they mention property to the west, but they sort of ignore our client who is here.

We agreed with the comment that was mentioned earlier that they could push this dock to the west. The reason why the old boat dock where the piling still exists, is to the west is because that, as was well pointed out, that's where the deep water is. If you look at the water depth chart that the petitioner provided, you'll see out there along the west riparian line you have water depths at 5.1, 5.5, 5.2. All of those are much deeper than they -- as you come back closer toward the shore, toward the beach area, and that's why they had the original dock out there.

They have put their dock 28 feet back, and I realize the terminal platform is at 22 feet, but it's 15 feet, so they could easily move the boat dock itself over seven feet and get closer to deeper water. That would enable them to bring the dock platform back, all right, so that they aren't so far out.

In addition to that, the -- and I think this was well mentioned by Mr. Strain, in order to get all of the number of questions correctly that they had to, they mis-answered one of the questions, as you pointed out. Instead of mentioning the entire boating facility, they just mentioned the length of the dock.

Here is another photograph.

Here, as you can see again, this is my client here, who doesn't have a lot of water, she has about -- she has 28 feet on the water there. And then you have the petitioner's house, and you can see the old dock way over here. And this is correct, they do go out to 31 feet. This one goes out to 31 feet. And this one goes to 35 but that's -- a lot of that is the overhang of the boat roof. And then you can see a 31 line all the way down, which has worked historically for many, many years for a lot of these people. We don't believe that these people got boat dock extensions, a lot of them are grandfathered structures, so it's kind of questionable what size boat they can actually put in there because they really didn't get permitted.

My client's position is that they can -- everyone else can get in at 31 feet and the petitioner should also be at 31 feet. And that that 31 feet should include everything, including the mooring facility, which is the boat and the dock, and not just the dock itself, leaving the boat out there in sort of no man's land.

I would also point out that the -- one of our biggest concerns is once you approve this, you basically are approving an envelope and then the petitioner can do whatever he wants in the future. He's talking about a Pathfinder, which is a flats boat, 24-foot Pathfinder, which according to -- I have a Maverick, a same sized boat, draws one foot not two feet. And if you draw one foot you need one foot for the cradle, that's two feet. You can easily obtain that two feet even under their own diagram by staying at the 31 protrusion, moving the boat slightly to the west to pick up the deeper water there, and that would avoid any kind of complications to my client or any of the people coming off of the county park property.

We also had agreed with the staff that the terminal platform was too large, and we're happy that the petitioner is going to reduce it. But notice that the -- you know, our concern is this, really, for this Pathfinder boat or in the future is the plan to bring in a much larger, you know, boat. And once these things are approved they don't come back for the boat size and they can now put in the lift, put in a much larger boat, which would have a much bigger bearing on the navigability of this little area and also, of course, on the view issue. Keeping it within the 31 feet we really don't have a problem with that.

The other point I mentioned was the riparian line issue. And my experience as an attorney doing a lot of this is that when you are at the end of a canal, end of a -- this is a little bay but it's similar to being at the end of a canal, and on Marco we have a lot of lots that are platted as hip lots, corner lots, which are very similar to this. They have a property line that goes out over the water but then typically they turn and go around the corner a little bit.

But the riparian line coming off of this point would go out at a 45-degree angle into the center of the channel. And it doesn't have to be a channel that's marked, it just has to be a channel. And the channel, obviously there are people coming and going from this beach area, there is a lot of kayaking going on there, the channel that runs the length of this bay. So our position is that our riparian line really comes off at this point and goes out at a 45-degree angle to the middle of the channel.

But, again, as was pointed out, there is no agreement with the neighbor, we never heard from the neighbor, the only way we had advice of this was through the public notification procedure, although the neighbor did obtain written letters from the other neighbor to the west and somebody across the bay. So obviously they knew they were proceeding.

So our position is quite easy. This has historically worked at 31 feet for all of the neighbors and we would like to leave it at that.

CHAIRMAN STRAIN: Questions? Melissa?

COMMISSIONER AHERN: The neighbor, 579, he's at the 31 feet but that would not include where his boat would be positioned.

MR. WOODWARD: That is correct. But from our research we don't believe that any of these people here were ever permitted, they just sort of built their docks. Of course this is -- Isles of Capri was built in the Fifties, and so we don't know how long they've had these structures and, you know, we don't know what kind -- in other words if

you were to go in and modify your dock now you would have to come back in and get approved and then there could be some restrictions.

But you are correct. We don't know what size boat they could pull up. They are far enough away from my client that there is no view issue there, it's an old grandfathered structure, we don't have any control over it, but we're trying to preclude that happening again.

COMMISSIONER AHERN: Thank you.

CHAIRMAN STRAIN: But if you are saying that the 31 feet is typical and acceptable --

MR. WOODWARD: That's historically acceptable and we have no problem with that.

CHAIRMAN STRAIN: Okay, and you're at 31 -- your client's at -- the 579 clients, not you. But the 579 is at 31 feet. So these guys are at 29.5.

MR. WOODWARD: No, 31 one would be the entire envelope including the boat.

CHAIRMAN STRAIN: But that's not the 31 that you are showing here. The 31 one you are showing here for 579 is not the entire envelope. You just acknowledged that by the fact they would put a boat on the outside of that dock. So if it's --

MR. WOODWARD: They're the only -- notice they're the only one, all right. If you look down here their boat is back here in a lift. These people have their boat in a boathouse. These people, according to my client who's lived there for a long time, brought their boat in like on the side here. And these people, I don't know, they could be bringing their boat in here. I don't really know where their boat is being brought in at.

We're not happy with the people at 579 being out that far but that is not a view issue for us, we're far enough away, and that's been the way it's been grandfathered. But just because they were grandfathered in with an unpermitted structure doesn't necessarily give everybody rights to do the same thing.

CHAIRMAN STRAIN: I was just going by -- I thought you indicated in the beginning of your presentation that you didn't disagree with the 31 feet.

MR. WOODWARD: No, we know 20 feet is allowed. But in this situation people need 31 feet because of the depths of the water, and you can see everybody down the street is doing it. So we're being liberal and saying 31 feet is what's required in this situation. But we don't think you need to go to 42 feet, which is the issue.

CHAIRMAN STRAIN: Okay. But the real issue is 579 at 31 feet is really 42 feet because they have a boat on the outside of that dock.

MR. WOODWARD: Again, I don't -- they may be at 56 feet. We don't know what -- they may be pulling in a yacht. I don't know what they are pulling in there. I don't know.

CHAIRMAN STRAIN: I'm just trying to make sure the comparisons are accurate. My biggest concern is what you pointed out and what I see in the right hand side of that screen. The previous presentation by the applicant seemed to indicate no one knew if these guys had any rights at all to the water and stuff like that. But in reality they have a boat lift and everything and they are apparently using it, otherwise I don't imagine why it's there. So I'm a little puzzled as to why we had a presentation that seems a bit disingenuous in the way it was presented in regards to that house when we specifically asked about it on the corner, so we'll readdress that before we finish.

MR. WOODWARD: Again there maybe is -- the picture taken on Tuesday, I wish we had taken at a little higher tide because you can see the dark line there. But you can see there's -- yeah, exactly there's --

CHAIRMAN STRAIN: This property owner has water access, which we were led to believe that the fill, the shoreline had receded almost to their property line or to the point where they may not even have any water. So this photo says a lot.

Further down on your -- the client, the applicant's property, there is a, can you move the photo? On 578, in the middle of the property there is a -- some kind of facility, little white dot, what looks like four posts around it. Is that a lift, do you know? Does your photograph show it? Yeah, does your photograph show what that is?

MR. WOODWARD: No, I don't know what that is.

CHAIRMAN STRAIN: Thank you. Any other questions?

MR. SCHIFFER: I do.

CHAIRMAN STRAIN: Go ahead.

COMMISSIONER SCHIFFER: One thing you are not pointing out is that after the 31 feet we're lifting it in the air. The other guy's floating in the water.

MR. WOODWARD: That's a very good point.

COMMISSIONER SCHIFFER: And what are they lifting into the water? The photo you show showing water, showing riparian rights has a -- I mean is that for -- no, no, not that, the --

MR. WOODWARD: This one?

COMMISSIONER SCHIFFER: No, the actual photograph you opened with, showing that there is water at the property line.

MR. WOODWARD: That one?

COMMISSIONER SCHIFFER: That's to lift the boat in and out or --

MR. WOODWARD: The davit? Yeah, this davit was to lift my client's boat in and out, and these little white PVC pipes here were bumpers along the seawall, so when it was in the water it tied up there. That's my client's mooring facility, which again, was not mentioned at all in any of the petition or anything before this.

COMMISSIONER SCHIFFER: Thank you.

CHAIRMAN STRAIN: Any other questions?

Go ahead.

COMMISSIONER EBERT: I have a question. Why cannot that boat, the bow, face the area -- just put it on the side over this way? Why does it have to come out the other way? If the water is deeper over here, it would be plenty deep, then, for the --

MR. WOODWARD: Right. You know, the depth of the water -- and again it's sort of interesting on this diagram, they have the depth along the property line here but you've got 28 feet of no depth calculations, and so it may well be that this is plenty deep and you could move the platform over here and pull the boat in, as you just mentioned, pull the boat in like this. And, you know, the -- and most people I know can lift their motor, you know, and if you have a flats boat that draws one foot you lift your motor, you should be able to get into a fairly low area.

But it could well be enough depth here on the side of the terminal platform instead of in front of the terminal platform, and then if they want to bring the terminal platform out further to the 31 feet we don't really care what's out at 31 feet. But we would prefer that because that would put the lift and the height issue to the side of the terminal platform instead of in front of it. That's a good point.

COMMISSIONER EBERT: Yes, that's where I was going. Thank you.

MR. WOODWARD: Thank you.

CHAIRMAN STRAIN: Bill?

COMMISSIONER VONIER: It seems to me that even a large parallel dock would work if it came out far enough. And having seen that picture I'm a little concerned that we're not addressing properly the neighbor who has waterfront access.

CHAIRMAN STRAIN: Anybody else?

(No response.)

CHAIRMAN STRAIN: Thank you.

Next speaker, please. By the way, were the both of you sworn in when we started?

MR. WOODWARD: Yes.

CHAIRMAN STRAIN: Okay, thank you.

MR. SCOFIELD: For the record, Rocky Scofield representing the -- Karen Wasserman and Ted Wasserman. I just have a couple of comments on that, when you were looking at it it wasn't panned all the way out. That line extends all the way down that canal, that's the 31 foot line. And all of the boats are contained within that line except the neighbor immediately adjacent to the applicant.

So, again, Craig said that these, you know -- and I'm fairly sure a lot of these things were not ever received at BDE, they probably got a county permit at the time. But BDE's, these were put in a long time ago so they wouldn't show up that way. But that line is -- you can see all the way down even the mooring pilings out on the very end, the boats, everything is contained within there. If the neighbor, you know, if they ever came back in, of course they would have to go through the BDE process.

To answer your questions about the water depths, you are probably used to seeing surveys. When we submit them, they are relative to mean low water. But this is, we see this, you know, it's, you just have to do the math when you see these. These are NAVD and you have to subtract to get to the mean low. When we submit them they show the depth below mean low water.

The other question, Brad, you had, this would not be acceptable under the new rules because we limit it to six

foot wide docks, if -- the administrative. So that's the point on that one.

This lot, when it was platted, the original plat was for 60 feet on the waterway. It was never dredged to that. As a lot of the properties in Isles of Capri were, especially down in Pompano and Snook Bay, they were not finished dredging, a lot of land has accreted in these waterways, especially on this end. So the applicant wound up with 28 feet of water at high tide there, as you can see, or medium tide was what that photo was taken at the other day. So historically there was access. They have a davit, they probably pulled a skiff up there, a flats boat, something very shallow draft in there. And we're just concerned about maintaining riparian rights for our client. If you have any questions I'll be glad to answer them.

CHAIRMAN STRAIN: When the photo that you have in front of us right now, when was that taken?

MR. SCHOFIELD: That's a county aerial photograph, so it was taken within the last couple of years.

CHAIRMAN STRAIN: I mean, the reason -- and, Ray, can you take the photograph on Page 3 of our application or of our staff report and put it on the projector?

Now, look at the difference in those two photos. In the photo that we have in our packet, it appears that the shoreline has gone almost up to the property line of the applicant for the neighbor to the east. So the question of access to the waterway becomes somewhat moot because it appears like they didn't have waterway in the first place.

The dock to the south, which is the Blue Heron restaurant, shows columns or piling in the water alongside the restaurant.

Now, go back to the other photo, which I'm not sure which photo is the most recent now. If you could pan out. Let me finish.

MR. SCHOFIELD: Okay.

CHAIRMAN STRAIN: Could someone move out, pan out on this, Mike? No, farther.

Okay, right there. Look at the dock configuration on this one for the Blue Heron restaurant, missing the piling and the extensions going out on the waterway, as well as this one clearly shows the shoreline giving access to 577. How did we end up with the difference in photographs, do you know, Mike?

MR. SAWYER: The one that -- again, for the record, Mike Sawyer, project manager. The photo that's in the staff report is from the most current 2012 aerial from Property Appraiser's. Where the other photo came from, I'm not sure --

CHAIRMAN STRAIN: So Rocky, what are you trying to show us?

MR. SCHOFIELD: No, ours is probably a couple of years old. It was -- that's either -- and I can't be -- I don't know if that was a Google Earth or the county, but --

COMMISSIONER HOMIAK: It's the county because I looked this past weekend --

MR. SCHOFIELD: It's county, okay. It's a county arrow so it's obviously older than the staff's.

CHAIRMAN STRAIN: Ray, you're sitting there with a computer, would you pull up the Appraiser's website and take a look and see what it shows on the most recent --

MR. BELLOWS: My computer crashed, I'm restarting. Sorry about that.

CHAIRMAN STRAIN: I'm sorry, you can't talk off mike record, Kris. So we'll get to you in a minute.

Ray, as you find that let me know because that would be important to see. I would like to know -- this is a completely different photo and presents a completely different picture than the one that was in our packet. You took a current photo when you were on site and it was shown by Mark or -- Craig, I'm sorry, you guys look alike. Craig, can you put that photo back up?

So this resembles more of the aerial photo that you presented, Rocky, then the one that's in our packet because it shows the shoreline quite a ways back from the property line. That's why I'm trying to understand which photograph is the most recent. We should have the most recent in our packet.

MR. SCHOFIELD: It could be recent or not. But if the photographs are taken at high or low tide that's -- I believe that's what you are referring to. The tide, it's a shallow area and the tide swings quite a bit here.

CHAIRMAN STRAIN: Well, this is low tide.

MR. SCHOFIELD: Pardon? This is about a mid-tide.

CHAIRMAN STRAIN: Okay. But still, I mean, it's not -- I mean, at high tide it would even look worse. The point is, your client's property does have what looks like to be bona fide water access and that's a critical factor in our review of this. It was not what I saw in the beginning of this discussion, and the photographs have made that blatantly clear.

So anybody else have any questions?

COMMISSIONER EBERT: That was taken this last Tuesday, correct?

MR. SCHOFIELD: I took that photograph Tuesday.

COMMISSIONER EBERT: Thank you.

CHAIRMAN STRAIN: Thank you, Rocky.

Just a minute, Kris. Are there any other public speakers or anybody else wanting to speak on this matter?

(No response.)

CHAIRMAN STRAIN: Okay. Ray, have you found the website yet?

MR. BELLOWS: It's logging on now.

CHAIRMAN STRAIN: Kris, did you want to have -- we definitely want to talk to you again anyway.

MR. THOEMKE: I have numerous things to say. First of all, I have aerial photographs from 1962 through 2012 I can show you here in just a second. And I'll start with that, because I am a bit concerned. I told you at the beginning it's unclear whether this property had legal waterfront access.

Here is the aerial photo of this area in 1962. And this is the point where the Blue Heron restaurant is. If you go straight across from there you are about at my client's property. And the property that we're talking about you claiming had waterfront access clearly did not have it in 1962.

CHAIRMAN STRAIN: But look at the -- look at the lines around the north end of your client's peninsula, you see the solid line differential between the water and the uplands, where there probably is installed a seawall? And if you look at across the bay, you see the solid line between the water and the uplands where the seawall forms a straight line and it goes around to the end of the Blue Heron restaurant? It doesn't look like the seawall was even in place at the time this photo was taken.

MR. THOEMKE: I don't believe there's ever been a seawall. Are you talking about -- there's seawall along here --

CHAIRMAN STRAIN: Right --

MR. THOEMKE: -- but there's never been seawall over here.

CHAIRMAN STRAIN: No, but there's no -- the seawall doesn't look like it was finished on the area that you, your client lives in, in this particular photo.

MR. THOEMKE: In 1962 that property didn't have waterfront access. This is why I said to you in the beginning it's unclear as to what they had. And now if you look at 1985 --

COMMISSIONER SCHIFFER: But, Mark, just to be clear, none of the properties on the --

CHAIRMAN STRAIN: Well, I know --

COMMISSIONER SCHIFFER: -- east side of that had -- or west side had waterfront access.

CHAIRMAN STRAIN: It wasn't developed yet. I mean, they would have to go in and finish dredging the channel and then put the seawall in. That's the picture we should see, from the -- from that time --

MR. THOEMKE: This is 1985, and you can see there is vegetation here but the property doesn't look like it had waterfront access in 1985 either. This is why I said to you originally, I was not being deceptive and I sort of resent the fact that you would suggest that. To me, it's unclear whether this property had it.

So now if we go and we look ahead, in 2005 -- okay. In 2005 it appears as though there is waterfront access there but it looks to me there is a pretty straight line right here. I don't know if that area was dredged, and if it was dredged was that illegal dredging or not. I don't know. So now all of a sudden in 2005 there is waterfront access there. How it got there from the previous slides I can't tell you. Was it illegal or not? I'm not the attorney, I can't tell you that. But my presumption going into this was I wasn't sure whether or not this property had waterfront access. I guess I'm still not sure.

CHAIRMAN STRAIN: What did you think the boat lift was for?

MR. THOEMKE: Well, if you illegally dredge the area you could put in boat and boat dock.

CHAIRMAN STRAIN: So now they illegally dredged the area?

MR. THOEMKE: I'm not saying that. But I'm saying that 1962 the property didn't appear to have waterfront access? In 1985 it didn't appear to have it. In this picture in 2005 it does, but how did that happen? I don't know the answer to that question, okay.

But let's assume that they have waterfront access for the moment. If you want to do that, that's fine, I'm not sure that you all can decide that. I know I can't decide that. But if we want to come to some resolution here, which is

what we would like to do --

COMMISSIONER SCHIFFER: Mark, a question?

CHAIRMAN STRAIN: Go ahead, Brad.

COMMISSIONER SCHIFFER: Do you dispute the photograph Rocky took yesterday?

MR. THOEMKE: Well, it depends on when the tide was.

COMMISSIONER SCHIFFER: The fact is at one point in time yesterday water was licking the property line, right?

MR. THOEMKE: Right.

COMMISSIONER SCHIFFER: Okay, you don't dispute that.

MR. THOEMKE: I don't dispute that, no.

CHAIRMAN STRAIN: Then Bill, then Diane.

COMMISSIONER VONIER: The question I have is would people bother to build a seawall if they didn't have water access. And this property definitely has a seawall, the one to the east.

MR. THOEMKE: A lot of structures on Isles of Capris, as was pointed out by those folks, were done illegally. I mean, I don't know if there was a permit for this or not. But I tell you what, we can solve this problem in a different way --

CHAIRMAN STRAIN: Before you do, Diane, did you want to --

COMMISSIONER EBERT: Yes. Does -- when was the seawall put in?

MR. THOEMKE: The seawall on their property? I have no idea. I would have no way of knowing that.

CHAIRMAN STRAIN: When was the seawall on your client's property put in? It looks like they are continuous, so --

COMMISSIONER EBERT: Yes. It looks continuous.

MR. UNIDENTIFIED: They are not the same seawall.

MR. THOEMKE: They're not the same seawall, but his seawall was put in in the 1970's. But, I tell you, we've been listening to what you said, and we have a drawing here that sort of shows something that might be a solution, okay.

If we were to move the boat perpendicular to the dock, we can -- under this scenario here, the total length was going to be 39 feet, which is not 31. But by doing this, we could also shift the entire structure a little more to the west to get closer to that 15-foot setback, and that might give us enough depth to shorten the dock to get it into around 31 feet, under this configuration. And that's something we're willing to take a look at to see if we can make that work and see if that wouldn't be an amicable solution to the problem.

CHAIRMAN STRAIN: Brad.

COMMISSIONER SCHIFFER: Wouldn't you put the boat on the other side of the dock. I mean, put the edge of the boat --

MR. THOEMKE: Well, then the problem is --

COMMISSIONER SCHIFFER: -- and this would be a good example of when a variance would be something that would probably be acceptable.

MR. THOEMKE: We'd have to have a variance to do that and we were trying to avoid that. We also have to have a variance from DEP, but I believe that we have that issue covered.

COMMISSIONER SCHIFFER: But the width of this would be the same if you put the boat on the other side and you slid the dock over. In other words, put the edge of that 12-foot boat, you know, the lift on the 15 feet. Why wouldn't you do that? Because the water is deeper over there, why would you propose this versus that?

MR. THOEMKE: Originally this is what the client preferred to have, so we did what he asked us to do. But he would like to comment on this, if you don't mind.

COMMISSIONER SCHIFFER: Here is the thing, is it looks like he's trying to keep open the same vista that the people on the east are trying to keep open, then.

MR. THOEMKE: What are the rights in your opinion of the property owner over here? Being on an angle to the water, do they have a right to have a view going like this --

COMMISSIONER SCHIFFER: No.

MR. THOEMKE: -- through the neighbor's property? Where does their line -- their line doesn't go -- a view right doesn't go along riparian line. And in riparian law as I understand it, the primary concerns of the courts has been

to provide access to everybody, with the view issue being clearly a secondary issue at the state level. So I understand a person has a right to have a view but what view do they have a right to have? And if we move this dock over and move it in a little bit --

COMMISSIONER SCHIFFER: Well, it --

MR. THOEMKE: How do you -- when do you get to the point where we can't have a dock because they want a view?

COMMISSIONER SCHIFFER: You don't. And it's secondary in your criteria too. But as you show here, the riparian line, which we now believe exists coming off at 45, then they should have a better view across there.

MR. THOEMKE: I would disagree with what you said though --

COMMISSIONER SCHIFFER: But that's not the only thing that -- but why wouldn't your guy move his boat further to the -- you said that he had a reason he wanted to put it essentially straight off the front of his backyard. So why wouldn't he push it as far west as he could, the boat itself? The boat is going to be lifted in the air, the dock --

MR. THOEMKE: We were trying to avoid the variance.

COMMISSIONER SCHIFFER: I'm not causing the variance yet. I wish you would request one but I'm not causing it.

MR. THOEMKE: Well, we can't -- but I want to correct when he said -- the riparian line is not established at 45 degrees on this property, okay. And in fact --

COMMISSIONER SCHIFFER: Let's just deal with the western property line. Why can't the one thing you propose, shove it over until it hits the 15 feet, no variance. And the boat is on the deeper water then. In other words, why would that be a problem? That would put it further away from the eastern property. It's the exact same dock just mirrored over. Slide it over so that the lift is within the setback and build it that way.

MR. THOEMKE: I would like the owner to answer that because that was not what we originally had discussed and it's not originally what he wanted. So I would rather let him answer that question than me talk, speak for him on that behalf.

COMMISSIONER SCHIFFER: That's fine.

MR. HELSEL: I would like to take a minute and give a little bit of background. I purchased this dilapidated property two years ago almost to the day, walked in the back, saw the pilings and thought this is what I've wanted and I've worked for all my life. Just going to get a permit, put the boards back on. Okay, two years later here we are.

The reason that the dock is moved and has been shoved and reconfigured around, and it has been reconfigured upwards of probably eight times, it took a year and a half to get through the DEP and the Rookery Bay. Then we had to have the underwater study done for the seagrass. Then we had to get the depth study done per the comp. That's fine, you know, these are the rules, let's follow the rules.

I'm willing to accept almost anything that let's me have egress with my -- I'm sorry to say, your client is not exactly a boat expert, I do not have a flats boat, I have a 21-foot Sailfish center console boat. It's easy to tell because it says Sailfish down the side, not Pathfinder as she explained in her letter.

The reason I didn't contact the neighbor is, quite frankly, I live on probably one of the greatest streets I could have landed on, with the exception of one particular person.

I did not know that I was going to violate any of her rights. I'm willing to work and make this so she's comfortable with it. She has property that she owns, the water access puts value on the property. I understand that. I have property on the water, it has value. I need a dock too because I just want to go fishing. I don't have any ideas about bringing in three large vessels, as she indicated in her letter. You couldn't get three large vessels in there.

Some of the comments that she had were off the wall. Some of the comments, and her attorney and her engineer pointed out, you know, obviously are concerns for anyone that own that property. So I'm willing to concede anything that lets me have a comfortable dock that I can get my boat in and out of and I can safely get on and off my boat.

COMMISSIONER SCHIFFER: So would you mind the design that's on the screen now, just flipping it over so the boat's on the other side?

MR. HELSEL: So what you're saying is if -- because I don't understand the rules, you are going to have to help me, Mr. Sawyer here. Then the first piling for the lift is going to be 15 feet off the property line?

COMMISSIONER SCHIFFER: Yes, yes.

MR. HELSEL: Then I don't have a problem with that at all because that means that I'm within the rules, we

don't need a variance and --

COMMISSIONER SCHIFFER: You just need the extension from us.

MR. HELSEL: Then that's fine.

CHAIRMAN STRAIN: I think if you were to do that and get --

MR. HELSEL: That acceptable?

CHAIRMAN STRAIN: Well, no, we don't need to do that here, but I think what -- in stepping back from this whole thing rather than seek an action from us today, which we would have to vote on the plan you submitted, you might want to ask for a continuance, resubmit a more -- the details to what we talked about today, resubmit it to Mike Sawyer, get it done quickly because he's done all the basics, get the late -- make sure we have the latest photograph in our packet, get together with your neighbor. Now that you know that they are going to be objecting it. To this point it would be wise, just to give them a heads up, say, here is what I'm going to resubmit, so you know what you are going walk into next time.

And if you all can come to a mutual agreement and you can come with no variance and just a 31-foot extension or whatever it is you think it will all come out to, life would be simpler and it would make it easier for this board to find approval on it.

So I would highly suggest that you consider that when we finish talking today. And that is recommendation and resubmit. It wouldn't take you that much time for a resubmittal to Mike Sawyer. Mike's quick. He's got a history behind this stuff so you go through it fast and put it back on our agenda. And it might delay you one or two meetings of ours. We meet again on the 16th. We meet the first Thursday in September again. So that might be a way to go.

Anybody else have any comments?

MS. ASHTON: Mr. Chair, if we are going to continue it could we continue it to a date certain in September so that they don't have to readvertise?

CHAIRMAN STRAIN: If they ask for a continuance we'll get Mike to give us a date certain on when he could re-review it.

MS. ASHTON: Okay.

CHAIRMAN STRAIN: Does anybody else on the Planning Commission have a comment on that?

COMMISSIONER SCHIFFER: He has a comment, Mark.

MR. HELSEL: First one in September.

CHAIRMAN STRAIN: First one in September?

MR. HELSEL: Well, we have a conflict with the 16th and I won't be able to fly back down. I flew down to attend the meeting because of all the concerns issued here. I won't be able to leave my business again.

CHAIRMAN STRAIN: If you get this put back together and you don't have the opposition you got here today, or most of those issues are gone away, I think you will find that you will not even need to be here. It would be a lot simpler process. Normally, docks --

MR. HELSEL: Cheaper too.

CHAIRMAN STRAIN: Yes, it would be. And I'm sorry that you have to go through so much, but --

MR. HELSEL: It is what it is. I mean, I said it's -- I'm very happy with the property I bought. I didn't buy it to flip, I bought it to have somewhere to have a winter home.

CHAIRMAN STRAIN: I think the general consensus from this board has always been waterfront owners have rights for docks. It's just a matter of how we get those docks put in place.

MR. HELSEL: Thank you.

CHAIRMAN STRAIN: So Kris, are you as representative officially requesting a continuance to the first meeting in September?

MR. THOEMKE: Yes, til the first meeting in September.

CHAIRMAN STRAIN: Heidi, is that sufficient?

MS. ASHTON: Yes, I believe that's September 6th.

CHAIRMAN STRAIN: September 6th. And they will be -- because they are a continued item they would be the first one up at that meeting.

MR. BELLOWS: Correct.

MR. THOEMKE: Okay.

CHAIRMAN STRAIN: Is that okay with the Planning Commission?

COMMISSIONER EBERT: Yes.

CHAIRMAN STRAIN: Any other discussion? Is there a motion to approve the continuance to September 6th?

COMMISSIONER AHERN: So moved.

COMMISSIONER SCHIFFER: So moved.

CHAIRMAN STRAIN: Made by Melissa, seconded by Brad. Discussion?

All in favor, signify by saying aye.

COMMISSIONER SCHIFFER: Aye.

COMMISSIONER HOMIAK: Aye.

COMMISSIONER EBERT: Aye.

COMMISSIONER KLEIN: Aye.

COMMISSIONER AHERN: Aye.

COMMISSIONER MIDNEY: Aye.

COMMISSIONER VONIER: Aye.

CHAIRMAN STRAIN: Aye.

Anybody opposed?

(No response.)

CHAIRMAN STRAIN: Motion carries 8-0.

We'll see you back here then. Thank you.

You doing okay? We usually take a break around 10:30, so -- okay. We'll get into Brynwood Center, then we'll take a break around 10:30.

***The next item up is PUDZ-PL20110000406, Brynwood Center. And this is located on the south side of Pine Ridge Road approximately 980 feet east of the intersection of Livingston Road and Pine Ridge Road.

All of 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: Are there disclosures from the part of the Planning Commission?

Go ahead.

COMMISSIONER HOMIAK: I spoke to Mr. Yovanovich.

CHAIRMAN STRAIN: Anybody else?

COMMISSIONER VONIER: I spoke to Mr. Yovanovich.

COMMISSIONER KLEIN: I also did yesterday.

CHAIRMAN STRAIN: He's been getting around. I had a meeting with Mr. Yovanovich. We went over a whole bunch of blue tabs and we will be going over them again today.

Okay, Richard, it's all yours.

MR. YOVANOVICH: Good morning. For the record, Rich Yovanovich on behalf of the petitioner. With me today I have George Hermanson from Hole Montes. He's the professional engineer on the project. I have Bob Blaine from Hole Montes, who is the professional planner on the project. I have Dave Wheeler, who's our transportation consultant. And I have Larry Gluck from the bank on behalf of the petitioner.

I'm going to put on the visualizer -- I have no idea if I got it right, I think I did -- a location map and a zoning map. The property that we're seeking to rezone is located approximately 980 feet to the east of the intersection of Livingston Road and Pine Ridge Road. We're on the south side of Pine Ridge Road.

As you can see, the site is approximately 13.65 acres. It's currently zoned agricultural, and we're seeking to rezone the property to commercial PUD.

To our west you have a North Naples Fire District fire station that fronts a portion of our western boundary. And then you have what's known as the Marquesa, I think, Plaza shopping center that also -- which is a commercial PUD that fronts a portion of our western boundary.

To our east you have another commercial PUD. You recently heard a petition, I believe for what's the vacant piece of that property for a car lot. I think that's been withdrawn or continued, I'm not really sure of the status of that. But we have commercial on both sides of our property. And then when you go north across Pine Ridge Road, that has also been rezoned for commercial uses.

We qualify under the Growth Management Plan to ask for commercial under the office -- commercial and

office infill criteria which your staff has reviewed in good detail in your packet.

Our request is for a commercial PUD. I'm sorry, I forgot to mention the zoning to the south. The zoning to the south is the Brynwood Preserve residential PUD, which goes across our southern boundary as well as the southern boundary of Marquesa. We're requesting 145,000 square feet of retail and office uses with the ability to convert some or all of that square footage to hotel and/or senior housing.

Our -- we have some caps as far as the retail and office uses, you know, should the development occur as the retail and office uses. We have a maximum of 25,000 square feet of retail and we have a maximum of 60,000 square feet of medical office.

We did our transportation analysis under the 25,000 square feet of retail, 60,000 square feet of medical office and 60,000 square feet of general office analysis. Those maximum trips are caps that are included in our PUD document, so if there is any conversion to a hotel or any conversion to senior housing, we're still capped at those maximum number of trips. So the conversion formula we put in there really is a conversion formula addressing square footage, not really addressing transportation impacts, because we already have the transportation cap in the PUD.

I'm going to put up -- this is the proposed PUD master plan for the project. As you can see, we have substantial preserve and buffers along the -- as you can see we have a substantial preserve along a portion of our southern boundary and another preserve with enhanced buffer along our southern boundary as well.

We met with the president of the Brynwood Preserve homeowners association regarding the preserve and the location of the preserves. You received a letter from one of the residents of Brynwood Preserve preferring that the width of the Marquesa preserve be carried continuously along our entire southern boundary. And I believe that preserve is approximately 130 feet wide.

This preserve right here is about 260 -- okay. This preserve width is approximately 275 feet in width so we exceed -- obviously exceed what Marquesa had. When we met with the president of Brynwood Preserve we explained to her that we felt that this configuration of a preserve together with an enhanced landscape buffer and a wall provided better protection to the residents in Brynwood Preserve. And perhaps -- let me put an aerial up for you to -- to better show what we were talking to them about.

You have -- the residents in Brynwood Preserve are oriented with their front doors facing the project, so they have a lake behind them, where they are going to spend most of their time in their home is going to be facing towards the lake not really facing the project. For most of the properties, the larger preserve addresses their front door entrance. And for this area here the preserve, together with the enhanced landscape buffer, together with the wall will address this person's side yard and these couple of people's front yard views of the project, should view become an issue, as well as noise, with having the wall here.

What we explained through the process was we have a conceptual layout with this building oriented right now with the shorter end of it, if you will, on the side, closest to our residential neighbor, and then they have their preserves here as well. If we were to carry through the preserve at the width that they are requesting, you would force a design of the site plan where this building would flip and you would have more of the building facing the residents and more than likely that would be the hotel building, which they don't object to, more than likely you would have the rear of the hotel facing the residents. And we felt and they agreed that this gave us a better layout of our site to have the building oriented in the manner that it's oriented together with the enhanced landscape buffer and wall to address concerns they may have with view of the building. And that was the primary concern was view, together with noise, and that's the wall.

I will tell you, noise is an issue because of what happened at the Marquesa Plaza. Now Marquesa was approved, I don't know, I think 2004-ish and they received an administrative waiver of a wall requirement along their southern property line. They have a nice buffer, and I could show you pictures. I went out there on, I think it was Monday, and took some pictures of the buffer for Marquesa, but they don't have a wall. And what they put on the very southern boundary of their property was a tire and automobile repair center, that's at the end of their project. That's a very noisy use. We understood that going in and we made sure we did not make that same mistake. We limited where we could have a tire or automobile repair center to a minimum of 600 feet from the southern property line. And you can -- and Kay can shoot in if she wants -- I think I have a -- yes, if you shoot in on that you can see where that 600-foot line is on that aerial.

We have a requirement -- so we have a minimum distance requirement of 600 feet for that type of use within

our project. And we also have a requirement that the bay doors need to stay closed. And we also have a requirement that the bay doors are oriented in an east-west direction and can't go in a north-south direction.

So we took great care in deciding where the different uses could go in this project and met with the residents to show them that we had taken concerns that we knew they would raise and did raise as we were going through the process. And I think that's one of the reasons why, when we met with the president of the HOA, she agreed that together with the restrictions on where uses can be, together with the wall, together with the enhanced landscape buffer it was not necessary to carry the 130-foot wide buffer from Marquesa all the way through along our southern boundary.

We also had, you know, the -- we also had concerns raised about a standalone restaurant. I don't want to name the name of the entity, the restaurant that's brought us all to this position, but we have those typical protections in the PUD regarding no noisy, amplified TVs, anything outside, and we have a -- and I'm going to go through some changes in the PUD documents for some clarifications that came about with various discussions with members of the Planning Commission. But we don't provide for a standalone restaurant in this PUD within 400 feet of the southern property line. The only restaurant we can have within 400 feet is associated with the hotel.

And when I go through the clarifications you'll see where we make sure, because that was always our intent. There were some asterisks, I think, deleted in one of the versions but -- so we wanted to make sure we took care of what are the potential noisy users that might be near Brynwood Preserve, our residential neighbor. And I believe we've done a very good job with that and I believe that that was clear in our discussions with the president of the association.

We -- I think it probably would be best if I just take you through the changes at this time to make the clarifications that will provide further clarification of our original intent. And I'm in the PUD document itself under the ordinance. And I don't know -- it's right after the staff report, I believe --

CHAIRMAN STRAIN: Right.

MR. YOVANOVICH: -- in your package. And I'll take you to the first change is on Page 2 of 16. Is everybody with me?

If you look under item number 34, we have the five asterisks which provide -- well, the five asterisks, it says not permitted within 400 feet from the property line.

CHAIRMAN STRAIN: That's three asterisks.

MR. YOVANOVICH: Three?

CHAIRMAN STRAIN: Five asterisks says, no outdoor music, television or windows shall be permitted other than for a passthrough food service. And I think you were going to add the three asterisks --

MR. YOVANOVICH: You're right. I understand. There should be --

CHAIRMAN STRAIN: Right.

MS. ASHTON: Is it going to be five and three?

MR. YOVANOVICH: It's going to be both the five and three to say that it can't be --

CHAIRMAN STRAIN: What happened to little footnote numbers, you know?

MR. YOVANOVICH: We need to work with -- we need to work on a better way of doing this.

CHAIRMAN STRAIN: Oh, yes.

MR. YOVANOVICH: But anyway, we need to add three asterisks there to make sure it's not within 400 feet, a standalone, because you'll see that we have as an accessory use for the hotel, limitations on where we can have those uses.

CHAIRMAN STRAIN: Brad?

COMMISSIONER SCHIFFER: Since this is the only five asterisks, why don't you add the 400 note to the five asterisks. And then that way we don't have asterisk, comma, asterisk, comma asterisk.

CHAIRMAN STRAIN: Since you don't need three asterisks any more, why don't you reduce them all for the rest of them after three by one.

MR. YOVANOVICH: Why don't we just fix it and we'll come back with a concept -- I agree, if we can combine them, I'm with you.

COMMISSIONER SCHIFFER: Don't do comma -- don't do -- because people are sitting here copying asterisks.

MR. YOVANOVICH: I'm with you. When we come back on the consent we'll make sure that --

CHAIRMAN STRAIN: From a staff's perspective, why don't we use little numbers, footnote numbers from now on, and request that. It's not hard to do. We've done it for most of them. This is the first time I've seen so many, I think, of asterisks.

MS. DESELEM: We can use that. For the record, Kay Deselem.

CHAIRMAN STRAIN: Thank you.

COMMISSIONER SCHIFFER: We can set an asterisk limit, like no more than three.

CHAIRMAN STRAIN: It does get confusing when you -- because if you --

COMMISSIONER SCHIFFER: Well, I mean, you're counting the -- it's really not right.

COMMISSIONER VONIER: Stupid.

MR. YOVANOVICH: Okay. Well -- and then there is going to be, whichever asterisk it's going to be, the one that does deal with no sound speakers. There are some words in there after it says, the only sound speaker systems permitted are for drive-through windows. And it says, for uses such as banks. In talking to the chairman, and I agree, taking the words uses, such as banks, avoids some ambiguity that we can argue that anything is like a bank or a fast food restaurant, so we recommend deleting the --

MS. ASHTON: Rich, can you tell us where you are, because I have no idea where you are.

MR. YOVANOVICH: Page five of six, I'm sorry, under the development standards table. I jumped ahead, I thought everybody was with me.

CHAIRMAN STRAIN: We're back to the asterisks again, though.

MR. YOVANOVICH: Yeah, we're still more asterisks. I believe that's double asterisks.

CHAIRMAN STRAIN: But this is the double under the development standards table instead of the uses table, so --

MR. YOVANOVICH: That's where I confused myself. I actually had jumped to that and that's why I had the wrong asterisk when I was referring to you guys. So your point is well taken.

On Page 5 of 16, the double asterisks, we need to take the words "uses such as" out before the words "banks" or "fast food".

If you go to the next page, Page 16.

CHAIRMAN STRAIN: Page 6 or 16 --

MR. YOVANOVICH: Page 6 of 16, sorry. Under item Roman numeral IV.B, the last sentence, it says, this use is not permitted less than 600 feet. I think grammatically it should read, these uses are not permitted, because we're referring to automobile service and repair shops. I think these uses is -- these uses are, is grammatically correct. And that deals with what I spent some time earlier talking about regarding addressing the Marquessa shopping center issue.

If you'll go to Exhibit C, I believe it is, the master plan, second page, and that's the one that has total site area 13.65 at the beginning and then it has a notes section. And -- there is no asterisk on this page. It should look like that. Is everybody with me?

Under the third note, we wanted to make sure that we are consistent with the Land Development Code as to what is an insubstantial versus a substantial versus an administrative change that could be made with regard to changing the location of buildings. So as long as we don't trigger either the insubstantial change process or the substantial change process, we can make changes to the location of the buildings and configuration of the buildings. So we added, and I hope I got the concept correct, Mr. Strain, was I added at the end, as provided for in the LDC. And that's the concept of making sure -- if the LDC would claim what we're doing is some type of an insubstantial or substantial change, one of which would come to you -- the substantial would come to you all. If there was a substantial it would come to you and the BCC. We would still have to come through that process. We weren't asking for a deviation from that processes by that note.

CHAIRMAN STRAIN: Right. And I had asked Kay to check that particular, and when we get to the staff report, as long as she concurs that that explains it, I'm fine with it. I just want to make sure staff is clear, as we go down the road in the future.

MR. YOVANOVICH: Okay.

And then, this was a biggie, now I'm on Page 16. According to the notes in the NIM, from the NIM meeting, on the last page of your write-up from your staff, and it happened after the meeting, and I don't remember saying it but maybe I did say it, but apparently someone on our team said that we agreed to paint the wall that we would construct

brown. It didn't show up as a PUD commitment. The Chairman told me that it should. So I would recommend adding a Roman numeral four entitled Wall, and we can call it something else. And then I would add, the wall depicted on the master plan shall be painted brown as a developer commitment, since it shows up in the staff report but didn't make its way into the -- okay. I guess we want to clarify that is the south face of the wall.

CHAIRMAN STRAIN: So what happens is, you build this wall, and those people that occupy your property get to see pink but on the side facing Brynwood they get to see brown. How much sense does that make, why don't you just leave it --

MR. YOVANOVICH: They actually get to see vegetation. Remember, we plant both sides.

CHAIRMAN STRAIN: I know. But you guys -- I mean, we have a process here. Any time you make a commitment in the NIM it has to be reflected in the PUD and as -- I'm surprised you made such a commitment, but since you did --

MR. YOVANOVICH: It was after the NIM --

CHAIRMAN STRAIN: It's in our report.

MR. YOVANOVICH: I understand.

CHAIRMAN STRAIN: So it needs to be there.

MR. YOVANOVICH: I don't know that they really cared what side -- I think they were worried about what side of the wall would be brown not -- they couldn't care what was internal to us.

CHAIRMAN STRAIN: I just think it's funny you guys care. But anyway.

COMMISSIONER SCHIFFER: Question on that.

CHAIRMAN STRAIN: Go ahead, Brad.

COMMISSIONER SCHIFFER: Rich, do you want to note that that's painted once. You're not going to maintain the paint job, right?

CHAIRMAN STRAIN: I think they have to, don't they?

MR. YOVANOVICH: I sorry, I got --

COMMISSIONER SCHIFFER: Are you going to maintain that paint job or are you just going to --

MR. YOVANOVICH: It's on our property, we have to. It's within our property, it's not on theirs.

COMMISSIONER SCHIFFER: Okay.

MR. YOVANOVICH: And it's closest to the drive isle -- or the pavement to provide better sound protection, so --

COMMISSIONER VONIER: Rich, are these concrete walls that you are going to build? Is it a concrete wall?

MR. YOVANOVICH: Well, it's going to be some type of solid wall. It's not wood. I mean --

COMMISSIONER VONIER: I have one behind my house and it's concrete, it's clovered brown.

MR. YOVANOVICH: And, again, I didn't really anticipate --

COMMISSIONER VONIER: I don't know why you would bother to paint a wall, you can buy them in brown concrete and they are there forever.

MR. YOVANOVICH: Okay. I would like to have the option of buying one not painted brown and we'll paint it brown. But brown is there. It's going to be a commitment to be brown --

CHAIRMAN STRAIN: The wall will be brown in color. That just takes care of it. And it's a --

MR. YOVANOVICH: Brown.

COMMISSIONER AHERN: Is that dark brown or light brown?

MR. YOVANOVICH: Any shade of brown under the --

CHAIRMAN STRAIN: The point was it's important to somebody and the commitment was made at the NIM. And even if it may not seem important, the fact that it was committed to and made gets in our documents. Otherwise, don't make those commitments at the NIM.

MR. YOVANOVICH: It couldn't have been made.

CHAIRMAN STRAIN: Well, it could have been made. Somebody made it otherwise it got in -- unless you are telling me Kay made an error in what she wrote down.

MR. YOVANOVICH: It's not, Mr. Strain, it's not a big issue for us. I only say that tongue in cheek because Kay and I have a running joke, I try never to make a commitment. I try to come back and tell you, you know, let me think about it and I'll get back to you. I try not to --

CHAIRMAN STRAIN: We know you do.

MR. YOVANOVICH: I think we need to make some clarifications in the PUD document regarding the number of trips under the transportation commitments. If I get it wrong I'm sure John Podczerwinsky will correct me. I think this is what it's supposed to read. I think the 565 unadjusted is supposed to go to 577 and then we're supposed to delete what we struck through. And those were, I believe, the comments from John. I hope we have the right numbers there to talk about what he wanted. And he can correct it if -- during staff presentation or now, Mr. Strain, if you prefer, either way.

CHAIRMAN STRAIN: John, I've got other questions of transportation, why don't we just wait for staff presentation to get into all that at one time. Thank you.

MR. YOVANOVICH: I believe, now, Mr. Strain, if you want I can answer some of the clarification questions you had now. They don't result in changes to the documents but you do have some questions regarding -- on Page, basically Page 5 of 16, the development standards table.

CHAIRMAN STRAIN: Well, I think maybe the best thing to do now is take a break for the court reporter and we'll come back and we'll finish up, we'll go right into it at that point. Let's take a 15 minute break and come back at 10:50.

(A recess was taken.)

CHAIRMAN STRAIN: Okay, everybody, welcome back from break. When we took break we left off with the applicant's presentation getting hopefully to closure.

MR. YOVANOVICH: Close.

CHAIRMAN STRAIN: Okay, Richard, go ahead.

MR. YOVANOVICH: I just wanted to point two things out that I forgot to point out during the review of the master plan, which I put back up. We've provided for interconnectivity to the -- for properties to the east, which carries on the theme to those other PUDs where you could basically go from Whippoorwill Lane to Livingston Road without having to get onto Pine Ridge Road. And as you can see we've identified two potential interconnections depending on how the property to our immediate east decides to develop.

We've already constructed in Pine Ridge Road, we're going to have a right in, right out as well as a left in. The right in -- the turn lane for the right in has already been constructed and the turn lane for the left in has already been constructed.

And then, going now back to Page 5, one of the two asterisks pages, a question was raised regarding the fourth asterisk, which refers to a setback from preserves, and it says, measured from the preserve tract structural buffers are permitted within the setback area. And then it says, see also the master plan. A question was raised whether or not that required a deviation or not to have the structural buffer within the setback. Not within the preserve but within the setback.

We had originally submitted a deviation because we thought we may need one. As we went through the process, I believe it was Summer Araque from your environmental section said, you don't need a deviation. We did leave the note on the table to make clear that we had the right to do those things. But we do not need a deviation according to staff, and that note there is for information purposes.

CHAIRMAN STRAIN: Well, and as you know, we've tried to eliminate redundancy or items that aren't needed or are already in the code from PUD language. Kay, I had asked yesterday when I talked to you, if you could check on that to make sure that there was no deviation that -- and I don't know why we would care what they put in the 25-foot setback as long as it isn't an accessory or principal use that violates the setback. So the whole purpose of having those four asterisks there seems kind of unneeded.

And Kay, did you have time to take a look at that?

MS. DESELEM: For the record, Kay Deselem. No, I didn't. Summer is on maternity leave and Chris D'Arco has been out of the office until today so I haven't had a chance to chat with him. But I see he's coming forward, hopefully he can respond.

CHAIRMAN STRAIN: Sure.

MR. D'ARCO: Good morning. For the record, Chris D'Arco, environmental services. Yes, it is allowed per code 3.05.07.H.1.h3. So it's permitted by the code, so --

CHAIRMAN STRAIN: We don't need it in the --

MR. D'ARCO: You don't need it in it.

CHAIRMAN STRAIN: Okay. Those are the kind of things, if we would stop cluttering up PUDs with them, it helps. So why don't we strike that four asterisks. And that means you have to change the five to four and you got to go in the table. Enjoy.

MS. DESELEM: Oh, yippee.

MR. YOVANOVICH: I'm just going to do the old trick where you leave the four asterisks and you say intentionally deleted, so I don't have to change anything.

CHAIRMAN STRAIN: Whatever. You have to come back to us anyway so --

MR. YOVANOVICH: We'll fix it. I believe I've gone through the history of how we got to where we are with the limitations of the uses, the buffer, the wall deviation request. I know your staff is recommending denial of the wall deviation request. I hope with the explanation that we've given that the Planning Commission can support the wall deviation because it really doesn't make any sense to have another wall ringing that large preserve area based upon where we've limited the uses and placed the wall to address potential noise uses as well as the limitation on things that can happen within 400 feet of the property.

If you have any further questions about the PUD request, I'm happy to answer it. And if I can't answer it someone from our team will.

CHAIRMAN STRAIN: Okay, questions from the Planning Commission.

Brad?

COMMISSIONER SCHIFFER: The first one is just kind of curious. On Page 6 in the group retirement you require notifiers for emergency. Just out of curiosity, why is that there?

MR. YOVANOVICH: That actually is language that came up originally, like on the very -- one of the very first senior communities that we did, people were concerned we were actually trying to get around the density limitations for multi-family. So we needed to assure people that we were going to provide certain services and amenities, that this was really a senior housing project, like transportation type uses. And one of the things was we really wanted to have an ability to notify if someone fell or needed immediate help, we -- that was something that became the standard list of uses for senior housing and has been carried forward I don't know how many years now, I believe, have to believe it's probably six or seven years.

CHAIRMAN STRAIN: Been a long time.

COMMISSIONER SCHIFFER: When it says notify emergency service providers, is that outside the building, is that the fire and rescue?

MR. YOVANOVICH: It was intended that -- we didn't ever -- Mr. Schiffer, we never got to that detail if it was going to go first to our office and then there would be a notification, but the mechanism was to make sure that emergency personnel could be notified if someone needed assistance.

COMMISSIONER SCHIFFER: Because there is required statutes and stuff like that. I wouldn't, for example, the Alzheimer rooms to be able to flip the switch and bring the fire department, you know.

MR. YOVANOVICH: I would think that if there's a statutory provision that trumps something that's in the PUD I would imagine the statutory provision would prevail.

CHAIRMAN STRAIN: I hope so.

COMMISSIONER SCHIFFER: But the fear is this could be additive to that, you know, in the statute, so -- but anyway --

MR. YOVANOVICH: Understand.

COMMISSIONER SCHIFFER: -- if everybody is happy.

Could you explain -- I'm having, when I look at some of these conversion factors, we kind of get into some unknown land. So I guess step one is it the intent that when you say for each acre of hotel or motel or group housing you mean that somewhere in there there will be a subdivided, platted area that becomes the site for the hotel, motel, group housing, correct?

MR. YOVANOVICH: Correct.

COMMISSIONER SCHIFFER: And that's the acre you're referencing, as opposed to a building or anything.

MR. YOVANOVICH: Correct.

COMMISSIONER SCHIFFER: Okay. How did you come up with it? I think I figured it out that you divided into the -- let me see where I thought I figured it out.

MR. YOVANOVICH: We took 145,000, divided it by 13.65.

COMMISSIONER SCHIFFER: Acres.

MR. YOYANOVICH: Acres, which is the project.

COMMISSIONER SCHIFFER: Including preserves and everything.

MR. YOYANOVICH: Everything. And it came back to a 10,000 square foot reduction, keeping in mind that there's a transportation cap that we can never exceed as far as the number of trips.

COMMISSIONER SCHIFFER: Okay. That's probably -- okay.

Well, that would probably be the best balance of the whole thing, do you agree? I mean, you would hit that before you would hit some of these other numbers --

MR. YOYANOVICH: Oh, absolutely, and that --

COMMISSIONER SCHIFFER: -- particularly if you build a huge amount of group -- you know, with the .6 FAR you could build a, you know, a 300,000 square foot building.

MR. YOYANOVICH: But I'll be capped at the trips. And I think that -- that that would address the -- plus the development standards. But we would be capped so we can't put more traffic on there, had we done a retail office project.

COMMISSIONER SCHIFFER: Then let me, I'll step off until John.

But then one other thing is why is it that you're not intending to put sidewalks along your roadways there?

MR. YOYANOVICH: We believe there's a better way to provide for pedestrian interconnection between the different developments on the project. And frankly, forcing pedestrians on that driveway/road may not be the best for them as far as how to walk through this project as well as the other projects. And staff agreed. I mean, it's hard to get staff to agree to a sidewalk deviation.

COMMISSIONER SCHIFFER: Are you saying that you're going to provide other means of walking?

MR. YOYANOVICH: Yes, yes.

COMMISSIONER SCHIFFER: Is that outlined somewhere in here?

MR. YOYANOVICH: We don't have it on the master plan, it will be as part of the SDP process we will have to show that we have provided an alternative that is better than sidewalks along the roads.

COMMISSIONER SCHIFFER: Because there was a lot of testimony when we were going through the car dealership that maybe that should be a grocery store, et cetera, and it should be accessible from these semi-residential buildings and from people shopping in these other areas. But you say that will be provided, just not as a sidewalk along the roadway.

MR. YOYANOVICH: Correct. There will be pedestrian interconnects marked for people to use.

COMMISSIONER SCHIFFER: I'm good, thanks.

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

(No response.)

CHAIRMAN STRAIN: Richard, let's start with Page 22 of the staff report. It's concerning the NIM again. You made a commitment at the NIM that you would meet again with the residents to review the issue of the wider buffer area. I just want to confirm you did do that?

MR. YOYANOVICH: We did that through the president of the HOA.

CHAIRMAN STRAIN: Okay. In Page 3 of the PUD, let's move on to the PUD, then. Actually it's on Page 4 and it's back to that little touchy subject of asterisks. Just so we're clear, the single asterisks shown on Page 4 don't carry the same weight as the single asterisks shown on Pages 1, 2, and 3.

MR. YOYANOVICH: Correct.

CHAIRMAN STRAIN: Right.

MR. YOYANOVICH: It's specific to that Roman numeral two section.

CHAIRMAN STRAIN: Okay. Just wanted to make sure.

In the development standards table on Page 5, the lake control elevation measurement, so that means you are going to plat these lakes to the water's edge instead of to the 20-foot maintenance easement. So any setback measurements are from the water's edge?

MR. YOYANOVICH: We may not plat the lake tracts, they could be part of a site development plan.

CHAIRMAN STRAIN: Okay.

MR. YOYANOVICH: So if it's part of a site development plan it obviously wouldn't be a platted lake tract. So the thought was, let's make sure we measure the setback from the maintenance easement that will go around, well,

actually we need -- typically there is a main easement that goes around the lake. We'll use the control elevation to make sure we don't get closer than that setback to the control elevation. And within that setback area will also be a maintenance easement, typically.

CHAIRMAN STRAIN: Okay. If you harden the shoreline of the lakes, either through bulkhead, riprap or anything else, where would the -- and then in those cases you don't have the 20-foot maintenance easement because it stops prior to or after the hardening, where would you measure from?

MR. HERMANSON: George Hermanson, Hole Montes. No, if the edge of the lake is vertical you still are going to have a 20-foot maintenance easement and you still will measure the setback from, in that case, the bulkhead. There will always be room for an easement.

CHAIRMAN STRAIN: Okay, but you'll measure the setback from the bulkhead, so in no case will the setback from a lake, bulkhead or lake water control elevation be less than 20 feet.

MR. HERMANSON: That's correct.

CHAIRMAN STRAIN: Thank you. On Page 7 of 26, your conversion.

COMMISSIONER EBERT: On Page 7 of what?

CHAIRMAN STRAIN: Seven of 16. Twenty-six is what I said, sorry.

MR. YOVANOVICH: It can happen.

CHAIRMAN STRAIN: Your commercial area conversion.

MR. YOVANOVICH: Sir.

CHAIRMAN STRAIN: You are not -- the conversion doesn't apply to any specific use because right now you're talking three general uses, medical office, retail office and what was that third one --

MR. YOVANOVICH: General office.

CHAIRMAN STRAIN: General office, yeah. So you can pick any of those to reduce or change from the conversion, is that the way you're looking at it?

MR. YOVANOVICH: Correct. That's why the trip cap stays in there to make sure we never exceed the number of trips we analyzed under this project, which was based on 60,000 square feet of general office, 60,000 square feet of medical and 25,000 feet of retail.

CHAIRMAN STRAIN: The amount of acreage is calculated by the way you plat the use, so you create a tract for a hotel. The use that the -- the tract that the hotel sits on, the acreage is for the entire platted tract; is that correct?

MR. YOVANOVICH: Correct.

CHAIRMAN STRAIN: But you just said you wouldn't necessarily plat the lakes, which are part of the water management for presumably the hotel. So how are you going to get into those common elements that are used throughout the property when they are used specifically for uses that would generally require a conversion?

MR. YOVANOVICH: Well, I'm going to probably in that case plat the lake, and then I'll have the hotel parcel, A, I'll call it, and if it's two acres, it will be two acres for the hotel parcel, take out 21,000 and change square foot from the 145, do my calculation of trips to make sure I don't exceed I think it's 577, as modified, and I would be -- I would have whatever that hotel is plus a potential 122-ish thousand square feet of other development, assuming I can stay within the trip cap.

CHAIRMAN STRAIN: Okay. But what I'm trying to get at is if you calculate the acreage based on the pure tract of the upland use --

MR. YOVANOVICH: Right.

CHAIRMAN STRAIN: -- then the common uses such as roadways, lakes, preserves and all of the other things don't ever get counted into the conversion calculation. So if you were to set aside the preserve, the lakes and the roads you would never use that in the calculation, so you would never get to the full conversion.

MR. HERMANSON: George Hermanson again. That's why we may not have a property line at the lake because a portion of the lake and preserves does count towards the density of a hotel so we don't want a property line there. We may -- for instance, part of the preserve may be part of the hotel tract. It will be an easement but it will be part of the density.

CHAIRMAN STRAIN: That's what I was trying to understand.

Kay, does staff see it that way?

Would you have -- how do you know to look at that in a future application if this conversion is used? Say

they take half the property and want to use six acres for conversion to ACLF or a hotel, how would staff know that portions of the lakes, the preserve, the roads and whatever have to be attributed to that six acres that is going to be used for conversion?

MS. DESELEM: For the record, Kay Deselem. I would think we would just use that portion of the property that's being developed with that use. We wouldn't have any way to go over and try to calculate and add in the incremental portions of any water management areas or anything.

CHAIRMAN STRAIN: So, see, staff wouldn't do what you are saying you intended to do. Staff wouldn't use the water management lakes. They wouldn't use the preserves, they wouldn't use the roadways, they would just use the tract for the upland use, is what I think I hear Kay saying.

MS. DESELEM: Yes, and Ray is shaking his head that he --

CHAIRMAN STRAIN: Well, then if you take a project of 13 acres and you have four acres, say, that aren't even used for anything but those common elements and you convert the whole thing to hotel, you are only then going to count for, of the 13 take off four down to nine acres, so they still have four acres unconverted more or less that they could use for density count for upland uses.

MR. YOVANOVICH: But if I've used the full nine acres of uplands, the only thing -- I can't build anything on the lake.

CHAIRMAN STRAIN: Oh, no, I'm just curious as to how -- what we do with that residual that's not being converted. You have an outstanding, an amount of calculable commercial space that is going to sit on John Podczewinsky's books forever for traffic counts or whatever. I'm just curious as to have we have ever -- how staff handles it, but --

MR. YOVANOVICH: And probably I think my understanding, and John can correct me, is he doesn't reserve capacity based upon the PUD, it's when I come in for a site development plan or a plat or whatever it is for building permits, and I come in for the hotel and the hotel is X number of units and it takes up Y number of trips and I've got no land left. He's not going to reserve for this ghost number of square footage that theoretically is out there but practically is not. That's my understanding of how the system works.

So there won't be a reservation for the ghost strips. And then we, hopefully at some point we close out the PUD so we don't have to keep doing the annual PUD monitoring reports with the annual counts. And as you're seeing, there's more and more PUDs that are trying to go through the process now of actually closing out, which is addressing the ghost density concerns I think that are out there.

CHAIRMAN STRAIN: Right. But when you bring in these conversion factors, which we don't see that often --

MR. YOVANOVICH: Right.

CHAIRMAN STRAIN: -- there's this unknown leftover pieces that go to common elements like water management and preserves. I don't think we've thought out as far as how they apply to a conversion ratio. And I don't think this is thinking about that way either.

MR. YOVANOVICH: And we try to do it both ways, where we've gone in and said, okay, instead of converting based purely on square footage let's try to get really detailed and say, you know, X hotel rooms equal Y retail square footage. And then we would have who knows how many permutations there would be for that.

And staff has said, you know, we got the trip cap so we know you are never going to exceed that number. Instead of coming up with a lot of different permutations of what the actual conversion could be, based upon transportation, let's just come up with something that is relatively simple to understand, cap it at the trips and address it that way.

Because historically the major issues have been, can the roads handle what you are asking, have you done an analysis for a max, and that's where the maxes comes in, can I come in and ask for X and get you guys to buy off on it and then theoretically blow past what my transportation analysis showed. So I think we've tried to address it the best way we could and make it relatively understandable for the public, for staff and for the developer, and hopefully this works.

CHAIRMAN STRAIN: I don't know how to make it any better than what it is. I'm just kind of curious as to what we do with that void.

Go ahead, Brad.

COMMISSIONER SCHIFFER: Just following up, because it was a question I asked also, is -- so, Kay, if

they show, like, the centerline of the road and they include the lake, if you look behind you, you know, the southern part of that thing from the centerline of the road, they could say that's the hotel site.

So you are saying you are not going to -- because the documentation here says they are allowed to -- you are not going to count those preserve and lake areas in the acreage that they can develop density from, because the paperwork says they can.

CHAIRMAN STRAIN: See, what that does, if you split the site in half, then you end up with a greater quantity of square footage still buildable on the north half of the site when your intention, from what I think George said, was that you would include the lakes, the roads and the preserves in that acre calculation for density reduction. That's a totally different number than the way staff would look at it. And that's where I think the confusion of this conversion's coming in.

MR. YOVANOVICH: And I would think we would plat that parcel -- I'll put a number on it. Let's call it five acres, and it would include the preserve and the lake, if there, okay? That's five acres of density -- wrong word. Intensity times 10,600-something square foot that we --

CHAIRMAN STRAIN: I agree. That's what George said. But that's not what the staff is going to consider.

MR. YOVANOVICH: I hope they will because that's what the document says and that's what the plat would show.

MR. BELLOWS: I think the clarifying language would have to be that it needs to be depicted on a platted tract of some kind, that this is the acreage set aside for a hotel site.

CHAIRMAN STRAIN: Why don't we say that the 10,622 square feet will include the appropriate acreage for water management and other allocations needed for the site as a whole. That way, if you have a piece of the preserve that, say, you use 50 percent of the site for a hotel, 50 percent of the preserve gets calculated to it. Maybe that is a solution to it. Because otherwise I'm not sure how anybody is going to read this calculation in the future.

Is that where you were going, Brad?

COMMISSIONER SCHIFFER: I'm going -- and it's awful, if you could get a large building, if, you know -- now, one thing. I'll wait til John comes up, I don't -- you know, since you are saying don't worry about these conversions, we're going to do with the transportation caps, why don't you do your system with transportation caps. In other words, why don't you say, based on trips, that you can take so much off of retail if you build --

MR. YOVANOVICH: Well, and that was -- again, I've submitted projects, and admittedly it is very difficult to have a lot of different conversion formulas, a hotel room equals --

CHAIRMAN STRAIN: Hacienda, for example.

COMMISSIONER SCHIFFER: We've been here before.

MR. YOVANOVICH: I understand. So what the -- if the overall concern, and historically the overall concern was how many trips are you going to put on Pine Ridge Road for this project or you're going to put on Livingston Road. You gave us a transportation analysis that says you were going to put X number of peak hour trips on there. We want to cap you at X number of peak hour trips.

Now, I could probably go out and have Dave Wheeler do a very detailed analysis of one hotel room equals X number of square feet of retail, one ALF unit equals Y square feet of retail, same thing for general office, same thing for medical office and you'll have a nice, very complicated table that's going to get you to the same place as the maximum number of trips. And we've done that on other projects. And staff said, uncle, you know, let's keep it simple because we understand the maximum number of trips you are going to come through that process, through either the SDP or the plat. We track the number you've been approved. We, staff -- and I agree as the developer's agent -- don't want to have five or six or seven or however many you need, different conversion formulas and subtract it from the 145 and the different categories. It just became very difficult to manage.

And I've got another one that we're coming through the process of doing, and staff said -- I started it that way and staff said no, don't do it that way, let's not have conversion formulas that complicated. And that's how we got where we are, Mr. Schiffer, and the remaining members of the Planning Commission.

CHAIRMAN STRAIN: But between you and staff, if this goes forward, by consent you could come back with some kind of definition on how staff would look at --

MR. YOVANOVICH: Yeah, that's fine. They would --

CHAIRMAN STRAIN: -- a conversion acreage.

MR. YOVANOVICH: When we thought we had addressed that on Page 7 --

CHAIRMAN STRAIN: No.

MR. YOVANOVICH: Roman numeral VII of 16, under development intensities, VII -- VI. Roman numeral VI.D.

COMMISSIONER SCHIFFER: And it's on your Exhibit C.1.B.

MR. YOVANOVICH: So we had thought we had addressed that on how to calculate it. If we need to clarify it to make sure our intent to give more land towards the calculation is in fact implemented, we'll work with staff.

CHAIRMAN STRAIN: Okay. I think that could be done by next time.

COMMISSIONER SCHIFFER: Yes. I think -- because I do think the intent is to use the gross acreage that they define for each project. And that's how they'll probably sell it, that's how it will be built and permitted.

CHAIRMAN STRAIN: That's something we should -- this board needs to be cognizant of, is that this has been -- the entitlements are being requested today at the request of a bank that owns the property. Most likely the bank will not be the developer. So it will be sold to someone, and who knows how they will interpret this document. So we have to be careful on how it --

MR. YOVANOVICH: And that's not our goal. Our goal is to make it very clear, and that's why we worked closely with the neighbors. Because the bank's not the happy owner of this piece of property, they're just the unfortunate owner.

CHAIRMAN STRAIN: Okay. The next question I have is still on Page 7, but this time it's D.

So in order to qualify for infill criteria, which is what this project is, you couldn't be over 12 acres. So to avoid that you are just saying, we're going to give away 1.65 acres in preserve so it's not counted.

MR. YOVANOVICH: And that's what the Comp. Plan says.

CHAIRMAN STRAIN: Why did you say that, for the conversion factor, you divided the 145 by the 13.65 instead of by the 12?

MR. YOVANOVICH: We looked at the project as, overall as a whole, and the 13.65 was the number.

CHAIRMAN STRAIN: But --

MR. YOVANOVICH: And that's how we did the math.

CHAIRMAN STRAIN: But you wouldn't use that. If you had to use that you wouldn't qualify for infill. So it's kind of like you want your cake and eat it too.

Don't you think the conversion factor ought to be based on what you qualify for, and that's infill, which means 12 acres? So if you do that, your 10,622 is slightly higher.

MR. YOVANOVICH: Okay. Did you do the math? I know you did.

CHAIRMAN STRAIN: I didn't do the math. It's intuitive, that it's going to be higher.

MR. YOVANOVICH: I know it's higher, but I just thought, I thought you were --

CHAIRMAN STRAIN: No, I figure I'll leave that up to you. You're good with numbers. But I think that ought to be your conversion ratio instead of the -- well, the number that you are trying not to use because you wouldn't qualify then.

MR. YOVANOVICH: Okay. Understand. I understand. I understand.

CHAIRMAN STRAIN: On the master plan, that's one -- it's your Exhibit C.1.A -- you note deviation number one on the master plan, and generally on the master plan we see deviations when they pertain to the master plans. That one really doesn't. It's just a textual deviation that says you can have on the site, an FAR up to 6.0. Is it necessary to show it on the master plan?

MR. YOVANOVICH: Our understanding is that whenever you request a deviation you are required to identify where it can occur on the property. Thus we put the note. As you can see, the deviation's the entire property. If we could take it off, it's fine with me, as long as I don't have to -- and I won't have to change any asterisks or take the number off. It's fine with us. We just understood we were required to do it. We did it.

CHAIRMAN STRAIN: On the Parklands, the GL Home property, when it first came in there was something like 25 deviations. I don't recall all those being noted on the master plan, but they may have been. Were you the attorney for that one?

MR. YOVANOVICH: No, sir.

CHAIRMAN STRAIN: Okay. Did -- George, you were involved in that. Was all those deviations shown on the master plan?

No.

MR. YOVANOVICH: I guess the answer is no, they were all not on there, but --

CHAIRMAN STRAIN: Okay. Then what's --

MR. YOVANOVICH: I'm happy with taking it off. If staff's happy, I'm happy.

CHAIRMAN STRAIN: It's not a master plan related issue, it's a general requirement. So why don't we drop that.

Over on deviation number three, I need you to help explain that one. It says it's LDC section, so forth, to require a wall adjacent to the developed commercial area only. Actually, the wall's being required adjacent to the developed residential area only, isn't it? Maybe you can explain to me, because the wall, you are showing it to Brynwood Preserve PUD to the south. Isn't that residential?

MR. YOVANOVICH: Yeah. As I understand, the Land Development Code is, for the portion of your project that is adjacent to a residential development, you are required to have a wall.

CHAIRMAN STRAIN: Right.

MR. YOVANOVICH: Okay. Now we have a boundary that -- I think this shows it better.

CHAIRMAN STRAIN: I'm not disputing your deviation, Richard. I understand that. The terminology threw me on the way it's written in the PUD master -- on the master plan. It says it's to require an adjacent to the developed commercial area only. What does that mean?

Because I thought you were trying to put it adjacent to the residential tract, which is Brynwood --

MR. YOVANOVICH: Brynwood.

CHAIRMAN STRAIN: Brynwood, however you pronounce it. But this says it's developed commercial area only. What is that?

MR. YOVANOVICH: Well, it was intended to show -- as you can see, the building on there, we envisioned that this is the developed commercial area and the wall would be along that developed commercial area. This is developed as preserve and lake, if you will. And that's, you know, that's not -- I mean, it's going to be a preserve. It's not a commercial development. And this is -- I guess the lake doesn't really matter -- but just the preserve.

And if the terminology -- if we could clean up the terminology. But the intent was, we're going to put up a wall where we have the potential to put a commercial development, which is identified on the master plan. We've shown exactly where the wall is going to be. So if there was any ambiguity, it's covered in the master plan.

CHAIRMAN STRAIN: Yeah, and I would just suggest you change it to the developed residential area only. And that way you're -- George is shaking his head, no. Okay. If --

MR. YOVANOVITCH: Because then I've got -- I've got residential along my entire southern boundary. Here.

CHAIRMAN STRAIN: So you would have to go into the big preserve.

MR. YOVANOVICH: Right. That's why we asked for the deviation is -- right here. This is developed residentially. I mean, on the -- you know what I mean?

CHAIRMAN STRAIN: Yeah, I know --

MR. YOVANOVICH: So that was our concern is we have the big preserve here. We talked to our neighbors. They definitely want the wall here with the enhanced buffer. So that's why we used that. That's why we maybe flip-flopped the terminology to say, along the commercially developed, instead of residentially, because that would then mean I would need it along the preserve.

CHAIRMAN STRAIN: Okay.

MS. ASHTON: Why don't you just put future developed commercial area. That might be what the confusion is.

CHAIRMAN STRAIN: Future developed commercial area. That would be helpful.

While we're on the preserves, you've got these hatched lines that show where you intend to put the water management berm and buffer with native plantings. And that is the area that we're saying is outside of the preserves; is that true?

MR. YOVANOVICH: Correct.

CHAIRMAN STRAIN: So even the south part of the big preserve, for example, that shows that water management berm along the entire back side, and you have it along the west side as well, all that is going to be a structural buffer created to separate this preserve from all the adjacent preserves that it adjoins to; is that right?

MR. HERMANSON: George Hermanson. That's correct. It's meant because preserve -- the large square

preserve is part of the retention system, so water has to be contained in it. Just for your information all of those berms will be planted, though. They will be more upland plants, though.

CHAIRMAN STRAIN: But you are going to build a berm, so you are going to destroy the preserve vegetation or the natural vegetation that's there now.

MR. HERMANSON: Yeah, but it will be replaced.

CHAIRMAN STRAIN: Right. Okay. So we're going to bulldoze it all down and then we're going to build a berm and replace it all.

MR. HERMANSON: We've been through this with the water management district, and we're that far from getting a permit, so they're okay with it, so --

CHAIRMAN STRAIN: Okay. Well, we're not the water management district. So I'm still trying to figure out where the practicality is. You have a berm to the north, and all around it, it adjoins other preserves. And I think its positioning was purposely so that it's contiguous to other preserves. And I know Chris is here, he's environmental. Don't we try to make preserves contiguous? But if you are using that as a water management preserve, is the hydrology in it going to be different than the preserves around it? Are we going to --

MR. HERMANSON: Slightly, yes. Yes.

CHAIRMAN STRAIN: How does it qualify still as a preserve?

MR. HERMANSON: We had to demonstrate that the hydrology that we're creating would be acceptable. And I'm mentioning the state again, but we had to go through a hydrologic analysis of what the water levels would be in that because they'll be a little different than the other preserves. And that was acceptable. The water levels will be a little bit higher there during summer.

But I will say this, that large preserve discharges through the berm. See the preserve along the west side, that skinny one?

CHAIRMAN STRAIN: Yes.

MR. HERMANSON: That will be receiving all the water that discharges from the system. That goes under a box culvert that's shown under that road, which goes into the next preserve and eventually up to Pine Ridge Road. So all of those preserves, not just the big one, but all of them will be hydrated from the system. It's just, it goes in steps, that's all.

CHAIRMAN STRAIN: Is the reason that you need the preserve for the water management is because you don't have enough lake area on the site?

MR. HERMANSON: Partly, yes. But I mean, that's a common way to use preserves. They want water.

CHAIRMAN STRAIN: I know. But it's for that purpose that you are going to have to destroy part of the natural vegetation to recreate it to berm, to berm it and then recreate it, which just seems counterproductive.

MR. HERMANSON: A lot of those preserves, though, are very much disturbed. We tried to avoid getting into the heart of them. The middle of that large preserve is the best part, and we're going around the edges, which is not really creating an issue with them.

CHAIRMAN STRAIN: In your calculations for your preserve acreage, when you did your survey work, where did you draw your preserve boundary lines for the calculations?

MR. HERMANSON: In the calculations for the water management?

CHAIRMAN STRAIN: No, no. What area specifically on this map were counted as preserve acreage versus anything else?

MR. HERMANSON: Well, as far as the -- and I'm going to refer to the state again because we're much farther along, we had to count them both.

CHAIRMAN STRAIN: Both being?

MR. YOVANOVICH: The answer to your question for the county is we did not count the buffers towards our preserve acreage.

CHAIRMAN STRAIN: So the berms did not get counted as preserve acreage for the county.

MR. YOVANOVICH: For purposes of meeting and exceeding the county's required minimum native vegetation number.

CHAIRMAN STRAIN: So all the little dotted areas are the pure preserves, and that's all that you -- those total, if someone were to calculate those, those would total the number of preserves you are saying you are setting aside.

MR. YOVANOVICH: Yes. That's what I'm told.

CHAIRMAN STRAIN: I like your conditional statement, Richard.

MR. YOVANOVICH: Well, I have to rely on the experts.

CHAIRMAN STRAIN: Okay. On the next Exhibit C.1.B, just the conversion factors listed there again, so if that -- as that gets relooked at, you may want to make sure it gets changed.

MR. YOVANOVICH: Just for -- so it doesn't look totally like we wanted our cake and eat it, too, we --

CHAIRMAN STRAIN: You never ask for such things, do you.

MR. YOVANOVICH: You know, we believe that the uses that we're converting to, the hotel and the senior housing, are actually lesser intensity type uses than office, medical office, general office and retail, so we thought that it wasn't unreasonable to use the full 13.65 since the conversion was to a lesser intense traffic use. And that was the thought process, to be fair to our side, as to why we thought it would be okay. And it really never came up as -- until today.

CHAIRMAN STRAIN: Today. And I'm just trying to be consistent. And if staff has looked at this consistently as 12 acres and you had to qualify it as that to qualify for the county terms that allow you to do what you're doing, then we should use the 12 acres throughout. That's all. That's the only reason. If you had the use of 13.65 acres, it wouldn't have mattered, I would have been fine with that. But unfortunately you didn't use that through the entire process, you used 12.

MR. YOVANOVICH: I understand.

CHAIRMAN STRAIN: You already cleaned up that -- we're going to refer to the LDC on note three, so that takes care of that issue.

On your application, Richard, we need disclosure for ownership. And you have First Community Bank of Southwest Florida, 100 percent. Normally we get a breakdown of who the individuals are so we know if there is a conflict.

MR. YOVANOVICH: I provided to Heidi this morning, after meeting with you, I got the list of every shareholder within the bank.

CHAIRMAN STRAIN: Heidi, could you get those to us by e-mail so if there is any conflicts we know ahead of time, we can make that announcement at the consent agenda then?

MS. ASHTON: Sure. It's 38 pages.

CHAIRMAN STRAIN: Well, just pdf it to us, if you could. You don't need to kill a bunch of trees to print it.

MS. ASHTON: Sure. Will do.

CHAIRMAN STRAIN: So that will be added to the package as part of their disclosure for --

MS. ASHTON: Okay.

CHAIRMAN STRAIN: Okay. And that's the end of my questions of the applicant, not staff.

Anybody else have anything?

(No response.)

CHAIRMAN STRAIN: Thank you, Richard.

Kay, do you want to go forward?

MS. DESELEM: For the record, Kay Deselem, principal planner with zoning. And we also, as you have noticed, have John Podczewinsky with us for transportation issues. And we have Chris D'Arco for environmental issues.

I won't belabor the issues as far as the staff report. We've gone into all the detail about what's proposed. I would just note that we have provided findings of fact in support of our recommendations. And the recommendation can be modified somewhat, I think, because of the concession that Rich made regarding the eating places, how he's clarified that, that it won't be within a certain distance. So the issue discussed in the staff report about having an eating and a drinking place within 90 feet of the south property line would no longer be an issue.

However, staff still is recommending denial of deviation three. And we have provided the information to support that recommendation in the staff report.

Other than that, if you have any questions.

CHAIRMAN STRAIN: Anybody?

COMMISSIONER SCHIFFER: I have questions.

CHAIRMAN STRAIN: Go ahead, Brad. Can we hit Kay real first, if we don't mind? Is there anything -- I have one or two of Kay on the --

MS. DESELEM: If I may, one correction I need to make.

CHAIRMAN STRAIN: Yeah. I was going to say. That's one of them.

MS. DESELEM: Yes. Bob Duane brought it to my attention and I thought the correction had been made. However it was not made in the NIM discussion. It was not Patrick Vanasse, planning director of RWA, who made the presentation, it was in fact Rich Yovanovich. And I apologize for that error.

CHAIRMAN STRAIN: They look alike. Okay. Anybody else? If not, John. Thank you.

MR. PODCZERWINSKY: Good morning, Commissioners. For the record, John Podczerwinsky.

CHAIRMAN STRAIN: Good morning.

COMMISSIONER SCHIFFER: John, the question is, in the traffic study it definitely shows the three commercial uses. But what kind of trip generation do hotels and the adult living have?

MR. PODCZERWINSKY: If you wouldn't mind, I'm going to put up the graphic of the trip generation table so that everybody can see it.

And generally, hotel uses per unit, which would be per hotel room, and also ALF uses, I think was the other question, per bed, those units are typically a far lower trip generator than the per square foot or the per thousand square foot units that we use in these trip generation reports. Shopping center and medical office typically in these type of PUDs are usually our highest trip generating uses, with a few small exceptions.

COMMISSIONER SCHIFFER: So it can be safely said that if they fully develop the site with the other uses, that they would never get near these trip generations.

MR. PODCZERWINSKY: That's safe to say.

COMMISSIONER SCHIFFER: So that means they could build the 350,000 square foot adult congregate living center. So the trip generation is not giving us any protection from, you know -- we're discussing this in terms of use of the roads but also the size of the object that they are going to build there could get pretty huge if there wasn't something limiting it.

MR. PODCZERWINSKY: That's correct, sir. My intent, from the transportation standpoint, is not to touch the square footage or to limit the square footage. That's based on other parts of the PUD document and it's not under my purview.

COMMISSIONER SCHIFFER: So then, Kay, when I asked Rich, he kind of gave me the impression not to worry about it, the trip generation will take care of it. But it will never, according to John, become a denominator in the process. So we could -- it's going to -- we could have some huge buildings if they, you know -- a .6 FAR on a 12-acre site or 13-acre site, if you want to call it that, is a lot, lot of square footage.

MS. DESELEM: For the record, Kay Deselem. One thing, that is a deviation that's being requested. So if you have concerns about that, there is the action that you could do on the deviation that would prohibit .6.

COMMISSIONER SCHIFFER: That's a good point. So we could maybe give them the .6 at a smaller site but keep it to .3 on the whole site.

CHAIRMAN STRAIN: That brings in another question. Would the .6 be calculated on the 13.65 or the 12?

MR. BELLOWS: It would be the 12, which was the amount you are allowed under the commercial infill.

COMMISSIONER SCHIFFER: It would be a lot. I mean, if you take out all the preserves, it's still, it's a quarter of a million square foot building. So, you know, take out -- subtract 4.1, which is all the preserve and lake areas. I don't know what the intent is but we could drive down the street one day and find a huge adult living center.

CHAIRMAN STRAIN: It's something to consider. I mean, are you -- if you guys were to build an adult living center on there, were you -- do you have a maximum limit you were thinking of?

Or you wouldn't -- you're not going to build it --

MR. YOVANOVICH: We have development standards, okay. We have maximum heights, we have setbacks from the different parameters. We haven't laid out what could that building footprint be within a three-story configuration. But where this project is actually located, would it be the end of the world to have a senior housing facility in this location of the town surrounded by commercial on both sides with appropriate height restrictions and appropriate setback standards, capping on the trips?

Frankly, we never thought that that would be a bad thing. And it might be actually a good thing, if it became a senior development versus a retail office, because we thought the development standards there to protect the public

from a big, long -- you're not going to -- you remember, they're not going to want to be long and spread out because people want to walk towards the common elements. So it's going to be more than likely multi-story, three to four stories. So it's not going to be a long rectangular building at one story. There is a portion that can be four stories but mainly it's a three-story building.

So we never thought that that was going to be a major issue and would be a problem if that was the use that was developed on the property versus, you know, a retail office community.

CHAIRMAN STRAIN: Okay. Anything further?

COMMISSIONER SCHIFFER: No. Just pointing out that it's there. I mean --

MR. YOVANOVICH: Right. And I believe we have to meet the architectural standards --

COMMISSIONER SCHIFFER: Of course.

MR. YOVANOVICH: -- for that type of use. It's considered institutional not residential. I think there's plenty of safeguards there, if that's the use that gets developed on the entire site at the .6 FAR. And we've done it for similarly sized acreages at a .6 to make sure we have appropriate unit size and common elements. It's not, not -- I think we did one up on Vanderbilt Beach Road that's a little over 10 acres, if I remember correctly. Similar standards. By Tiburon.

COMMISSIONER SCHIFFER: And you built at the full .6?

MR. YOVANOVICH: We have a .6 approved. We haven't built the project yet, but, yes, that was approved. And that was one of the earlier projects that came up with those required amenities, so I wasn't -- or my client wasn't getting around the limitation on four units per acre.

MS. DESELEM: If I may, for the record? There is, in the property development regulations, height restrictions for the group housing limiting it to three stories and a 40-foot zoned height and 50-foot actual height. So that is going to somewhat limit how much they can do at the group housing.

COMMISSIONER SCHIFFER: That means they could take their .6, make it .2 per story and essentially cover -- I mean, you know, the site would be big enough to build the maxed out building.

And you're right. Maybe it's a good location. I mean, it is close to 75. I would imagine better uses of the land than something passive like this. But whatever, I'm not saying it's bad, I'm just saying it's there. If they go the full route the other way it's a big building.

What would control you with the hotel? Obviously the room count is -- but you have no control on the size of amenities or anything like that.

MR. YOVANOVICH: Again, and you're right, Commissioner Ebert. I was -- the four stories apply to a portion of the hotel site not the group housing. We're controlled by a maximum of 20 units per acre, I believe it is, for hotel rooms, again at the trip cap, again with the development standards that are in place. And we --

COMMISSIONER SCHIFFER: But no requirement on -- amenities aren't limited or anything.

MR. YOVANOVICH: They're not. But at some point the market is going to say -- this is not going to be the type of hotel that has a huge resort style pool, with, you know -- it's just -- you're right. I don't have those in there but there are some safeguards I think by location of where this site is that you are not going to have a big resort convention center on this particular piece of property.

COMMISSIONER SCHIFFER: Well, you note that it's -- like, the restaurant's only for guests with keys, essentially, guests that are staying overnight.

MR. YOVANOVICH: Right.

COMMISSIONER SCHIFFER: They can't even bring their friends to the restaurant.

MR. YOVANOVICH: I hope that really isn't the interpretation but --

COMMISSIONER SCHIFFER: Well, code enforcement probably won't get into that.

MR. YOVANOVICH: You know what? Do we need to -- I hope that's not the interpretation. Can we --

COMMISSIONER EBERT: Told them it wouldn't be a public restaurant.

CHAIRMAN STRAIN: I didn't interpret it that way but --

COMMISSIONER SCHIFFER: No. That was kind of a wisecrack.

MR. YOVANOVICH: Okay, I just want to make sure.

COMMISSIONER SCHIFFER: If you read --

MR. YOVANOVICH: You know, I've been around long enough where that's not a wisecrack, you know.

CHAIRMAN STRAIN: Okay.

COMMISSIONER SCHIFFER: Well, you could add, and their guests.

MR. YOVANOVICH: Okay. And let's -- please do that. Can we -- does anybody object to making we don't -- and their guests?

CHAIRMAN STRAIN: I understood that to be the intent anyway, okay.
Anything else?

Go ahead, Diane.

COMMISSIONER EBERT: I have a question but it's of Chris.

Chris, could you come --

CHAIRMAN STRAIN: Well, let's finish with John first. He's waiting in the wings.

Chris, we're just going to be just a minute.

Anybody have any other questions of John?

(No response.)

CHAIRMAN STRAIN: John, I've got a couple.

In the land use you use 25,000 for shopping center because that's the limit to retail, but there is no limit on general office. So there could be 120,000 of general office. General office is a little higher than medical. Does that change anything?

MR. PODCZERWINSKY: Actually, medical is higher than general office, believe it or not.

CHAIRMAN STRAIN: In the first column you've got 110 for general office, 109 for medical. So I made the -- okay. So if medical was -- so you used the highest of all of the combinations then.

MR. PODCZERWINSKY: Yes, sir.

CHAIRMAN STRAIN: The other thing is, the applicant started to get into the transportation development commitments and the confusing language that was clarified now to be read differently than what's in our packet. Are you -- have you reviewed that?

MR. PODCZERWINSKY: Yes, sir, I did. And there was a communication that I sent to you yesterday, I believe it was, in an attempt to clarify that.

CHAIRMAN STRAIN: I didn't get a chance to read it before today's meeting.

MR. PODCZERWINSKY: The letter that I had originally sent was incorrect. I did bring a copy of that and I have a mark-up that reflects the applicant's changes to that.

CHAIRMAN STRAIN: Are you in agreement with the applicant's changes?

MR. PODCZERWINSKY: Absolutely. Yes, sir.

CHAIRMAN STRAIN: So the key number, the 565 changes to 577.

MR. PODCZERWINSKY: That's correct.

CHAIRMAN STRAIN: And we strike that second, part of that second sentence.

MR. PODCZERWINSKY: Yes, sir, that's correct. And the only other change to that should be the date of the TIS should be referred to the October 13th, 2011 TIS.

CHAIRMAN STRAIN: Okay. Anybody else have anything of John?

COMMISSIONER EBERT: Yes, I do. I have one quick question, John. This is an activity center, right, the corners, all four? Is it?

MR. YOVANOVICH: The corner is. But to be totally accurate, we're not within the activity center. We're adjacent to it but we're not in it, and that's why we're under the commercial, the commercial infill criteria. But yes, it's the four corners of the activity center, but we're adjacent to it and not within it.

COMMISSIONER EBERT: Have you counted -- has the other -- let me see. On the north side of Pine Ridge, there is a large vacant property there. Has that already been zoned and do you have traffic counts for that?

MR. PODCZERWINSKY: It has been, to my understanding. It's -- they've acquired their zoning and I believe they have gone through an SDP process on some of their buildings but not all. It may be a commercial plat at this point. A commercial plat would not have all of the trips recorded yet until they come in for individual SDPs within the plat, so --

COMMISSIONER EBERT: John, the only reason I'm asking is because Pine Ridge is stretched out to its limit and so is Livingston. I guess there is a question, because it is such an active area, is all this kind of already taken into account?

MR. PODCZERWINSKY: Yes, ma'am, it is. In fact, this is the majority of the reasoning behind our seeking

the additional route through this parcel to create basically an alternative corridor to Pine Ridge for the local residents to be able to access all of these commercial properties at some point in the future. It's a little bit of a circuitous route but at least it would help to keep people from using Pine Ridge that currently use it today.

That's the intention here, and the applicant has addressed that by working with the county in our request for that alternative route through their site.

COMMISSIONER EBERT: Thank you.

CHAIRMAN STRAIN: Thanks, John.

Is there other questions? Did you have some more.

COMMISSIONER EBERT: Chris.

CHAIRMAN STRAIN: Did you want to talk to Chris?

COMMISSIONER EBERT: Chris, on Exhibit C.1.A it shows that there is a wildlife crossing. And the gentleman from Hole Montes said it is for water. What is it?

MR. D'ARCO: I'm sorry, what was it?

COMMISSIONER EBERT: Here it shows a wildlife crossing under the road and he said it is -- it's for the water. A culvert for water.

MR. D'ARCO: It's labeled as a wildlife crossing. I'm not sure if that's a requirement of the district permit or whatnot. It's labeled as a wildlife crossing.

MR. HERMANSON: George Hermanson. It's both. The pipe for water would have been much smaller but they wanted an animal connection between the two, so it's a much larger conduit. It's built at grade so it doesn't fill with water all the time. So there will be periods where it's wet and dry and that's -- the animals that are indigenous to that area would be able to use that. So it's both.

CHAIRMAN STRAIN: And are you putting appropriate signage up on the berm so that the animals know which way to go?

MR. HERMANSON: Yep. Especially the drivers, too.

CHAIRMAN STRAIN: There's a typical example. You have a little skinny preserve in the north and you're putting a wildlife crossing to get to the -- this makes no sense.

MR. HERMANSON: Seriously, we did have to put traffic notification for drivers through there, what it is, yes.

CHAIRMAN STRAIN: We wonder why regulation gets in the way of business.

Anything else, Diane?

COMMISSIONER EBERT: No, thank you.

CHAIRMAN STRAIN: Anybody else have any other questions of staff, the applicant or anyone?

Are there any public speakers registered, Ray?

MR. BELLOWS: No one has registered.

CHAIRMAN STRAIN: Do any members of the public wish to speak on this item? Yeah.

(No response.)

CHAIRMAN STRAIN: Okay. We will then -- Rich, you have no rebuttal, no speakers, so we will move into our -- do you have any final comments you want to make?

MR. YOVANOVICH: No. I'm just here to answer any questions and hopefully respond to any revisions, if you'll give me that opportunity.

CHAIRMAN STRAIN: I've got nine potential stipulations I'll read to the Planning Commission members if we're inclined to vote for recommendation of approval, and we can see if these all fit.

The first one is you're going to redo the asterisks in all parts of the document, either redo them or figure out a way to fix them so it's clearer to what the intention is.

You are going to make some grammatical changes that we talked about during the course of the meeting.

You are going to add the wall color as a developer commitment.

You are going to adjust the trip values to the way John Podczerwinsky has confirmed that we had presented to us.

We are going to redefine how acres are used for conversion, meaning the discrepancy over gross acres versus what, you know, the water management, the preserves and how that -- the acres, and bring all that into consideration.

We've going to have a new conversion factor based on the 12 acre value instead of the 13.65.

We are going to add the ownerships disclosures to the packet record.

And that's it. That's the ones that I have. Does that seem to be consistent with everything we talked?
Brad?

COMMISSIONER SCHIFFER: You forgot the, with guests, in the hotel.

CHAIRMAN STRAIN: That was one of the changes, okay. Yeah. In the PUD textual changes, we went over a bunch of them during the meeting, and that was one that needs to be corrected as well.

MR. YOVANOVICH: The only one I would like one last shot at talking about is the --

CHAIRMAN STRAIN: Oh, the deviation denial? We haven't talked about that.

MR. YOVANOVICH: We haven't talked about the deviation denial. And I don't -- actually, two things. The note. When you were talking about the grammatical changes, were you referring to the reference to the LDC in note three on the master plan?

CHAIRMAN STRAIN: Yes. And also in the development standard table under the, use such as, grammatical.

MR. YOVANOVICH: Those things. Okay.

What I really -- I believe that the conversion square footage that we proposed is fair because it's based upon converting to, as John has already said, a lesser intense use. So even though we were using the gross square footage and we're capped at the same number of trips, the square footage conversion, I don't think is a cake and eat it too because it's a conversion to a lesser intense use, as testified to now by your staff as well. So I would hope we could continue to leave the 10,660, I think it is, square feet as the conversion formula instead of recalculating it at 12 acres.

CHAIRMAN STRAIN: Well, that's easy. Just drop the 145,000 to 12 times 10,000, whatever the number is. So you don't want 145,000 in intensity then?

Richard --

MR. YOVANOVICH: I've just -- Mr. Strain, I just --

CHAIRMAN STRAIN: When your testimony was that you used the 13.65, I can't sit -- I can't rest with that on record as the basis for a calculation when the whole intention of this application was to fit into an infill district that required you to be 12 acres or less. So it's just not -- it doesn't seem consistent. And I'm --

MR. YOVANOVICH: Then why don't we just take -- would it be wrong to just simply based on trips?

COMMISSIONER SCHIFFER: No.

CHAIRMAN STRAIN: I don't want to get into all of --

MR. YOVANOVICH: I'm just saying we'd try to look at something that made sense.

CHAIRMAN STRAIN: You're talking traffic engineers, and they have 15 different ways to explain things. If you ask them something, they'll always come to the conclusion that you want them to come to. And I don't really want to go there.

I'd rather not get into a confusing issue like traffic science. I would rather stick to a simple thing that you calculated out. You told us what the calculation was. Correct it one way or the other. I'd prefer -- and I don't think you can correct it to 13.65 because this application is not supposed to be based on 13.65, it's supposed to be based on 12, otherwise you don't qualify for infill. And if you don't qualify for infill we're looking at a whole different ball game, so --

Go ahead.

COMMISSIONER SCHIFFER: I support that, Mark. And every one of these conversion acres gives you 26,000 square feet to build. So, in other words, the reward for conversion in terms of the group home is a large amount of square footage.

MR. YOVANOVICH: Okay. I understand what you are saying.

CHAIRMAN STRAIN: Anything -- then let's just talk about the issue of the deviation. I think it's number three for staff. They recommend a denial on it. Basically what staff's saying is that the required wall ought to go around the entire preserve, regardless of whether it's not where it's located; is that correct?

MS. DESELEM: Yes, sir, that is correct.

CHAIRMAN STRAIN: And the applicant's suggesting it makes more practical sense just to put it along where it's most needed, and that's along the residential portion of the south side of the project.

What's the consensus on this board?

COMMISSIONER SCHIFFER: I support what the applicant wants, because I don't like digging in the

preserves just to put a wall.

COMMISSIONER VONIER: I likewise support what the applicant wants.

CHAIRMAN STRAIN: I think general consensus is we're going to not approve the denial but approve a recommendation of approval for that deviation. Okay.

So with all of those, the stipulations read and the --

MS. ASHTON: Mr. Chair?

CHAIRMAN STRAIN: Yes, ma'am.

MS. ASHTON: I think that some of your discussion was that the .60 FAR, if it was going to be developed as group housing for the entire site, would apply to just 12 acres. And I think that needs to be clarified in the document because, arguably, 13.65 acres would be eligible, I believe, for the .60 FAR because they don't need the infill district to get the group housing, they could have done that as a conditional use, so --

CHAIRMAN STRAIN: But they came in and got it through the infill --

MS. ASHTON: Right. So I think you need to clarify that because there might be a difference of opinion.

CHAIRMAN STRAIN: So the group housing multiplier becomes part of the 12 acres not the 13.65. And again, that was what was applied for, the 12. That was the focus of the whole application.

Go ahead.

MR. YOVANOVICH: I understand. But Heidi is correct. I mean, that one use doesn't rely at all on commercial infill. So I'm just asking -- and I think that's a legitimate distinction. I understand the commercial -- hotel is a commercial use, and the others did not give me the FAR on the commercial, limiting me to the 12 acres, Commissioner Strain. But I do think it would be fair to allow the existing conversion to apply to the group housing use and then recalculate the 12 acres on the commercial uses, if you will.

CHAIRMAN STRAIN: Would staff have looked at -- if this project came in as a group housing project on 13.65 acres, would you have proceeded to review the project differently than the application in front of us today for the 12-acre infill project?

MS. DESELEM: Yes, sir.

CHAIRMAN STRAIN: Then I can't go along with your request.

MR. YOVANOVICH: I didn't understand the question. I mean, so --

CHAIRMAN STRAIN: If you came in for a 13.65 acre project for group housing in this location, that's it, that's your standalone, or you came in, as you have, with a 12-acre project for infill, and this included as part of that, Kay just said she would look at it differently.

MR. YOVANOVICH: And I'm going to tell you she did.

CHAIRMAN STRAIN: Until she looks at it differently, I don't know if we have a way to render a decision on it.

MR. YOVANOVITCH: Then let me -- I'll ask the question through the chair, because I think that's the way I'm supposed to do it.

Our request was for 145,000 square feet of retail and office. With a conversion formula for the reduction of, for each acre, I take out 10,660 square feet for either a hotel or senior housing. So your staff did look at this project as the potential that a hundred percent of it could be either hotel or senior housing, and they recommended approval. They didn't ask for any changes in the conversion formula. Their only concern was the restaurant use, which we clarified, and the wall. So they did in fact look at this project with the potential that the entire site could be either senior housing or a hotel.

I've already acknowledged that there's a difference between the commercial infill, 12 acres, but on the residential, I mean, on the senior housing, there is no difference.

So I don't think we're being unreasonable and I think your staff has in fact looked at the conversion formula and signed off on it.

CHAIRMAN STRAIN: Well, they did look at that but they looked at it as a 12-acre project. Is that not right?

MR. YOVANOVICH: They had the numbers. They had the numbers.

CHAIRMAN STRAIN: Right. But in your PUD you said you removed the 1.65 from consideration so you qualify for infill.

MR. YOVANOVICH: Mr. Strain, they asked us where we came up with the number and we told them.

MS. DESELEM: If I may?

CHAIRMAN STRAIN: Yes, ma'am.

MS. DESELEM: Staff looked at it as the total acreage, but in light of what's come up today, I think that was in error. And I think what you pointed out is very important to consider, that it is the infill and it's only 12 acres. So we erred in our initial evaluation. I think you're correct, sir.

CHAIRMAN STRAIN: Thank you. And, Richard, if you pursue this, you might end up with a split vote where would you go forward and have to be -- off of potential consent. It's up to you.

MR. YOVANOVICH: I'm not that -- well, maybe I am, at home. So I'll qualify. I won't make my statement. I understand. It's not worth the argument.

CHAIRMAN STRAIN: I don't think it is. I think you guys are getting a good project with the right acreage. I don't know what we're --

MR. YOVANOVICH: We understand. And we appreciate the differences of opinion.

CHAIRMAN STRAIN: Anything else from anybody?

COMMISSIONER SCHIFFER: I'm starting to come around. The point they make is a good point, that they could build the 13.65 acre site without any infill issues, and that's what they used to make their conversion factor.

CHAIRMAN STRAIN: But if they had a standalone application for a group housing at 13.65 acres with a .6 FAR, based on what you previously said about the size of the building, would you still think that's reasonable?

COMMISSIONER SCHIFFER: We might not give them --

CHAIRMAN STRAIN: Okay. Therein lies the difference.

COMMISSIONER SCHIFFER: He's accepted it.

CHAIRMAN STRAIN: Okay. So now we've got the stipulations. We added to it that the group acres will be based on a 12-acre count. The group --

MS. ASHTON: FAR.

CHAIRMAN STRAIN: The group use that Heidi brought to our attention was based on a 12-acre count. Anybody else have any others?

Is staff clear on the stipulations and the discussion?

MS. DESELEM: I believe so, yes.

CHAIRMAN STRAIN: Is there a motion on the part of the Planning Commission?

COMMISSIONER VONIER: So moved.

CHAIRMAN STRAIN: Bill, before you -- you want to hold that motion for just a minute, Bill? Go ahead, Richard.

MR. YOVANOVICH: With the changes that are being made, is staff willing to change their recommendation on the wall issue? Because, if staff's going to fight me on that issue, I'm on regular agenda.

CHAIRMAN STRAIN: Kay?

MR. BELLOWS: For the record, Ray Bellows. The reason we wanted the wall there was the concern of, if there's clearing of the preserve of exotics, it thins it out rather heavily. And I think that's what was the issue with the other part of the development, as was mentioned earlier about the tire store, because there was a lot of clearing of the exotics in there and it thinned out that preserve.

But if it's -- the Planning Commission is strongly supportive of approving the petitioner's request, then I don't have a problem with it.

CHAIRMAN STRAIN: Does anybody on the Planning Commission -- go ahead, Paul.

COMMISSIONER MIDNEY: I don't understand what you mean, that they would thin out the preserve.

MR. BELLOWS: Exotics need to be removed from preserve areas, and some preserves have a lot of exotics. And when you remove all of them you can start seeing through the preserve areas, and noise and sound travels through those preservers a lot easier then.

COMMISSIONER MIDNEY: So the wall would be a visual aid to the people in the adjoining development.

MR. BELLOWS: And, more significantly, a sound barrier.

COMMISSIONER MIDNEY: Sound barrier to the adjoining development?

MR. BELLOWS: Yes.

COMMISSIONER MIDNEY: But I think our attitude would be that this is going to fill in because they've agreed to pretty strict filling in and a lot of planting and a lot of monitoring, and it's supposed to be filled in 80

percent, I think, within three years.

MR. BELLOWS: In regards to Rich's question, if that's the intent and that's perceived to be what is going to happen, that it be a thick preserve, then I believe we can support that and we will not fight that.

CHAIRMAN STRAIN: And wouldn't, at the same time, though, where the wall's not going to go the preserve areas, is more adjacent to adjoining commercial uses than it is to residential to the sought, where the wall is going to go, it has a residential area to the south, and that's why they are putting the wall there.

So I'm not sure if they -- if they want to protect themselves from the commercial to the east or west, then they can put a wall up on their own. But if they don't want to, who is losing? The commercial area's got the -- if you look at that Marquis (sic) shopping center, it's the back side that faces them. So if anybody's going to want a wall, they are going to want to put it in on their own, for their own tenants rather than have Marquesa complaining about it, because who is going to complain about it? Their delivery trucks?

MR. YOVANOVICH: I hope not. I just put up that picture I took on Monday. That's the view from Marquesa. Through Marquesa's preserve, you can't see any houses.

CHAIRMAN STRAIN: So you went and you stood in front of the one clump of trees and took a picture?

MR. YOVANOVICH: Just to show you that -- I didn't. I drove a little further along.

CHAIRMAN STRAIN: Oh, okay. Two clumps of trees. Okay.

MR. YOVANOVICH: Just to get a better idea, because the question was asked of me about the preserve, and I know staff was saying that that was a -- the preserve along Marquesa had thinned out. That's the thinned out preserve. And I'll testify that those are representative and not cherry picked.

COMMISSIONER VONIER: Mark, if I may. I drove by there and looked at that myself. And I would agree with Rick. This is what it looks like.

CHAIRMAN STRAIN: With that substantiation, Rich, I think we'll tend to believe you.

So what we're considering then is the stipulations previously read. We're going -- and staff has agreed with the Planning Commission's position and the evidence shown that they are not going to seek a denial on that deviation.

MR. BELLOWS: Correct.

CHAIRMAN STRAIN: Okay. Which means theoretically you would be on summary agenda at this -- or consent agenda at this point, if we're unanimous. And that's where we're going to go next.

Who would like to -- Bill, did you want to make the motion?

COMMISSIONER VONIER: Sure. In the matter of PUDZ-PL20110000406, Brynwood Center, I move approval.

COMMISSIONER KLEIN: Second.

CHAIRMAN STRAIN: Is the motion maker and the second saying they're moving approval subject to the stipulations we just got?

COMMISSIONER VONIER: Subject to the stipulations as noted.

COMMISSIONER KLEIN: Yes.

CHAIRMAN STRAIN: Okay. Both are acknowledging. Okay.

Any discussion?

All in favor, signify by saying aye.

COMMISSIONER SCHIFFER: Aye.

COMMISSIONER HOMIAK: Aye.

COMMISSIONER EBERT: Aye.

COMMISSIONER KLEIN: Aye.

COMMISSIONER AHERN: Aye.

COMMISSIONER MIDNEY: Aye.

COMMISSIONER VONIER: Aye.

CHAIRMAN STRAIN: Aye.

Anybody opposed?

(No response.)

CHAIRMAN STRAIN: Motion carries 8-0.

Thank you all very much. Appreciate your cooperation in getting through this asterisk-ridden document.

***We have no old business scheduled.

***We have no new business.

The next time --

COMMISSIONER SCHIFFER: Mark, I have one little question.

In watching the commission hearings on the LDC I noticed that some of the hearings had people giving expert opinions. Some, I guess lobbyists or people came before the commission that didn't come before the Planning Commission. Is there any kind of requirement that if somebody is going to provide evidence or testimony to the commission that they've done it to the Planning Commission prior?

CHAIRMAN STRAIN: No. I wish there was.

No. In fact I think it's a bad habit. I shouldn't say habit, but a bad situation that sometimes occurs. People realize, if they save their ammunition to use it at the BCC where it can be more, let's say, impactful with the final voters than us, they would hold off and drop the bomb there instead of trying to negotiate it here. And unfortunately that has happened and it could happen again.

COMMISSIONER SCHIFFER: But what it does, it means that they're making a point that, where the Planning Commission didn't know this, so it's kind of an unfair strategy. Is it something that other communities have it where, if you are going to lobby the commission, you have to first lobby the planning commission and their judgment?

MS. DESELEM: For the record, Kay Deselem. In my experience with Lee County where they have a hearing examiner's process, you have to have standing with the hearing examiner before you can address the board.

COMMISSIONER SCHIFFER: Okay. Because, if somebody had an important bit of info, which it appeared they thought they had, we should hear it too and use it for our judgment, not just let it go there. Because the point comes as, well, maybe if the planning commission knew that, they would have done something different.

MS. DESELEM: Historically --

MR. BELLOWS: The board could refer it, right, or remand it.

MS. DESELEM: I've seen other planning commissions and zoning boards where they don't have that requirement. But the board does always have the option to remand a petition if they think it needs further consideration by the Planning Commission.

COMMISSIONER SCHIFFER: So it's their judgment to say, well, maybe that's something you should have told the Planning Commission, and send it back.

MS. DESELEM: Possibly, yes.

CHAIRMAN STRAIN: You know, it might help if, in those instances where that is obvious, that staff at least tell the board, by the way, you're hearing information that was not provided to the Planning Commission, so they know that they could make that decision to consider sending it back to us because that information is valuable enough that we should have heard it. That would be helpful.

COMMISSIONER SCHIFFER: I think so, because I think it would be fair for everybody if everybody heard the same thing.

CHAIRMAN STRAIN: I think that's a good point.

MR. BELLOWS: We can inform --

CHAIRMAN STRAIN: Talk to Nick about it and -- yeah.

MR. BELLOWS: Other staff members involved and see if we can come up with some policy in that regard.

CHAIRMAN STRAIN: I think it would be helpful.

Anything else from anybody? And the public's gone.


So a motion to adjourn?

COMMISSIONER AHERN: So moved.

CHAIRMAN STRAIN: By Melissa, second by Barry. We're out of here.

There being no further business for the good of the County, the meeting was adjourned by order of the Chair at 12:03 p.m.

COLLIER COUNTY PLANNING COMMISSION



MARK P. STRAIN, Chairman

ATTEST:
DWIGHT E. BROCK, CLERK

These minutes approved by the Board on 9-5-12, as presented or as corrected _____.

TRANSCRIPT PREPARED ON BEHALF OF GREGORY COURT REPORTING SERVICE, INC.
BY ELIZABETH M. BROOKS, RPR, FPR.