

January 17, 2013

TRANSCRIPT OF THE MEETING OF THE
COLLIER COUNTY PLANNING COMMISSION
Naples, Florida, January 17, 2013

LET IT BE REMEMBERED, that the Collier County Planning Commission, in and for the County of Collier, having conducted business herein, met on this date at 9:00 a.m., in REGULAR SESSION in Building "F" of the Government Complex, East Naples, Florida, with the following members present:

CHAIRMAN: Mark P. Strain
Melissa Keene
William H. Vonier
Paul Midney
Karen Homiak
Diane Ebert
Barry Klein
Phillip Brougham

ALSO PRESENT:

Raymond V. Bellows, Planning Manager, Zoning
Nancy Gundlach, Principal Planner, Zoning and Planning
Heidi Ashton, County Attorney's Office
Tom Eastman, School District

CHAIRMAN KEENE: Good morning, everyone, and welcome to the January 17th Collier County Planning Commission meeting.

If everyone would rise for the Pledge of Allegiance.
(The Pledge of Allegiance was recited in unison.)

CHAIRMAN KEENE: Roll call.

COMMISSIONER HOMIAK: Mr. Eastman?

MR. EASTMAN: Here.

COMMISSIONER HOMIAK: Mr. Strain?

COMMISSIONER STRAIN: Here.

COMMISSIONER HOMIAK: Good to have you back.

COMMISSIONER STRAIN: Thank you.

COMMISSIONER HOMIAK: Mr. Midney?

COMMISSIONER MIDNEY: Here.

COMMISSIONER HOMIAK: Mr. Vonier?

COMMISSIONER VONIER: Here.

COMMISSIONER HOMIAK: Ms. Keene?

COMMISSIONER KEENE: Here.

COMMISSIONER HOMIAK: Ms. Homiak is here.

Ms. Ebert?

COMMISSIONER EBERT: Here.

COMMISSIONER HOMIAK: Mr. Klein?

COMMISSIONER KLEIN: Here.

COMMISSIONER HOMIAK: And Mr. Brougham?

COMMISSIONER BROUGHAM: Present.

CHAIRMAN KEENE: Thank you. The first item is addenda to the agenda. And Mr. Strain is back. It looks like we are going to have an open seat on the commission for a while. So I would like to -- if someone would make a motion to reappoint officers.

COMMISSIONER EBERT: I will make a motion.

COMMISSIONER VONIER: Second.

CHAIRMAN KEENE: All in favor?

COMMISSIONER VONIER: Aye.

COMMISSIONER MIDNEY: Aye.

CHAIRMAN KEENE: Aye.

COMMISSIONER STRAIN: Aye.

COMMISSIONER HOMIAK: Aye.

COMMISSIONER EBERT: Aye.

COMMISSIONER KLEIN: Aye.

COMMISSIONER BROUGHAM: Aye.

CHAIRMAN KEENE: I would like to make a motion to reappoint Mr. Strain as chair.

COMMISSIONER STRAIN: Well, that will sure feel good. Thank you.

COMMISSIONER HOMIAK: Why, Melissa?

CHAIRMAN KEENE: Not that I haven't enjoyed it, but --

COMMISSIONER VONIER: You've got a second over here.

CHAIRMAN KEENE: I've got a second?

COMMISSIONER VONIER: Yes.

CHAIRMAN KEENE: All in favor?

COMMISSIONER VONIER: Aye.

COMMISSIONER MIDNEY: Aye.

CHAIRMAN KEENE: Aye.

COMMISSIONER STRAIN: Aye.

COMMISSIONER HOMIAK: Aye.

COMMISSIONER EBERT: Aye.

COMMISSIONER KLEIN: Aye.

COMMISSIONER BROUGHAM: Aye.

COMMISSIONER STRAIN: I thank you, and I appreciate that very much. Thank you.

COMMISSIONER VONIER: And I move we reappoint Melissa Keene as vice-chair.

COMMISSIONER KLEIN: Second.

CHAIRMAN KEENE: All in favor?

COMMISSIONER VONIER: Aye.

COMMISSIONER MIDNEY: Aye.

CHAIRMAN KEENE: Aye.

COMMISSIONER STRAIN: Aye.

COMMISSIONER HOMIAK: Aye.

COMMISSIONER EBERT: Aye.

COMMISSIONER KLEIN: Aye.

COMMISSIONER BROUGHAM: Aye.

CHAIRMAN KEENE: Mr. Strain, come take your chair.

(Applause.)

CHAIRMAN STRAIN: Thank you all.

COMMISSIONER VONIER: I feel so much better back here.

CHAIRMAN STRAIN: Do I get the energy drink too?

COMMISSIONER KEENE: No, that goes with me.

CHAIRMAN STRAIN: If Cheri[©] was here and I had an energy drink, Terri, she would be very upset.

COMMISSIONER BROUGHAM: Mark, if I may, I'd like to have one item at the end of our meeting. It concerns a discussion on the delivery of meeting materials.

CHAIRMAN STRAIN: Okay. We'll do that under new business, C.

COMMISSIONER BROUGHAM: Okay.

CHAIRMAN STRAIN: And my first thing I want to do is thank all of you very much. I have missed this board for the last three months, and I'm very, very happy to be back and grateful to the Board of County Commissioners for making it possible, so --

COMMISSIONER AHERN: And we have missed you, and I am very glad that you are back.

CHAIRMAN STRAIN: Well, I'll certainly try to have an interesting meeting today.

I did -- it was noted this morning that we have a -- I didn't notice it. Someone pointed it out. We have a 9 o'clock time-certain. So for those members of the public that I told the schedule was Top Hat first and Creekside second, we have an interim presentation on an item for the EAC.

***Mr. Dickman?

MR. DICKMAN: Thank you, Mr. Chair, and congratulations. Thank you, board members.

My name is Andrew Dickman. I'm chair of the EAC, also an attorney and an adjunct professor at Ave Maria Law School.

I'm here on behalf of the EAC just briefly to talk to you about stormwater management. I know all of you have seen the Collier County Watershed Management Plan.

I'm here with Jerry Kurtz, who you may know, you probably know, of the environmental stormwater planning section.

The purpose of this is that we have started embarking on taking on certain aspects of this plan to try to move those forward in terms of policy that will end up being land development regulations or even goals, objectives, and policies in the Comprehensive Plan.

We feel that, while at the same time that we are reviewing development recommendations or development applications and also changes to the Land Development Code, we have put so much time into this plan, as you-all have, that we feel that this is such a strong issue, stormwater management and the recommendations that are in it, whether they be structural or nonstructural, that we have set up a subcommittee to do -- to put together reports, specific reports -- and I think you-all have received that memo

in your packet. We put it out a while ago -- that addresses that and comes up with a couple of recommendations.

We've decided on the format of this report. And future reports will be, number one, to look at our county itself and how are we doing on that specific topic. And the first one that you have is stormwater management, which is probably the main focus of this plan and then, secondly, each one of the members of the EAC has taken on the task of researching other counties in the region -- Lee County, Charlotte County, Sarasota County, even Miami-Dade County and Monroe County -- to see how they handle that specific issue and what we can learn from them.

Some cases we're doing better. Some cases we're doing worse. But what we want to emphasize is that we're working in lockstep with Jerry's team to move this forward. We feel that under our -- under our authorization under the code that we are given that authorization to bring those forward, and I would just like to take a few minutes to walk through this with you, a few items, if I may.

All right. Number one that we have found is that definitely our water, having clean water in the county, is -- absolutely, there's a nexus between our economy, our quality of life, our social health, and our ecosystems.

So if we don't have clean water, especially in the -- in the areas along the shorelines, we are going to have a problem with our economy and our quality of life.

The estuaries that we have found, Wiggins Pass, Naples Bay, Rookery Bay, and Ten Thousand Islands, those are the primary estuaries. Those aren't all the estuaries along our coast, but those are the primary estuaries.

Out of those five estuaries, only one, Ten Thousand Islands, has -- is clean of any pollutants. All the other ones have some type of pollutant in those estuaries. And when you look at the estuaries, those are sort of like the canary in the cave mine, so that if the estuaries start going bad, you know that upstream all those canals and ditches and different types of structural engineering projects that are used to deal with stormwater management, there's something wrong there.

And it could be linked to land development and land planning, and that's why we're here today, really, because we feel that by linking what you-all do with what we do is going to be really key to the success of this plan.

The goal, obviously, is that we're required by law to clean up our waters. We have waterways that are impaired, and we're required under the law to clean up our waters.

And we know, based on the numbers that we were given from the planning department, that by 2020 we're going to have approximately 50,000 new people. And the question is, how and where do we develop -- develop these projects.

And I've given you these numbers, and I've given you these maps. The areas that are most of concern are going to be the ones that are highlighted in red. And you can see geographically on those maps that when you look at No. 9, especially -- and I'll use that as an example -- that's -- of the planning community -- these are planning communities that are set up by the planning department, by the way. They're not set up by us.

Corkscrew, which is north of -- you can see it up in the north part of the area. It surrounds Immokalee, and it's along Immokalee Road and Oil Well Road. That area is slated to have almost a 370 percent growth rate. We're talking about adding 17,000 new people up into 2020.

Now, the question is, that -- where is that and how is that going to affect the watershed and the basins in there? Because that area will flow into Wiggins Pass. So we know all of these communities flow into one of the estuaries or another. And what structural improvements are made or what types of structural improvements are made, whether they're done in the canal areas or whether they're done on site is going to be key to how those estuaries -- and I'm focusing on the estuaries because, again, those are going to be the canary in the cave mine. Whether they are successful is going to tell whether we're successful upstream.

One of the things -- one of the recommendations that we've set out is looking at areas where we can incentivize development. Now, the boxes that I've listed up in the front are Planning Communities 1 through 4. And if you look at the map -- so if you look at the map, this area -- this area where I'm pointing to is the -- what I'll call the danger area.

If you're going to put that amount of people, 17,000 people, in that area, then you're going to really have to focus on how you're going to deal with stormwater management, because that area is going to flow into the Wiggins Pass area. I'm just using that as an example, because when you overlay, maybe you should ask the planning department to take population growth, and where you have slated for residential development to go, by your watershed and your basins, then you'll have an idea of which estuaries these types of developments are going to fall into.

But the areas that I've circled in blue are the areas that are already somewhat urbanized. But there are -- there are areas that can be developed and should be developed, albeit there may be a requirement to have higher densities. I know that's not the greatest word in this county, but there can be a mix of -- there can be a mix of development.

And the reason that we're pointing towards that is one of the recommendations that came out of Charlotte was to use incentives -- not to require, but to use incentives for developers to say, okay, we know that we have stormwater management infrastructure in place in these areas, so maybe it would be cost effective with the incentives to go into these areas, maybe cut that 17,000 -- 17,000 population number in half that's slated to go in the Corkscrew area and, through incentives, drive it into an area where there's already infrastructure in place.

I just point those out as examples. You can look at them, and hopefully you'll talk about them when it comes time to deal with your land use element and look at these population projections. Again, these are numbers that were given to us by the planning department. They're median numbers. Obviously there's high numbers and low numbers. These are projections. But there are new decennial census numbers out, and these are the numbers that were given to us.

Finally, I want to go over the recommendations that we've made. These came through a lot of discussion and debate on the EAC. The first one is taking low-impact development, low-impact development. That is absolutely something that is not in place now. There is not a low-impact development manual. There's nothing in the Land Development Code that deals with low-impact development, and there's nothing in the Growth Management Plan that deals with low-impact development.

One example of low-impact development, if you're not aware of it, would be, perhaps, requiring using pavers, pervious pavers instead of impervious parking lots, and we've tried to move towards that. So low-impact development is something that's cost neutral as opposed to all of the multi-million-dollar structural projects that are being recommended in the Watershed Management Plan.

Secondly, require on-site stormwater management, such as retention areas for new construction in older subdivisions without treatment systems. So taking -- instead of having the water flow into canals which, ultimately, flow into the estuaries like Naples Bay, Wiggins Pass, and the others, then to have those dealt with on site.

The third thing is to incentivize new development in urban areas. I've already touched upon that.

Lee County divides itself into drainage ditch -- drainage districts where they charge what's similar to an impact fee, but they charge a fee for stormwater management as opposed to what we do here in the county which is -- across the board in your millage rate you have a stormwater fee, but it's across the board. There's no internalizing the impact in terms of where it is in the watershed.

So Lee County has taken on that approach, and it's akin to a development. So you're internalizing it according to what kind of development is occurring in that watershed.

The fifth one is by protecting natural groundwater recharge areas, like wetlands, by preserving the natural sheet flow. Again, Corkscrew is a major area of sheet flow that ultimately ends up into Wiggins Pass. Mirasol was a big issue. It probably still is a big issue. Not a big issue? Okay. But either way, that is an area that you can use as an example of where the sheet flow is.

Then, finally, looking at reducing nutrient pollution from agriculture operations. There was a fertilizer ordinance that was adopted; however, it did not really address the agricultural runoff, and we feel that that's something that should be dealt with.

We're trying to keep these reports short and to the point so that it can stimulate discussion at your -- on your forums and also at the County Commission level.

So I just wanted to come here today; the EAC had asked me to come here today. And just so you

know, our next report that will be coming out will be dealing with low-impact development.

There's lots of new technology out there that will help reduce runoff into our canals and, ultimately, into our estuaries. We saw some fantastic presentations when the Watershed Management Plan was being developed with all kinds of great technologies and techniques.

So our next report's going to be on low-impact development. And, again, that's something that is cost neutral. It can be incentivized, and it needs to be -- we need to prepare a manual for it and then, ultimately, prepare land development codes and goals, objectives, and policies, to have low-impact development.

So with that, Jerry's here for any questions. I'm here, I guess, to answer any questions. But if not, I really appreciate the time, and thank you for giving me the time-certain. I appreciate it.

CHAIRMAN STRAIN: Okay. Thank you. Are there any questions?

(No response.)

CHAIRMAN STRAIN: Okay. We appreciate your report. Thank you.

MR. DICKMAN: Thank you.

CHAIRMAN STRAIN: Okay. Now, that was a 9 o'clock time-certain. We need to move back into our regular agenda.

The next item on the agenda was the Planning Commission absences. The next meeting is February 7th. Does anybody on the board know if they're not going to be here on February 7th?

(No response.)

CHAIRMAN STRAIN: Okay. That means we'll have a quorum.

Approval of minutes, December 6, 2012. They should have all been received electronically. Is there a motion to approve?

Mr. Brougham?

COMMISSIONER BROUGHAM: I have a correction.

CHAIRMAN STRAIN: Okay.

COMMISSIONER BROUGHAM: Very minor. Just on the first page for the commissioners that were present, scratch Brad Schiffer -- he was not present at this meeting -- and add Berry Klein and Doug Rankin, who were present.

CHAIRMAN STRAIN: Thank you. Is there a -- and is there a motion then to approve it --

COMMISSIONER HOMIAK: Motion to approve --

CHAIRMAN STRAIN: -- as modified?

COMMISSIONER HOMIAK: -- with those changes.

CHAIRMAN STRAIN: Okay. Ms. Homiak.

COMMISSIONER VONIER: Second.

CHAIRMAN STRAIN: Seconded by Mr. Vonier.

All in favor, signify by saying.

COMMISSIONER VONIER: Aye.

COMMISSIONER MIDNEY: Aye.

COMMISSIONER KEENE: Aye.

CHAIRMAN STRAIN: (Abstain.)

COMMISSIONER HOMIAK: Aye.

COMMISSIONER EBERT: Aye.

COMMISSIONER KLEIN: Aye.

COMMISSIONER BROUGHAM: Aye.

CHAIRMAN STRAIN: I oppose. I don't oppose; I abstain. I wasn't here. Since I wasn't here, I sure don't know what happened on the minutes.

COMMISSIONER BROUGHAM: You have been gone a while.

CHAIRMAN STRAIN: Yes, three long months.

BCC report and recaps, Ray?

MR. BELLOWS: I have no recap for today.

CHAIRMAN STRAIN: Okay. Thank you.

Chairman's report. Again, I'm glad to be here, so thank you, and I don't have a report because I didn't know I'd be here today, at least in this chair, so I appreciate it all.

Consent-agenda items. I don't think we -- is there any left over from December, Ray?

MR. BELLOWS: No, there isn't.

CHAIRMAN STRAIN: ***Okay. Then we'll move right into our first advertised public hearing. The first item up is PUDZ-A-PL20120000726.

All those wishing to testify on behalf of this item, please rise to be sworn in by the court reporter. Any of the neighbors that are here to talk, if you are here, now's the time to stand up at least to get sworn in. Everybody that wishes to speak must stand up, on just this item.

Okay. Terri?

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

CHAIRMAN STRAIN: Disclosures on the part of the Planning Commission? We'll -- hi, Phil.

COMMISSIONER BROUGHAM: My display does not work.

CHAIRMAN STRAIN: Okay. Well, that will confuse a few people. We already did musical chairs. Let's start --

COMMISSIONER BROUGHAM: Switch nameplates again.

CHAIRMAN STRAIN: We'll start on your end. Any disclosures?

COMMISSIONER BROUGHAM: I did have a conversation with Mr. Anderson.

CHAIRMAN STRAIN: Okay. Bill?

COMMISSIONER VONIER: (Shakes head.)

CHAIRMAN STRAIN: Paul?

COMMISSIONER MIDNEY: (Shakes head.)

CHAIRMAN STRAIN: Melissa?

COMMISSIONER KEENE: I spoke with Mr. Hancock.

CHAIRMAN STRAIN: Okay. I spoke with Mr. Anderson and Mr. Hancock multiple times. I also spoke with a group of residents at Walden Oaks yesterday or the day before. I can't even remember now. It's been a busy week.

Mr. Homiak?

COMMISSIONER HOMIAK: No, nothing.

CHAIRMAN STRAIN: Okay.

COMMISSIONER EBERT: I spoke with Mr. Anderson.

CHAIRMAN STRAIN: Barry?

COMMISSIONER KLEIN: None.

CHAIRMAN STRAIN: Okay. Thank you.

Bruce, it's all yours.

MR. ANDERSON: Good morning, Mr. Chairman. Welcome back. For the record, my name is Bruce Anderson from the law firm of Roetzel and Andress.

I'd like to introduce Mr. Tim Zellers, president of Tamiami Hyundai, and Tim Hancock, the director of planning for Davidson Engineering.

Unlike most commercial PUDs that come before you, this is a proposed single-use PUD. It's an auto dealership with typical accessory uses that you expect when you bring your own car in for service. It replaces another single-use PUD. In this case you know exactly what you're approving. Not a long list of potential uses. Just one.

The Growth Management Plan, its intent is to allow commercial redevelopment of this property so long as the new use is no more intensive than the existing commercial zoning allows.

The county has issued an official interpretation that the rezoning of this property from an amusement park to a new car dealership does not represent an increase in intensity use; therefore, it is in compliance and consistent with the Growth Management Plan.

This project is a relocation of a locally owned Hyundai dealership that has been very successful, and they need to expand. In this economic times, that's a good thing.

The same family has owned and operated Tamiami Ford for many, many years. Mr. Zellers

estimates that this expansion will create at least 40 new jobs. Not relocated jobs; new jobs.

This property has been zoned for commercial uses for almost 30 years. The first PUD was approved in 1984. Next door is the Lone Oak PUD, which has been developed as Walden Oaks, and it was approved two years later, and it has its own commercial component fronting on Airport Road.

The county has long recognized that commercial uses are appropriate at this location for both the Princess Park PUD and the Lone Oak PUD. So it should come as a surprise to no one that another commercial use would replace the amusement park.

The proposed new auto dealership will typically close around 7 p.m., while the current amusement park, with its go-carts, bumper boats and more, is open till 9 or 10 o'clock on weekdays and midnight on weekends. Which would you rather have as a neighbor?

I'm going to turn it over to Mr. Hancock to address land-planning issues and the steps that have been taken to address concerns that were raised at the neighborhood information meeting.

Thank you very much.

CHAIRMAN STRAIN: Thanks, Bruce.

Tim, I assume that we'll ask questions of either of you when you're finished your presentation. Does that work for you?

MR. HANCOCK: Yes, sir.

CHAIRMAN STRAIN: Okay.

MR. HANCOCK: Good morning, Mr. Chairman. Welcome back.

CHAIRMAN STRAIN: Thank you.

MR. HANCOCK: Members of the Planning Commission, my name is Tim Hancock with Davidson Engineering. I have the pleasure of being the co-agent for the applicant, which is the Tamiami family of dealerships.

Bruce and I agreed well in advance that any errors and omissions with respect to this application are mine and mine alone and not his. So as we go through that, please keep that in mind.

CHAIRMAN STRAIN: What are you anticipating?

MR. HANCOCK: I guess if I start off like that, it's not all that good.

But, nonetheless, before you is an aerial of the subject property. The Princess Park PUD, as currently zoned, is an 11.36-acre parcel. It measures approximately 395 feet of frontage along Airport Road where you also have a water management canal. So you have somewhat of a bridge or culvert that crosses the canal and enters the property.

What's being proposed uses that exact same access conditions. No changes to that are anticipated.

The property is unusually deep, 1,250 feet. So not a lot of frontage; quite a bit of depth. Certainly have some limitations on your site design and your issues that you're dealing with.

The surrounding properties consist of, to both the north and east, the Lone Oak PUD, as cited by Mr. Anderson, was zoned and developed subsequent to the Princess Park PUD. Lone Oak is a mixed-use PUD containing approximately two acres of commercial office space along Airport Road.

The balance of the project is 604 residential units, which is a density of approximately 6.89 units to the acre.

To the south is a commercial PUD known as the Willow Park PUD. It is a mixed commercial office development. There are a few vacant lots to be built out but, for the most part, it's a fairly dense office development with a significant traffic generation.

To the west is Airport Road across which is the Keystone Place PUD, an apartment complex consisting of 404 units on 34 acres; a density of almost 12 units to the acre.

The commercial zoning for the Princess Park PUD was approved in 1984 under Ordinance 84-34. This predates our current Growth Management Plan. So how is commercial determined at this site? At that time a point system was in place. If you had access to certain infrastructure, be it roadways, water, and sewer, you got a certain number of points. And if you built enough points, which was basically encouraging commercial development to occur where infrastructure existed or was proposed, you could then request commercial zoning. That was the basis under which commercial zoning occurred on this site in 1984.

At that time -- and if you look at an aerial from 1985, if you start at the intersection of Pine Ridge

Road and Airport Road and you go north, you were in farm country. It was nothing but agricultural operations and fallow ag land. The Princess Park PUD, in essence, went out to the boonies to do what it wanted to do. Development subsequently grew up and surrounded this project.

Policy 5 of the Growth Management Plan was created, in essence -- and specifically 5.1 -- to recognize commercial zoning that predated the adoption of the Growth Management Plan. Some of us were here for what we call the ZRO process, a zoning reevaluation ordinance.

When they adopted the Growth Management Plan, there was a recognition that certain commercial zoning existed out there that may not fit the plan that was being adopted. In other words, the rules are changing, but we can't take away from those what they already have.

So Policy 5.1 stated that if you have existing commercial zoning, you are, in essence, grandfathered. You are deemed consistent by policy and allowed to remain.

That policy went one step further, and in Policy 5.9 of the Growth Management Plan it further recognized that these commercial projects may incur, over time, a change in use. To not allow a change in use would, in essence, to be taken -- would be taking an existing commercially zoned piece of property. And let's say, for example, it went from a retail shopping center and wanted to develop medical office, that change in use would have been prohibited if you only grandfathered the use that was there at the time. It would be a de facto force to residential zoning in this case.

So Policy 5.9 was created specifically for the purpose that we're here today, and that is to look at an existing commercial operation and propose a commercial business that is equal to or less intensive than the existing land use. That's the purpose of 5.9 and the basis under which the request is before you today.

The applicant, the Tamiami family of dealerships, is a family-owned business. They've been in this community since the early '70s in operation. It includes Tamiami Ford, Tamiami Hyundai, and Tamiami Mitsubishi.

This application is really the result of the growth and expansion of two businesses. Tamiami Hyundai is currently operated out of a -- the former Naples Nissan site on Airport Road right across from Horseshoe Drive. Tamiami Hyundai and Tamiami Mitsubishi share that site.

Everything occurs on that site you need to occur; new and used auto car sales, repair. But the growth of the Hyundai line has created a demand for new space and new jobs. By relocating Tamiami Hyundai and moving it north, which is where the population center is slowly moving, it actually not just increases new jobs and opportunities on this site, but it actually increases and frees up space for the Tamiami Mitsubishi operation to grow also. So this is a move that will aid and assist the growth and job creation of two dealerships.

We filed an official interpretation with Collier County prior or concurrent with filing our rezone. We did that for the purpose that we wanted to ensure that we had consistency and staff determination of consistency with Policy 5.9. It was out of an abundance of caution to do so.

We also, at the same time, filed a Growth Management Plan amendment. In the event that the official interpretation were not favorable, we felt strongly that what was being proposed was equal to, less intensive, and a better neighbor than the existing use, that we filed the Growth Management Plan amendment as a backstop.

We asked the board -- once we had the official interpretation that we were, in fact, consistent with Policy 5.9, we tabled the Growth Management Plan amendment. It's still sitting out there. We hope not to have to resuscitate it and bring it back online.

As mentioned before, there -- under 5.9, you can be equal to or less intensive and be consistent; however, it's a two-part test. The first part of the test is that your zoning itself must be equal to or less intensive.

The second part of that test is that your proposed impacts to public facilities must be equal to or less intensive.

I'm confident we'll be getting into the zoning issues here in short order, and I'll be addressing that in a few minutes.

But going to the impacts to public facilities, as contained in our application for the official interpretation, the proposed dealership versus the existing zoning represents a reduction in p.m. peak-hour

trips of 122 vehicles. It represents a reduction in water and wastewater use of 5,920 gallons per day. There's no change in water management. There's no change in demands on parks and drainage.

Staff indicated in their report that there's potentially an increase in solid waste generation. I've not seen that calculation. I don't agree with it for the simple reason that the existing facility has got a restaurant and bar included in it, and the proposed facility will be using compactors and more modern methods of waste disposal.

So the solid waste generation, I think, is an issue. But as stated in the staff report, it's not significant enough to outweigh all of the other reductions that are represented by the proposed project.

The current conditions at the King Richard's amusement park are that a variety of indoor and predominantly outdoor attractions, including batting cages, go-cart tracks, bumper boats, a variety of rides including small roller coaster, miniature golf, indoor video games, and a snack bar/restaurant, among other uses, are present.

This petition seeks to remove those uses fully and replace them with a new and used automotive dealership, including accessory uses such as repair and service in an enclosed building.

The proposed rezoning, again, as Mr. Anderson indicated, is very detailed in nature. We have identified the maximum buildout of the proposed buildings on site at 65,000 total square feet. This is a relatively low square-foot usage averaging just 5,750 square feet per acre. Certainly not a maximization of the site.

One of the reasons for that is that we wanted to make ample space available for temporary storage of inventory. And in doing so, it certainly shrinks the area for the buildings. But, nonetheless, it's a fairly low square-footage intensity.

The other thing we did in the design of the site is, that inventory, we put a significant amount of it behind the building to the east. Not typical for automotive dealers. I think if you look at some of the newer dealerships, and particularly the ones that I'll see in Miami, the building is set way back, and you see a sea of vehicles between the building and the roadway.

Here we've done somewhat the opposite. We've limited the inventory in the front of the building; put most of it to the rear. That allowed us to push the building up closer to Airport Road. Yes, it gives the dealership better visibility on Airport Road because we don't have a lot of frontage there, but it also creates additional separation between the physical building itself and the residential development to the east.

The building will be designed to meet architectural standards, including landscape buffering adjacent to residential properties, which the current PUD does not meet.

The current Land Development Code, when you have a commercial use next to a residential use, requires a 15-foot Type B buffer with a 6-foot masonry wall. Currently, a buffer is there. It is dominated by exotic vegetation and consists of a chain-link fence. That will be replaced along the entire eastern boundary and the northern boundary from the northeast corner all the way to where the commercial office exists with a Type B buffer, which includes trees and shrubs, 50 percent of which have to be placed on the residential side of 6-foot privacy wall, which is masonry or concrete construction. Obviously, this is going to be a far better sound buffer than the existing dilapidated chain-link fence.

We have limited the land uses in the PUD only to what is necessary. The site plan reflects that. And a detailed site plan -- as we all know, the more detail you put in your site plan, the more likely you are to be drug back before this body when you want to do an expansion. This is not an overly inexpensive process to go through.

We do believe what we've shown here is adequate buildout. The building to the north will be the first phase of development. That will house the vast majority of what is necessary. The building to the south is somewhat of a placeholder right now that, should there be additional showroom space for, you know, part of the Hyundai line, we have the ability to create it. Out of an abundance of caution, we wanted to show both to try and avoid having to come back and go through this process for a minor expansion in the future.

There are substantial measures of increased compatibility when you look at the proposed project versus the existing zoning. Number one, we've already discussed building placement where you have go-cart tracks and batting cages just a couple hundred feet or 300 feet from existing residentially zoned property. The building as you see here is over 500 feet from the eastern property line, which is the nearest residences.

That was not an accident.

The buffering and landscaping, which we have discussed, is well in excess of what currently is there today. We've even gone as far as looking at loading and unloading. The beeping of a truck as it backs up can be an irritant to somebody who's in bed on Saturday morning.

We've created the site with ample circulation so that delivery vehicles can come into the site, go to the right, circle the site fully, and the loading area is on the north side of the proposed dealership. It does not require backing into a bay. It's a pull-in lane, and then the truck is offloaded with forklifts into an open garage door that is then closed when the loading occurs.

Site circulation was important. We did not want trucks sitting a mere 200 feet, or unloading and loading, close to the residential. That's why the site was designed the way it is.

One of the things -- when you look at impacts and the way that Collier County asks you to look at impacts with respect to the Growth Management Plan, is there are a bevy of impacts that are not evaluated that we think are important, first and foremost of which, on this project, noise reduction. Currently, batting cages, roller coaster, go-cart tracks. I think if you ask any of the residents there if they truly love listening to that, you'd probably get a no.

What we are proposing is a service -- a sales and service building, and the service building is fully enclosed with the exception of a few quick-lube bays for oil changes. Those will be located with the doors facing south. The only door that would open and close from the service area that -- it would be facing to the east where it's just the predominance of residential, is one -- one service door that is raised when a vehicle is done with service and exits, and closed when the vehicle exits.

This is the same thing we employed with the Naples Nissan dealership at Whippoorwill and Pine Ridge, and it works very well. There aren't residences right on the other side of the street there, but Hospice is to the south just a few hundred feet away. And we worked very, very hard to make sure that there wasn't noise transfer from that dealership to the Hospice site. Hospice is happy with what was done there. As a matter of fact, they're even considering expanding closer to the dealership.

So we think that employing those same tactics here -- there's a good-neighbor policy that was done there and works. We're transferring from this site and design.

Currently -- we've had discussion at the NIM, and there was concern about noise from the existing community pool area. That's the community pool for the Lone Oak development, or at least one of them, but the primary recreation area for the Lone Oak development, Walden Oaks.

Currently, the batting cages are 200 feet from that pool deck. The go-cart track is 275 feet from that pool area. A chain-link fence with no wall and an existing vegetative buffer.

What is being proposed -- the area I just pointed to is -- are car detail bays where hand detailing is done, and those are approximately 325 feet from the pool. Again, at development there will be a 6-foot privacy wall between those bays and the adjacent property.

In addition, those bays are enclosed on three sides and roofed, so the noise is directed in a northerly direction, not north and east. Again, these are hand-detail bays. These are not service bays where air tools are used and so forth. This is mainly where cars are prepped for delivery. So there's not the repair function going on in these bays.

So, again, enclosed on three sides, roof, openings facing north, and a 6-foot privacy wall 50 feet away. We think this is an adequate -- adequate attention being paid to the transfer of noise and certainly well beyond what exists today.

One of the questions we received was about car washes. Just between that detail bay and the service building, there will be a car wash. The car wash openings do face east and west but can be oriented so that the blowers are on the west side.

That car wash is not for customer use. It's used simply by employees. Approximately 75 cars a day at the most would be going through the car wash.

Car washes are permitted in the C4 zoning district. There's additional requirements in the Land Development Code for car washes if they're stand-alone commercial uses, and that's LDC Section 5.05.11. Even though this is not open to the public, this location and design meets every single one of the LDC criteria for a commercial car wash; as to location, as to distance, and as to buffering.

The last thing I'd like to clarify before opening up to any questions is -- and this was the -- this was the part I referred to where all the mistakes are mine.

We've been somewhat trained, candidly, by this body to be overly open in our disclosures. When I rezone churches now, I throw everything in but the kitchen sink. You don't want to do childcare, I understand, but if you want to do it five years from now, it's going to cost you a lot of money and a lot of time to get that.

So what we try and do is we try and be extremely open and have full disclosure, because the last thing I want to do is stand up here and have someone say, well, you didn't say you were going to do that. That's precisely how this PUD was structured.

The dominant use in this PUD and the use we're requesting is Land Use Code 5511, which in the SIC code is new and used automotive dealerships.

If you look at the SIC code -- and I know a copy was included in your packet by Nancy -- it explains that it's new and automotive -- new and used automotive dealerships along with accessory repair uses. The repair uses are part and parcel of an automotive dealership.

I've done several automotive dealerships over the last 10 years. I've yet to do one that did have a repair department. I've yet to do one that did not detail vehicles. They are part and parcel of the same use as recognized by the standard industrial classification code.

Where I erred is in the application in the PUD. I indicated C5 intensity uses. That should read C4 intensity, and the reason is that an automotive dealership with the associated repair uses is permitted in C4. By listing the accessory uses independently, I opened up the door to discussion of, are you doing a C5 project.

So, candidly, this is a C4 project. It should have been listed as a C4 project. Operating on the side of full disclosure, we listed all the accessory uses. But if we were limited solely to typical accessory uses of a new and used automotive dealership, fine, we're happy with that.

So Accessory Uses 1 through 7 were an attempt to be open and full disclosure, not an attempt to increase the intensity of the project.

I can also cite for you multiple examples in Collier County where new and used automotive dealerships with all associated repair and service uses exist in straight C4 zoning. They've been permitted. They've been built recently. So I think there is a track record here that what is being proposed here as a permitted use is, in fact, a C4 use.

There is a glitch in your Land Development Code that provided some interest to us. Under C4 you can have a new -- you can have an automotive dealership, and it says in the LDC new cars only.

When you go to conditional use of C4, it says, that same land use code, 5511, used cars only. Nowhere does it say new and used cars.

And it's interesting because then it says, well, the new car component is C4, but the used car component may be conditional use of C4. Either way, it's C4 intensity. And Collier County has recognized in the past that C4 is a zoning district that allows for automotive dealerships that have both new and used and repair. We are exactly consistent with that.

To summarize very quickly, we think what we have proposed here is clearly a reduction in intensity to the adjoining neighborhood. It may not be what people want, but asking somebody what they want and then asking them if this is better than what's there are two different questions.

The measure for us, according to the Growth Management Plan, is are we equal to or less intensive from a zoning standpoint. The answer's yes. The amusement park uses are only permitted as a conditional use of C4. The outdoor recreation uses are only a conditional use of C4. A new car automotive dealership is straight C4.

So the argument there, and the one that staff made, is that those are similar in intensity because our zoning is hierarchical in this county. C1 is less intensive than C2 and so forth.

So the only measuring stick we have is, where does it fit in? New car automotive dealerships, C4; outdoor recreation, conditional use of C4.

So the zoning is similar or less intensive. We've provided ample evidence that the public facility impacts are equal to or less intensive, and I believe that we have addressed the vast majority of the issues

raised at the NIM that are site related.

The one I didn't hit on is lighting. We got questions from the neighbors about what's the lighting going to be like. And, candidly, there's a couple dealerships in town that are probably visible from the Hubble telescope. Extremely bright lighting immediately on the roadway can be a distraction.

We had a discussion with Mr. Zellers. We met with lighting experts, and earlier this week I sent a letter out to the residents who attended the NIM. The best example I can give you of what the display lighting for this project will be like is actually going back to that Naples Nissan site on Pine Ridge Road. Granted, we did that project too, but the lighting there -- you're capped at 25 feet in the LDC, but the lights are required to be shielded from residential glare. Those lights are actually shielded from glare spillover into Pine Ridge Road.

You also have there a canal between the dealership and the roadway, just as we do on this site. So the example we've provided the residents that is probably the most -- the most similar approach to site lighting we're going to have is the Naples Nissan dealership. We could call out a couple that may be a little more intense out there and not as desirable.

But the bottom line is, they asked for an example of how we would handle that, and we've provided that as a real-world example. And if you stand on Pine Ridge Road at night and look down, you'll see that the glare is very limited out onto the roadway.

When it gets to the rear of the site, our requirement for lighting is security; it's not display. Therefore, in all likelihood, we'll have fewer fixtures. There's no point in spending all the money for display lighting throughout the entire site.

So -- but the shielding requirement is still there. And the closest we come to the rear property line is in excess of 200 feet. The area east of the parking area -- the lake area and around the lake area will not be lighted. So the nearest light structure will be over 200 feet away from the residential property line and almost 300 feet from the nearest residential structure.

With that, Mr. Chairman, I will conclude my testimony and remarks, and Mr. Anderson and I -- and also, Mr. Josh Fruth is the project engineer with Davidson Engineering. He's here and available to answer any questions you may have.

CHAIRMAN STRAIN: Thank you, Tim.

And we'll start with our board's questions. Phil?

COMMISSIONER BROUGHAM: Yes, a few questions, and then quite a few questions of staff later.

If you could look at the master plan; what you have up there is fine. You mentioned in your testimony that there would be, on the eastern boundary and I assume east of that lake, a landscaping buffer and a wall, or did I misinterpret what you said?

MR. HANCOCK: You heard that correctly, sir. It's a 15-foot Type B buffer with a 6-foot masonry or privacy wall.

COMMISSIONER BROUGHAM: On your master plan that wall is not shown.

MR. HANCOCK: No, sir. It's a requirement of the Land Development Code. In a 15-foot Type B buffer, if you're adjacent to residential, then the wall is required. So we've been asked not to be redundant with the LDC.

COMMISSIONER BROUGHAM: Okay.

MR. HANCOCK: So inherent in that 15-foot Type B buffer, because the adjacent use is residential, a wall is required.

COMMISSIONER BROUGHAM: All right. I think I understand.

Again, going -- looking at the master plan, you do show a 15-foot wall and a Type B landscape buffer on the northern boundary, at least east of the commercial area there. At least I'm assuming that's what that "expansion" there means. Perhaps not.

MR. HANCOCK: Both call out a 15-foot Type B buffer, but requirement is the same. And you're correct.

COMMISSIONER BROUGHAM: Okay. So there will be a wall. I mean, that's the base question.

MR. HANCOCK: Yes, sir. The entire length of the northeast boundary from the northeast corner all

the way to the existing commercial, which is up towards Airport Road, there will be a wall along that entire length, yes, sir.

COMMISSIONER BROUGHAM: Okay. Under Exhibit F, Page 6 of 6, development commitments, you had mentioned lighting and your commitment to having no lighting around the lake. Could you put that in as a Item No. E; would that be appropriate?

MR. HANCOCK: Yes, sir.

COMMISSIONER BROUGHAM: Okay. Just a second. That's all I have for the applicant.

CHAIRMAN STRAIN: Okay. Anybody else of the applicant at this time? Bill, and then Diane.

COMMISSIONER VONIER: Tim, how many of the seven accessory uses does the dealership have now in place?

MR. HANCOCK: Let me pull that up real quick. In a standard repair department, while it's a very small portion, repair to exhaust systems on No. 1 does occur. There's no tire retreading going on; however, there is tire repair on No. 2. Automotive glass replacement, again, something that occurs. Transmission repair, I would call it minor transmission repair but, again, it is a support repair service.

Six is general automotive repair. The one thing that probably -- that doesn't really happen within a service area like this -- and, again, erring on the side of probably overdisclosure, is body repair. That usually is in a separate building, a separate land use. So currently in a standard dealership, body repair and -- you know, you don't straighten frames anymore at automotive dealerships. So that one is probably not occurring.

And all of those that I listed, in our opinion, are incidental and accessory to the new car dealership.

COMMISSIONER VONIER: I have a problem with the tire retreading, because that covers a multitude of sins, and it's -- I don't think there's an operation in Naples that does it.

MR. HANCOCK: And we're not going to do it here, and we'd be happy --

COMMISSIONER VONIER: It's smelly, and it's not a pleasant operation. So I would like to see the tire retreading taken out.

MR. HANCOCK: I think we can do that without affecting the business model.

CHAIRMAN STRAIN: Okay. Is that all, Bill?

COMMISSIONER VONIER: That's all.

CHAIRMAN STRAIN: Diane?

COMMISSIONER EBERT: Good morning, Mr. Hancock.

MR. HANCOCK: Good morning.

COMMISSIONER EBERT: Number 7 also, does not Tamiami -- like you said, the repair shop, is there not one that he already has set aside in a different location? So if that happens, that's where they will be going?

MR. HANCOCK: That is correct.

COMMISSIONER EBERT: Okay. So do we take 7 out of there also?

MR. HANCOCK: Yes, ma'am.

COMMISSIONER EBERT: Thank you. Another question -- thank you for the walls.

The car washing. Being sensitive today and knowing that we've had many water things, will this be recycled water? Will you be -- so it isn't -- when you said you had what, 75 car washes a day, this will be recycled water so you won't be using fresh water all the time?

MR. HANCOCK: Yes, ma'am. As a matter of fact, we've already identified the equipment that will be put in place, and it has an 80 percent recycling rate.

COMMISSIONER EBERT: Okay. Thank you.

CHAIRMAN STRAIN: Okay. Anybody else, of the applicant?

(No response.)

CHAIRMAN STRAIN: Okay. Tim, I have some questions.

Ray, I'm going to give you some paperwork.

That was an unexpected move.

Tim -- and I met with you and Bruce, and I also met with the residents. When I met with the residents, they were concerned about a number of issues that I'm sure they'll express today. I also expressed to them that we try to find compromise if it's possible. So my intention now is to walk through issues that

hopefully find a compromise, and we'll know how the residents feel when it comes up.

But I still have an overriding issue that I'm concerned about from the responsibility position that this planning commission is in. And I showed you mine yesterday, and you showed me yours last night. And it's not what you think.

So I will give you the opportunity to show us yours and get it on record, and then I'll put mine on record.

MR. HANCOCK: I appreciate the clarification.

CHAIRMAN STRAIN: You might want to walk us through yours, because I'm going to do that with mine, and that's so the board is fully versed on the two issues.

MR. HANCOCK: I've asked Nancy to zoom in on that. Otherwise, unless you're under 25 years of age, you'll never be able to read this.

In a meeting with Commissioner Strain, we discussed how do you measure intensity of zoning accurately? Is there a numerical formula that you can assign to zoning intensity?

One of the problems I have -- and I've been doing this for 23 years -- is, you know, medical office is allowed in C1 zoning, and it is far more incentive from a traffic standpoint than rock crushing, which is C5, yet rock crushing is clearly more intensive. There are things you can do to mitigate intensity, so certainly within our zoning code there are C4 uses that, with certain applications and design, could be less intensive than C3 uses; however, the Growth Management Plan and the way staff has interpreted the board direction on measurement of zoning is to use the hierarchical method that we have. If it's allowed in C4, then it's deemed to be, generally, less intensive than what's allowed in C5.

Using that as a nexus, the question Commissioner Strain raised is that in our PUD we have one permitted use. That's new and used automotive dealerships, SIC Code 5511. The new portion is allowed in C4. Used only, as allowed, as a conditional use of C4.

In the Princess Park PUD, they have, I believe, 11 or 12 permitted uses; nine of those are allowed only in conditional use of C4, two of which are allowed conditional use of C3.

I think we both agree on the uses in the Princess Park PUD and how they fall in the zoning code.

The problem is when you get to the accessory uses for what we're proposing. If you take those accessory uses out of an accessory condition, meaning they're incidental and subordinate to a permitted or primary use, and you make them stand alone, their intensities stand alone, in our code, is C5. Therein lies a reason why I used C5 intensity more than once in describing things out of an abundance of caution.

The question becomes, do we measure those when we look at overall intensity as C5? And my response to that is that if they were stand alone or if they were individual permitted uses, then the answer would be yes. If we could come and do a transmission repair shop, stand alone on the site, it's a C5 use per the Land Development Code; however, doing work on a transmission in a service area that is there for the sole purpose of support of a new car dealership is an accessory use, and it is clearly incidental to the primary use.

And so Commissioner Strain proposed basically taking all of the uses that could occur, assigning a numerical value, 4 for C4, 5 for C5; if you're a conditional use, you'd use a 4 and a half because it's deemed to be a little more intensive than C4 and less than C5; divide them up by the number of uses, average them out, and that's your intensity number.

The flaw that I saw with that analysis -- and I always hesitate to use the word "flaw" when talking about something Commissioner Strain has done, but the flaw I saw with that analysis is, if I have a project that had 90 percent professional office and 10 percent transmission repair, there needs to be a weighted assessment of the overall intensity of the project; otherwise, C1 and C5, you average them out, it's a C3 intensity project. Well, not really, because 90 percent of it is C1.

And I think that gets to what staff's analysis with respect to the OI was. They looked at the predominant permanent use of the two projects and made a determination that we were equal to or less intensive. The reason being -- and what you see up here -- the area and space allocated to the Princess Park PUD that are C4 conditional uses is 83 percent of the project, not including water management or parking.

So we're -- and I even excluded walkways in between the go-cart track and the batting cages. We took those out. We even took out the infield on the go-cart track, attributed that to open space. When you

look at that total area, 83 percent of it is C4 with conditional use; 17 percent is C3 with conditional use. We then used those percentages to weight the intensity of the permitted uses in that PUD.

In looking at the automotive dealership -- again, Commissioner Strain took permitted and accessory uses and listed them all; C4 for the automotive dealership, C5 for the accessory uses. And, again, my position is that if that were stand-alone uses permitted, then that would be a fair assessment, or at least fairer assessment; however, Land Use Code 5511 allows associated repair as a function of an automotive dealership.

And, again, it occurs throughout the county in several locations that we have automotive dealerships in straight C4 zoning. And I believe that is direct support for the fact that an automotive dealership is a C4 intensity use. And that's why I think I erred in calling out C5 and wish to make that correction to the document and application today.

If you look at the intensity of new car dealership, what we looked at is we looked at, on a volume basis, how much of the activity on that site is allocated to new vehicles? And across the board, not just at Hyundai, but across the board in the Tamiami family of dealerships, you're dealing with, I think, it's 76 percent. Seventy-six percent of the volume is on the new car side; 24 percent is in the used car side.

So in deference to the way the LDC is currently written, the new car dealership is a C4 use, the used car dealership we called out as a C4 conditional use. We applied those weights also.

And the result is that the two uses are fairly similar. The Princess Park PUD, when you use the weighted approach, is at 4.33. The automotive dealership, when you use the weighted approach, is at 4 point -- I think it's one -- yes, 4.13.

The difference in the two analyses is twofold. One is weighting. I think without using weighting you're not measuring the intensity accurately.

The second component is whether or not, because you can fix a transmission inside a service bay of a new car dealership, that turns it from a C4 to a C5 use. My testimony is that because SIC Code 5511 allows associated repair, and in support of that Collier County has approved multiple automotive dealerships in straight C4 zoning, that we are erring in looking at the new car dealership and associated repair uses as C4.

By removing tire retreading and by removing auto body repair, that case is strengthened even further.

So that is the crux of the analysis we prepared. We included the formula there. And to give you a greater level of comfort, it was prepared by an engineer, not me, so -- who's here. And if I tried to explain it to you, I probably would get lost along the way.

But all it was, basically, is taking each use, multiplying it by the weight, adding it to another use multiplied by the weight, and then dividing by 100 percent. Did I lose anybody? Okay.

And we ran several tests on it that were simple. For example, if you had a project that was 50 percent C1 and 50 percent C2 and you ran it through the formula, you got 1.5.

And so we ran several tests on it to make sure the formula ferreted out, and it did. So we're comfortable that it is an accurate weighted measurement of the proposed intensity versus the existing intensity.

CHAIRMAN STRAIN: Thank you, Tim.

And now I'll talk to you about mine. But before we do, do you -- and I know you're familiar with the county and you've been in planning for quite a while. Why do you think the new car/used was considered a higher intensity than new -- than a car dealership new? For example, why was it a CU requirement versus a standard permitted use in C4?

MR. HANCOCK: In all honesty, if you have a lot that sells only used cars, generally you're dealing with -- few exceptions in high end -- and there's some of those in this town -- a lower socioeconomic demographic.

CHAIRMAN STRAIN: Could it also be contributed to the fact that used cars would probably use more repair?

MR. HANCOCK: Certainly. Obviously, when the car comes on the lot, things are done to it before it goes out. Not the case, typically, with a new car. They're more prepped than repaired. That could be a component, yes, sir.

CHAIRMAN STRAIN: Nancy, I didn't want that put up right now. I still want to talk about his, if

you don't mind. If you could put his back up there. Can you put his back up, please?

Upper right-hand corner -- can't quite see it. You need to move over to the upper right-hand -- move it to the left, if you could. Ah, right there.

I think you may want to switch something around in the numbers. The SIC code for used is 5521 and vice versa.

MR. HANCOCK: Yes.

CHAIRMAN STRAIN: So then I would assume if you do that the other columns are consistent with the switch.

MR. HANCOCK: Yes, sir. I can't even try to blame Bruce for that one.

CHAIRMAN STRAIN: Well, if you'd move it now back to the bigger table in the middle, Nancy, if you could.

And so what you did is you applied a weight of 83 percent to a conglomerate of uses that are on that site listed as principal uses for Princess Park, and then you came back with one score for those of 4.5; is that correct?

MR. HANCOCK: Yes, sir.

CHAIRMAN STRAIN: Okay. And you added the 4.5 to the 3.5s below, and you divided that by the number of total uses there instead of -- and I'm just wondering why you did that versus dividing it by three, or why your engineer did that.

MR. HANCOCK: We actually didn't divide by the number of uses.

CHAIRMAN STRAIN: Okay. How did you get 4.33? Why don't we go back to that then?

MR. HANCOCK: The formula that was used -- and I'm going to take this so I can read from it -- so I can read from it, and then I'll put it back on the visualizer.

CHAIRMAN STRAIN: Sure.

MR. HANCOCK: For the existing PUD, there were two land uses being analyzed: C4 with conditional use and C3 with conditional use. Nine of the uses are C4; two of the uses are C3 conditional use. Therefore, there were really only two classifications that were weighted.

The assumption here, Commissioner, is that if all the uses are C4 with conditional use, then you don't need to divide anything. It's 4.5.

CHAIRMAN STRAIN: Well, I know they're not all C4 with conditional use. I know that.

MR. HANCOCK: And so there had to be a way to factor the intensity of the non-C4 conditional uses, and those were lumped together. So there really are only two land uses being analyzed there.

And so the 4.5 times the weight of .834 plus 3.5 times the weight of 17 percent was then divided by the weight plus weight, which is 100 percent.

CHAIRMAN STRAIN: Okay. Then is it your assumption that if you take those first categories of C4 with a CU, any one of those would take up 83 percent of the site or collectively, altogether their pieces could take up 83 percent of the site?

MR. HANCOCK: Altogether their components currently take up 83 percent of the site.

CHAIRMAN STRAIN: So then any one of those wouldn't take up -- what percentage of the site, do you think?

MR. HANCOCK: They're each very different. Go-cart track is the most consumptive use out there because of area allocation.

CHAIRMAN STRAIN: But as a principal use, do you think anybody would build an 11-acre site with any one of those uses being primary, I mean, being the major part of the site?

MR. HANCOCK: No.

CHAIRMAN STRAIN: Because, I mean, that's what the principal uses could do versus an accessory use.

MR. HANCOCK: That is correct, and the answer is, no, I don't see an 11-acre swimming pool.

CHAIRMAN STRAIN: Okay. In -- and I don't either, and that's why it was important to look at these as accessory uses and to equally, I thought, look at your request for accessory uses in the same light.

In the period of time that Princess Park was built, which was in the '80s, the accessory use definition included two words that aren't included today. It said, accessory uses are those needed -- are uses that are

necessary and incidental to the primary use.

Today's code reads -- and it was after, I believe, in the early '90s, it was changed so that accessory uses are now incidental and subordinate to the primary use. Because the burden of using the word "necessary" became a factor in some OIs that were done back in the early '90s, and they were found to be -- the applicants then were not allowed to do those because they couldn't prove them to be necessary.

So I think the methodology at the time was to include everything as a principal even though it was -- obviously you're not going to build an 11-acre swimming pool. It was going to be an accessory use.

If you take that into consideration, and then you apply the accessory uses for the intensity that they are, and yours equally, that's how I approached it.

And before we go there, Nancy, the text that I have -- that I provided, the LDC text, could you put that on the overhead?

And I know you've talked about this issue. You need to shrink it down a little bit, and then push it -- pull it down on the page so we can read the top first, and I'll start there.

This is right from the current LDC on MUNI code for the C4 commercial district. And what it says under the principal uses -- there's a whole slew of them. I pulled the pertinent ones, automotive vehicle and equipment dealers, 5511 and 5599, new vehicles only.

Now, when we add verbiage to the end of a referenced SIC code, we do it intentionally. It's done in many places and in many zoning districts throughout the code. In that same code, or in that same C4 section, the yellow on the bottom for conditional uses says, automotive dealers and gasoline service stations, and the one that is most concerning is the 5521.

Nancy, if you can now scroll down. Try to leave the yellow highlighting on the top visible. Yeah, a little bit further. Okay. That's good.

The C5. The C5 is distinctly different in the way it's worded. Motor vehicle dealers, new and used, 5511 and 5521. So it took the two up above, combined them together in the one down below, and then when you get into your repair services, all your repair service -- or all but one, occur in No. 18, automotive repair services, 7532 to 7539.

And then the car washes, which you didn't specifically ask for, but it's obviously an accessory use because you show it on your plan, the 7542.

The reason I wanted to show this is in no case did you ask for 5521. You have, consistently throughout your application, asked for 5511. I can't see, from a Land Development Code perspective, how 5511 in a C4 can stand with anything but new because it specifically says new vehicles only. The only time it comes under with used is in the C5 district. That's where my concern is.

And -- so I ran your numbers both ways just to give the benefit of the doubt of using both C4 and C5, but I used the accessory uses.

And, Nancy, if you could put that next one up now that we could get into that.

And this is the same I showed you last night. I highlighted it for clarity for today's meeting. On the left is the base zoning, your current PUD, which I think you said we agree on. And I did mine not by weighted; by strict average and division.

So if you take the number of uses, which I think are 10 or 11 under the current PUD, and you divide the total overall intensity score, you get an overall intensity average of 4.32.

If you go to the proposed PUD with the C5 use of 5511, as was applied, you get a 5.0; significantly more.

If you go to the proposed PUD but you substitute in 5521 and 5511 separately, one is a C4, one is a C4 with a CU, you end up with a 4 point -- now I'm having a hard time reading that little print -- 4.85.

In either case the intensity is higher. I'm not saying you're weighted average is wrong, but I'm concerned that we cannot dismiss accessory uses. Granted, I don't think anything in Princess Park, as a principal use that we've talked about, would gain an 11-acre site, nor do I think you're ever going to have a transmission repair for 11 acres, but you could go up to 49 percent, and that is the instance that has caused great concern in this county before.

Stevie Tomatoes. This board found, when that project came through, that we did not want drinking establishments on that site, and we recommended that to the board, and it got mixed up in the transition.

Well, they came in with an eating establishment. I think it was 5812. They put that eating establishment in, and then they built one or two -- I don't know how many bars they have there and barstools, bar seats, and TVs around the whole thing and opened the doors up and put in amplified sound.

So they were serving alcoholic beverages and attracting a large crowd, and they probably still do. But the immediate neighborhood, just like this, had residential adjacent to it. And that accessory use ended up legal because it didn't exceed 49 percent of the site, but it was the driving force which caused the neighborhood the most concern, not the fact that it wasn't licensed or permitted as an eating establishment. That's why I believe we've got to weigh in on the accessory uses. We can't ignore them.

And I understand the argument that you're not going to use them to an extent that may rise to that percentage. But as we -- but you could. It would be impractical, just as it would be impractical for Princess Park to put in an 11-acre or let's say even a 6-acre pool. No one in their right mind's going to do that. But you have to weigh in on them, and that's why I was concerned.

I also am concerned that in this entire application we still have not seen a request to use 5521 to be consistent with C4 with a CU if that's what you're trying for. You're still saying 5511. 5511, with new and used, cannot be in C4. It doesn't say that. It's clear it's in C5.

I'm sure that maybe staff will have a comment on that when it comes up. And if they do, that's fine, but that's the code today. And that's the kind of -- the stumbling block that I'm having as a member of this board approving something that appears to be inconsistent with the code for the use -- for the zoning district that was used to determine that. I mean, you guys are saying C4. Staff did the analysis on the C4 use, even though the application was a C5, and I'm still concerned about that.

So I haven't got past that, but let's, on the -- and I met with the residents. One of the things they're going to be talking about today is their concerns. I'm hoping that they're going to offer some solutions, if there are any. So maybe hearing some thoughts in the rest of my comments might spur some way of getting to a compromise on what you've got here, and we'll see as we go through.

But that's the situation that we talked about, and I -- you know, I appreciate you spending the time to put your document together. And when I get more time, I'm sure going to look at it more closely for the future, because I have a feeling these could come up periodically. But intensity is the issue.

MR. HANCOCK: Commissioner?

CHAIRMAN STRAIN: Yes, sir.

MR. HANCOCK: Is now an appropriate time to address some of those comments?

CHAIRMAN STRAIN: Absolutely. I want to hear everything you've got to say, Tim.

MR. HANCOCK: One of the values of PUD zoning is to be able to carve out something that makes sense and is appropriate for a given site. While the Land Development Code allows new car only in C4 and used car in conditional use of C4, the idea that if you combine the two now you're C5, I think, is an error in the LDC.

By virtue of PUD zoning, while we listed 5511 as an SIC code and did not list 5521, the reason was, by listing 5511 and referencing the SIC code, that included new and used. And everywhere within our PUD document and our application we use the phrase "new and used."

So what we did is we found one SIC code that addressed both of the uses and simply referenced that code. Because we're not doing used car only, referencing 5521 seemed extraneous. So the PUD does include new and used cars, and it uses SIC Code 5511 as the umbrella under which that request is being made and the definition of 5511 under which is a reference in the document. That's why 5521 wasn't specifically cited.

If we were to cite 5521, allowing for new and used cars, it still would be a conditional use of C4 intensity, not C5.

CHAIRMAN STRAIN: And, Tim, if this was purely a PUD matter, we wouldn't even have this discussion. That's not where my concern is. My concern is that it's a -- it's a piece of property consistent by policy through 5.9. 5.9 is very strict. It says you can't have -- we cannot approve anything on that property greater than the intensity that's there now.

Unfortunately, to do that standard as you have elaborated -- there are two. There's a level-of-service standards to look at, and there's zoning standards to look at.

Based on the way the LDC is written for new and used automotive, it concerns me that we've not

looked at the appropriate zoning standard to compare the intensity, and that's where I'm coming from.

I understand your argument on the PUD, and I don't disagree with you. It just isn't just a PUD in this case because it's a unique piece of property brought in from the old days back in the '80s prior to us having a GMP in place, and it does pose complications, and there's little pieces of these properties, as you know, all over the county. And I'm just still uncomfortable with it, and I wanted you to know that, so --

You had said that there's a -- and you can -- could we put his site plan back up again? Thank you.

I just want to make sure, you're -- the loading area's going to be along the north side. Does that mean where -- just out of curiosity, you're going to just -- is that that road that -- so they'd come in, the trucks would go to the left, pull off along that asphalt somewhere, and do the unloading up there?

MR. HANCOCK: Yes. And adequate room has been left in that aisle for passthrough traffic and fire circulation.

CHAIRMAN STRAIN: See, what I'm going to do is make notes of the things that you're telling us on the -- as potential stipulations, but I want to read the list prior to the residents speaking, so if it helps the residents in their presentation, then we will be maybe that much further along.

MR. HANCOCK: Understood.

CHAIRMAN STRAIN: The residential -- I heard you repeatedly say it's to the rear and facing east. That property line along the north, I thought I saw one photograph with some structures not just to the front in the commercial but as the road looped down. Are there any structures along that wall -- that property line to the north other than the commercial?

I drove there the other night, but it was -- I was lost, so I didn't know what I was looking at. There's a lot of loops around that place. And I've got this big, noisy diesel, and I was trying not to wake people up.

MR. HANCOCK: No. The -- as the road comes in and winds around the commercial, once it drops down to the south, there's a landscape buffer that is on their side of the property line heavily landscaped between the road and the property line of the project. There are no structures between that road and our property. The only structure you're going to see is, as the road curves back up to the north a little bit, there's a clubhouse facility next to the pool and some tennis courts. No other structures that I'm aware of, sir.

CHAIRMAN STRAIN: Okay. That's -- I just wanted to make sure what was there. You -- there's so much paperwork on this one, so I'm going to try to find it as quick as I can.

The car wash aspect of it, you made the statement that the car wash was for stand-alone car washes. What did you base that assumption on?

MR. HANCOCK: I based it on my copy of the LDC, which shows it as a C4 permitted use.

CHAIRMAN STRAIN: Right. But did you read Section 5.05.11?

MR. HANCOCK: I did.

CHAIRMAN STRAIN: Okay. In that section, do you see anywhere where it says the -- in fact, I'll just put it on the overhead. And I'm -- the way I read that section is that if you're putting a car wash in, you've got to make sure you have those standards. Car washes are considered a bit more intensive than some other uses, especially alongside residential. And, yeah, I think you articulated it correctly; blowers are probably the biggest concern.

Do you -- and you said you'd meet these anyway and that you would put the blowers on the west side. So do you have any concern or problem stipulating that you would meet this standard and put the blowers on the west side?

MR. HANCOCK: No, sir.

CHAIRMAN STRAIN: Okay. You had mentioned that there's two types of security lighting -- I mean two types of lighting. One is for security and one is for display, and that you would try to keep -- or you intended to keep the display lighting to the front and the security lighting to the rear.

Do you have a line of demarcation where that will occur, and do you have a description of differences between the two lighting?

MR. HANCOCK: Line of demarcation is fairly simple. It is no closer than the edge of pavement on the eastern side, which is, by my estimation, over 200 feet from the residential section.

No light poles will be located east of where the edge of pavement is shown on the PUD master plan. As far as some form of standard, no, we really don't. The county does not have a lumens limitation,

and so there's really not a benchmark out there other than to say there's no point in installing fixtures we don't need, so the security lighting would be of a lesser intensity. But, no, sir, I'm afraid I don't have an average lumens because fixtures haven't been selected yet.

CHAIRMAN STRAIN: Well, I wasn't asking for average lumens, but you alluded to the fact that that would be a benefit. So when we go on break, which we will do in five minutes, or -- and as we listen to other speakers today, before this is all over, I'd like to understand if you can somehow add a definition or a refinement to that so we could stipulate, if it comes to that, that you're going to limit lighting in certain areas.

MR. HANCOCK: Okay.

CHAIRMAN STRAIN: And I haven't even started on the package yet, so why don't we take a break now and come back in 15 minutes at 10:40, and we'll resume with the packet.

MR. HANCOCK: Okay.

CHAIRMAN STRAIN: Thank you.

(A brief recess was had.)

CHAIRMAN STRAIN: Okay. If everybody will please take their seats, we'll resume the meeting. We have some housekeeping issues to announce. During the break the residents -- some representatives of Walden Oaks supplied us with some paperwork. It's up here on the front counter. It's an introductory letter and a petition signed by some of the residents. I haven't counted it, because I didn't get time.

And, Tim, during the break I talked to Heidi Ashton about our respective presentations, and she suggested that we enter the -- those two documents in the record, yours and mine. So that's been done as well.

Mr. Anderson, is there an extra copy of -- I tell you what, I've read mine, so you can borrow mine. How's that?

MR. ANDERSON: Thank you very much.

CHAIRMAN STRAIN: Okay. And we'll try to get you a copy one way or another before the day's over.

Okay. Tim, let's move into the -- Page 1 of the PUD Exhibit A.

MR. HANCOCK: Commissioner, if I may address the question you posed prior to the break --

CHAIRMAN STRAIN: Yes.

MR. HANCOCK: -- with regard to site lighting. I spoke with somebody involved with the lighting component, and I don't see a problem with committing to a minimum reduction, you know, in the average foot-candles of 25 percent for the area east of the line you see called No. 1.

CHAIRMAN STRAIN: Okay. So generally from the back, the furthest back point of the service building as it's shown today, is that where you're -- is that roughly what you're talking about; does that work?

MR. HANCOCK: Yes. And at the very top of that you see a pen pointing to a little box that I drew in there.

CHAIRMAN STRAIN: Yes.

MR. HANCOCK: That also is an area that would have the lower level of lighting too. So I would -- obviously, the MCP would be revised to show these lines, but the area north of the service and to the rear where you see that first line, line No. 1, we would commit to a minimum reduction of 25 percent in the average foot-candles, because we only need security lighting back there. We're also assisted and aided by a masonry fence for security, which is helpful.

The second item is that No. 2 line. I didn't want there to be confusion. I said nowhere east of the parking area, but that does not include if that little lobe that you see on the north were to be constructed. That second line, Line No. 2, would be where -- there would be no lighting fixtures east of that line.

CHAIRMAN STRAIN: Okay. Thank you. And while we're on these kind of issues, the -- your hours of operation, what were you intending those to be?

MR. HANCOCK: Currently the dealerships operate no earlier than 7 a.m., no later than 7 p.m., with Saturday -- or Sunday being probably no later than 6 p.m., and that's a window that has a little bit on the north and south side of the opening and closing. Our concern is that, you know, from my lips to God's ears, business continues to grow and some additional hours are added to the existing.

The typical hours of operation for the dealership are generally eight to six. There's always a hesitation to put a limited hours of operation in a zoning document because of what it takes to change that. But I think if we agree to a window of seven to seven, we would not be harming ourselves.

CHAIRMAN STRAIN: Okay. And the reason I ask is the standard reason I'm listing all these things, because I want the residents to know where you're willing to move to on these points, because if that has an impact on their presentation or the -- or the pamphlet they handed out, this board would need to know that, so --

Okay. On Page 1 of 6 under Exhibit A, based on prior discussion, the tire retreading you've agreed you wouldn't do, and the No. 7, which is top body, upholstery repair shops, and paint shops, you agreed you wouldn't do; is that correct?

MR. HANCOCK: That's correct.

CHAIRMAN STRAIN: On Page 2 is your development standards.

COMMISSIONER BROUGHAM: Mark, excuse me.

CHAIRMAN STRAIN: Yes, sir.

COMMISSIONER BROUGHAM: On that prior page, are we going to be changing, up at the top, developed as a C5 commercial to a C4? I'm a little bit confused on that.

CHAIRMAN STRAIN: Well, I -- yeah, I am too. And I spoke with Ms. Ashton during the break. I showed her the section from the code. We would probably have to acknowledge some kind of change in the document, and I'm just not -- I haven't figured out how to do that yet, because I can't get -- I'm still trying to figure out how to struggle past the reference that only new and used are under one category as a C5 use, and --

COMMISSIONER BROUGHAM: Well, let's reserve it for a cleanup at the end.

CHAIRMAN STRAIN: Yeah. I was going to get through the rest of my questions and hear staff's presentation and hopefully find an answer through all that, so --

Page 2, your rear yard is a hundred feet, but you've said in your NIM that it would be 500 feet. Is that -- any reason that wouldn't be corrected to 500 feet?

MR. HANCOCK: My only concern there -- and I think we can maybe do an accessory and principal approach to that, and here's why. If we were to put an irrigation well back by the lake and want to put a pump house over the irrigation well, it would be deemed a structure. And so if we had a 500-foot number in there, it would prohibit something small and accessory like that.

So one thing we discussed is -- obviously, nothing's going to happen within 200 feet. So no structures within 200 feet and no principal structure. If we went out to 400 feet, then that would not hamstring any minor modification to the plan.

CHAIRMAN STRAIN: Okay. But, Tim, I understand your concern about a well, but I think you're on potable water there, aren't you?

MR. HANCOCK: We are, but for irrigation, for landscape buffers, we may wish to have groundwater.

CHAIRMAN STRAIN: According to the memorandum from you, the last paragraph on the NIM said, Mr. Hancock then showed a comparison of the existing approved MCP and the proposed MCP, highlighting the distance between the rear property line and nearest building being over 500 feet.

I somehow need to get that commitment, because you stated it in that meeting to the residents, into that development standard.

MS. ASHTON-CICKO: Mr. Chair?

CHAIRMAN STRAIN: Yeah.

MS. ASHTON-CICKO: How about principal uses and accessory buildings are 500, and accessory structures would be less. Would that address the issues?

CHAIRMAN STRAIN: I think that would meet the intent of what I think you were trying to communicate at the meeting. Principal and accessory uses will be no closer than -- principal and accessory uses as listed would be no closer than 500 feet of the rear property line.

MR. HANCOCK: My only hesitation there -- and this is not a -- we're not attempting a bait and switch here -- is if we were to try and move the service building 200 feet to the east, I think staff would

concur that that would be a significant change in the master concept plan and require us to come back before the Board of Zoning Appeals in a public-hearing process. So I'm not sure that -- that's why the 400 made sense to me. Commissioner, I'm --

CHAIRMAN STRAIN: It's 500, by the way, not 4-

MR. HANCOCK: Well, that's why I suggested 400 is -- a shift in the building of 50 feet, for example, I wouldn't want to be problematic.

CHAIRMAN STRAIN: Tim, I can't undo what was said at the NIM. NIMs are --

MR. HANCOCK: No, sir.

CHAIRMAN STRAIN: -- held specifically to find commitments and seek compromise or standards that can be incorporated into the program. That has to be incorporated somehow, at least in my interpretation. So I don't mind going on, but it will come up as an issue before the day's over, so --

MR. HANCOCK: Okay.

CHAIRMAN STRAIN: The 15-foot buffer that's to the north, you go from 10 down to 15. Were you planning to put -- and maybe Phil may have gotten into this. I was writing at the time. Were you planning to put a wall in the north buffer as well?

MR. HANCOCK: Yes, sir.

CHAIRMAN STRAIN: Okay. So there will be -- and that will have to be, at some point, relabeled all the way around just to make sure it's consistent with what this meeting --

MR. HANCOCK: We're happy to add the language to the MCP. Again, we're just trying not to be redundant with the LDC on that.

COMMISSIONER BROUGHAM: Just for clarification, the northern boundary would be -- if we took it literally, would be inclusive of the westernmost part of that, which is bordering to the commercial. Is what we're talking about the full --

MR. HANCOCK: No. Commissioner Strain referenced the 15-foot buffer.

COMMISSIONER BROUGHAM: Correct.

MR. HANCOCK: The 15-foot buffer goes as far along the northern boundary until it gets to the commercial.

COMMISSIONER BROUGHAM: Okay.

MR. HANCOCK: Then it goes to a 10-foot buffer, and a wall would not be required, because that's professional office.

COMMISSIONER BROUGHAM: Okay. I just wanted -- because I heard northern and looked at the entire plan of that. Okay, fine.

MR. HANCOCK: Thank you.

CHAIRMAN STRAIN: And I'm just trying to get through the rest of my questions that we haven't already got into, so -- just be a minute.

MR. HANCOCK: While you're doing that, quick clarification. The transportation engineer indicated to me that I made an egregious error. It's not 122 trips being reduced in p.m. peak hours. It's 119. So I want to put that on the record and -- to avoid any confusion or problems.

CHAIRMAN STRAIN: That had to be John Podczerwinsky, or was it Reed?

MR. HANCOCK: Norm Trebilcock. He's --

CHAIRMAN STRAIN: Oh, okay. I didn't know -- I forgot. I didn't know yours was here too. Okay. We've got a whole pile of them.

MR. HANCOCK: Oh, they're all here.

CHAIRMAN STRAIN: And we've taken care of quite a few of these questions so far.

There was a master site plan, existing zoning concept plan in a traffic impact analysis that is greatly inconsistent with the plan that we're reviewing today. What was the purpose of submitting that? You've got both plans in there. I mean, I want to make sure there's no attempt to get both plans as a record plan that you were intending to use, because that plan is in your -- so I only find it in your transportation impact analysis. I'm not sure why you did a second plan that you're not trying to use. That's why I'm -- my question.

MR. HANCOCK: And let me go to that to make sure I don't misspeak, but I do have a --

CHAIRMAN STRAIN: Page 11.

MR. HANCOCK: Okay. And that's of the TIS in your staff packet, correct?

CHAIRMAN STRAIN: Yes.

MR. HANCOCK: Okay. Oh, Page 11, okay. That particular exhibit was used during the course of the official interpretation application. The purpose of that exhibit at the onset of the OI was to show what potentially could be constructed under the existing permitted uses in a more modern-type facility. Obviously, the Princess Park PUD and the King Richard's development is an older development.

Currently, if you're doing a recreation facility, including indoor and outdoor, the current model is to have outdoor go-cart tracks, indoor go-cart tracks, believe it or not, and the facilities average between 60- and 80,000 square feet in footprint.

In the early stages of the OI, I was trying to show that under a redevelopment scenario, this is what could be built. The response from staff was -- and that's why this is specifically an OI exhibit that is actually somewhat defunct now, because the response I received from staff was, no, we need to see your analysis under the buildout conditions of what is currently permitted and consistent with the existing master concept plan.

So we really weren't even allowed to take the existing permitted uses and revise the MCP and do an analysis. We had to use the existing master concept plan. And that goes to a point, Commissioner Strain, that you indicated a little bit earlier about accessory uses and what you can and can't do on the site.

It's an 11-acre site. And, yeah, there's probably not going to be 11-acre swimming pool, but there might be an 11-acre water park. Probably not now that there's one on Livingston. But there could very well be a go-cart track facility of 11 acres. They exist elsewhere in the nation. So there are some of those uses that could consume the entirety of the site; one being go-cart, one being a water park and so forth.

However, this site and the way it's currently being treated, while the PUD seems more broad in accessory uses than what we currently permit, I can assure you that staff is not treating projected new uses in that fashion.

If I came in today and asked to do a water slide, I would be back before this board before a water slide could be permitted. Even though it may be an outdoor amusement use, it's not listed specifically in the PUD.

And during the course of the OI, we were limited to only evaluating those uses specifically listed in the PUD. So I offer that only as clarification, sir.

CHAIRMAN STRAIN: I appreciate it. Thank you.

Originally -- and I'll -- I'm sorry. This is a staff question. There's no sense --

We've gotten to the end, at least for now. Why don't we -- and anybody else have any further questions of the applicant before we go to staff?

(No response.)

CHAIRMAN STRAIN: Okay. Can we have staff report?

Thank you, Tim.

MR. HANCOCK: Thank you.

MS. GUNDLACH: Good morning, Commissioners. For the record, I'm Nancy Gundlach, principal planner with zoning and planning.

And staff is recommending approval of this petition. It is consistent with the Land Development Code and the Growth Management Plan.

And I do have one little clarification on this morning's presentation. There is, in fact, a deviation from the architectural standards. And I have staff specialists here with us this morning to answer any questions that you might have.

CHAIRMAN STRAIN: Great. Thank you, Nancy.

Are there questions of staff? Phil, I thought you said earlier you had some?

COMMISSIONER BROUGHAM: I do.

CHAIRMAN STRAIN: Do you want to start?

COMMISSIONER BROUGHAM: On Page 7, Nancy, can you talk to, under Part 2, and go down to where you start to list the analysis of public facility impacts. Can you talk to me about drainage where you say there's no change? When I envision this amusement park and the amount of open land, quote-unquote,

there versus a car dealership, which is going to, my words, pave 95 percent of that, I would think the paving would have some sort of an impact on drainage.

MS. GUNDLACH: Yes. We have -- that is part of our Growth Management Plan consistency review, and I'd like to invite -- there he is -- David Weeks to answer that question.

CHAIRMAN STRAIN: He kind of sneaks up on you, doesn't he?

COMMISSIONER BROUGHAM: Quiet guy.

MR. WEEKS: Good morning, Commissioners. For the record, David Weeks of the comprehensive planning section.

Commissioner Brougham, in response to your question, the water management standard is a requirement to retain water from a 25-year, three-day storm event. And the water management staff that reviewed this petition looked at it under -- considering that standard, considering the amount of water management that is on the site today, and then the proposed water management. And the conclusion was that it would be the same, that the amount of retention that is on the site today versus what is proposed would be the same.

COMMISSIONER BROUGHAM: Essentially, then, that lake is acting as a retention, and it has capacity for whatever that runoff would be across all that paved area?

MR. WEEKS: That is correct. For the existing PUD, it was provided both for water management purposes but also was allowed to have recreational uses. I don't know if it ever was used for recreational purposes, but that is included in the PUD.

COMMISSIONER BROUGHAM: Okay. Thank you.

CHAIRMAN STRAIN: David, before you leave -- is that the last question of David?

COMMISSIONER BROUGHAM: I don't know.

CHAIRMAN STRAIN: Oh, okay. I didn't know if you were done with him. I wanted to catch him before he walked off.

COMMISSIONER BROUGHAM: Go ahead.

CHAIRMAN STRAIN: Oh, okay. David, on May 29th of 2012 you sent a letter to the applicant. And it said in the middle of it the following: Comprehensive planning staff's informal determination is that the overall intensity of the proposed zoning and use is greater than that of the existing zoning and use; therefore, the proposed rezoning to allow auto sales and repair would not be consistent with FLUE Policy 5.1.

Can you explain to me why you said that then and why you have changed your mind now?

MR. WEEKS: Yes. That initial -- that informal analysis was based upon a comparison of what is actually developed on the site today as Princess Park or, excuse me, as the King Richard's amusement park. And what Policy 5.1 says is the evaluation is supposed to be a comparison between the zoning on the property versus the proposed zoning.

The distinction is that what is on the site is not the maximization of the site. That is -- let me give you an example of -- different from here. But let's say you have a 10-acre piece of property zoned commercial, and there's a 20,000-square-foot office building on it. Well, the site can accommodate more than 20,000 square feet.

So if that property wanted to come in for a zoning change, it would not be appropriate to compare 20,000 square feet of actual development to, perhaps, 80,000 that's proposed under a new zoning. It's what would be allowed by the existing zoning to be placed on the site.

And so, after we communicated that to the applicant, then in their formal submittal they correctly did an analysis of what could be placed on the site of the Princess Park PUD, not what is just there today.

CHAIRMAN STRAIN: So in -- May 29th you, apparently, didn't take what you just said now into consideration because you were supplied different information? Did you rely on staff's information to write your -- I mean, not staff's, but the applicant's information in which to write that letter, or did you do your own analysis? And if you did your own analysis, with your -- I mean, you've got -- you're the historian for Collier County, basically. You understand this stuff from day one.

So why wouldn't you have looked at it the right way the first time? I guess that's the question.

MR. WEEKS: We were reacting to the information the applicant provided.

CHAIRMAN STRAIN: That's -- good. That's what I needed to understand. So you hadn't done

your own research, and then when you did your own research, you came back with a different conclusion that was based on your own information, not the applicant's; is that a fair statement?

MR. WEEKS: Correct, that's correct.

CHAIRMAN STRAIN: Okay. That's kind of what I need to know.

MR. WEEKS: I'm not sure where you're headed with this --

CHAIRMAN STRAIN: Nowhere.

MR. WEEKS: -- but if there's a question of blame, then possibly --

CHAIRMAN STRAIN: I wasn't -- you can admit to a whole bunch of things, Dave, but you don't need to. I'm not going there. I just wanted to understand how it occurred and how your mindset changed. It makes a lot of sense based on -- that the applicant provided you with information and later on you found out better information. That happens all the time, and -- I mean, I have done that every night that I go home and read something new. So I fully understand.

MR. WEEKS: Sure. And if you're done with me, I'll be happy to leave.

CHAIRMAN STRAIN: I don't know. Phil might --

COMMISSIONER BROUGHAM: I'm just going to throw my question out. And I never know who's going to pop up. But under PUD findings; is that you?

MR. WEEKS: Probably not.

CHAIRMAN STRAIN: Thanks, David.

COMMISSIONER BROUGHAM: That's Nancy. On Item No. 4 on Page 11 under PUD findings, on your staff comment, staff believes that this proposed automobile facility will not be any less compatible than the current indoor and outdoor recreational theme park, "any less compatible." Just can you use a different set of words to describe your intent there? Will not be any less compatible. Does that imply will be more compatible?

MS. GUNDLACH: It implies it will be equally compatible.

COMMISSIONER BROUGHAM: Okay. And then if you read on down to the second sentence, repair services within closed buildings which will reduce some of the site noise. I pick on -- the implications on these words, "some." To me that's not very definitive. It implies -- and you don't even need to respond -- that there were really no measurements taken, there were no comparative analyses made between an automobile repair shop and go-carts going around a track or whatever. Just -- that's good. I just -- I just don't think there were any -- there was any analysis on that.

On Page 12, Item No. 8, again, wordsmithing. About halfway down, the petitioner has demonstrated that the element may be waived without a detrimental effect on the health, safety, and welfare of the community. How did he demonstrate that?

MS. GUNDLACH: Okay. That's described in the deviation section, okay.

COMMISSIONER BROUGHAM: Okay.

MS. GUNDLACH: Do you want me to say more?

COMMISSIONER BROUGHAM: Yeah. Just flip me back there, if you would.

MS. GUNDLACH: All right. That is located on Page 15. And, basically, the deviation is that all of the facades -- currently the Land Development Code requires that all of the facades be treated as front facades, and the deviation is that only the facades facing Airport Road will be treated as front facades.

But I do want to point out that the other facades that remain are required to meet the secondary facade treatments, just not the primary.

COMMISSIONER BROUGHAM: Okay. Thank you.

And I think one final one. Well, I'll skip that because it deals with Item No. 6 on Page 13, which goes to the comparative intensity. So we'll leave that --

MS. GUNDLACH: Okay.

COMMISSIONER BROUGHAM: -- for a later discussion.

MS. GUNDLACH: Thank you.

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

(No response.)

CHAIRMAN STRAIN: Nancy, on the overhead that's on the machine right now, could you just

show us where the deviation would not apply? What facades -- because this doesn't have a facade that flat faces Airport -- or -- yeah, Airport Road. It's perpen -- I mean, diagonal. So could you show us what facades that staff would conceive to be covered?

MS. GUNDLACH: I'll just mark it with my pen.

CHAIRMAN STRAIN: Yeah, that's fine. I just want to make sure we're all on the same page.

MS. GUNDLACH: And I'm going to mark the ones that it would -- it's easier just to mark the ones that it applies to.

CHAIRMAN STRAIN: Correct.

MS. GUNDLACH: Okay.

CHAIRMAN STRAIN: The sales service, that little building to the south, wouldn't you have a facade on the front there?

MS. GUNDLACH: Oh.

CHAIRMAN STRAIN: Right.

MS. GUNDLACH: Thank you.

CHAIRMAN STRAIN: Okay, thank you. I don't know if I have much else. Nope. Nancy, you did a good job on a very complicated project. Thank you.

MS. GUNDLACH: Thank you.

CHAIRMAN STRAIN: Okay. That's the last of the -- oops. David's going to contribute something.

MR. WEEKS: Commissioners, I would like to make a couple of comments about the 5.1 analysis. You've not asked any questions, so I'm not going to walk through how I had done it. Of course, it's in your staff report.

First, I just want to note to you that I'm sure you're going to be seeing more of these coming before you as time goes on. In fact, the very next item on your agenda, a component of that proposal includes a Policy 5.1 analysis under the Future Land Use Element.

But there are dozens and dozens or, perhaps, hundreds of properties that have been found consistent by policy as the King Richard's site has, and I'm sure there's going to be some of those coming to you in the future seeking a zoning change, and we'll be dealing with this Policy 5.1 issues.

Staff's analysis, as you note in the staff report, is a rather simplistic view. There's -- the language in the Policy 5.1 simply says a comparison of zoning intensity. We simply look at the zoning district. We've never thought of, much less provided, any type of numerical analysis, as you have prepared, Mr. Chairman, and also as the applicant's agent further prepared.

I would suggest to you that it might be a slippery slope doing a numerical analysis, and what I mean by that is in this case we're dealing with an unusual circumstance because we're dealing with a PUD with very few land uses approved, and they're all integrated. And in the proposed use is a single use or, if you divide it, two uses, new and used car sales. That's atypical. Most of the projects, as you know, that you see, you're dealing with PUDs mostly, and the PUDs have numerous land uses that are approved and then typically being proposed.

So this -- any type of numerical analysis, I believe, could start getting rather complicated, particularly if we go beyond just how a use is allowed in the zoning code, whether it's allowed by right or by conditional use and what zoning district it is allowed within, because in some cases we may be dealing with the business park zoning, which is a blend of commercial and industrial uses.

Within a given zoning district, there can be different levels of intensity. Should those be weighted the same? I'll pick out an example. C1 zoning district, by right, allows a childcare center and a lawyer's office. Which one of those sites, do you suppose, generates the most crying?

CHAIRMAN STRAIN: Most crime, it would have to be the lawyers.

MR. WEEKS: Thank you. I felt like my joke was falling flat. But I think the -- my point there actually, besides some humor, is the fact that the components of compatibility are many: Noise, glare, light, dust, vibration, hours of operation, the amount of parking spaces or impervious surface in general, the bulk impact of buildings that might be allowed, the amount of open space or lack thereof. It can get very complicated. And those might be appropriate, though, to consider those additional details, and it may just get to the point where it's too complex.

The staff position remains as it has been historically, and that is just to make a rather simplistic view and simplistic comparison between zoning districts without any numerical evaluations.

I think my last -- well, no, two more comments. One is about the specific PUD. There's been some discussion about the car dealership being listed in C4 for new by right and then conditional use in C4, and then both of those listed together in C5 as if there might be a flaw in the LDC. And I -- personally, I don't see where there is a flaw there. The fact that it's listed together both allowed by right in the C5 zoning district, but one allowed by right and one by conditional use in the C4, I don't think, is unusual.

I did take a few minutes to look and identify at least one other use that is somewhat similarly treated, and that would be the amusement and recreation services. If it's indoor, then C4, it's allowed by right. If it's outdoor, it's allowed in C4 by conditional use. C5 zoning district allows both of those by right.

And I -- again, I -- my reaction to this is it's not a nonissue, but your perspective may be different.

I think there was one more thing. No, that's enough. Thank you.

CHAIRMAN STRAIN: No, David, I need rebuttal.

MR. WEEKS: Okay.

CHAIRMAN STRAIN: First of all, this property is different than some of the other examples you've cited. It is -- Policy 5.9 brings into another level of scrutiny that we don't normally have when we look at intensity in the fact that it is limited. It limits the intensity to what is already there and not to exceed that.

I read your dissertation on it in the packet. I was satisfied with what you wrote until I got to the Exhibit A, and it says it's a C5 use. And I recalled reading yours; you didn't acknowledge any C5 use.

So I went back and looked and checked it. Wait a minute, there's something wrong here. Why would one -- and I have great respect for the abilities of the planner to note that it, rightfully so, was C5, but I also know your history, and I thought, well, you don't make those kind of mistakes.

I went back in and tried to figure this out, and the difference is the SIC codes that are being requested. If it's a C4 use with a used car dealership, the only SIC code that is allowed under that C4 with a C5 is 5521. So they didn't ask for that. And the only way I've found 5511 with a used component was as a stand-alone in C5.

So I couldn't make the bridge that you did, and that troubled me. So I tried to figure out another way to take a look at it to evaluate it to get the intensity issue to go away, and that's when I developed the process that I showed here today.

MR. WEEKS: Okay.

CHAIRMAN STRAIN: My concern with what you have said is you disregard the accessory uses. And I understand why you did, but I can't see, after what we learned on some projects -- and we even went to court. The county -- I was a witness in that case with the county on the Stevie Tomatoes case. That accessory use drove the neighborhood to the crisis that we had when Stevie Tomatoes was discovered. And I don't want to see that happen again. So I think it's important that somehow the accessory uses are carried in.

That's why I asked Tim Hancock when I met with him, and I told him up front where my concerns were, to please come back with another idea if you think I'm wrong. And he did. I still don't agree with the fact he didn't evaluate the accessory uses for the car dealership, because they're important. They could go up to 49 percent of the site. That's a significant change, and that worries me. I'm not over that yet.

But I appreciate all the input, and I understand everybody has a different way of approaching it. I'm more analytical, so I like numbers. They kind of -- you know, there was a program once called Numbers on television. It was pretty neat.

But I like approaching things analytically as for -- indifference to the way that I saw your analysis. So that's -- and that's that part of it.

The difference in the -- I think I already explained, then. The difference in the zoning issue is more of a SIC code reference in the LDC than how you explained it to be. I understand that you could combine those two SIC codes under C4 and come back with a new and used car dealership, but you'd have to ask for both SIC codes, and I didn't see that happening here.

MR. WEEKS: Right. And I'd make one more comment, Commissioner.

I think it's important to separate, notwithstanding possible disagreements in how to view the -- and make a determination on this overall intensity analysis that's required in FLUE Policy 5.1. We can separate

an analysis to determine consistency with the Future Land Use Element, the FLUE, in regards to overall intensity from specific parameters of compatibility.

What I mean by that is I don't see it as incongruent to determine that a proposed project is consistent with Policy 5.1 that there is not an increase in overall intensity yet still have compatibility concerns and address them, just as you've done today, in discussing specifics about this proposal as to architectural treatment, buffering, use limitations, et cetera.

CHAIRMAN STRAIN: I appreciate it, David. Thank you.

Okay. Let's see. We left off with -- was the end of the staff presentation and staff questions. We've had the applicant. The applicant will get an opportunity for rebuttal after we hear the public speakers. And I -- how many public speakers do we have on this issue, Ray?

MR. BELLOWS: Okay. Five or six.

CHAIRMAN STRAIN: Okay. Based on that and the discussion we will probably have, I can't see us getting to the next item before noon. And I'm going to say this because the Creekside residents may want to go and -- or the -- not the Creekside -- the Collier's Reserve residents, I'm assuming, and the Creekside people may want to go to have a longer lunch.

At the rate we're going, we'll probably take a lunch at noontime. Hopefully we'll finish this. We may take a little later if we want to go into -- just to get this one done. But I can't see us coming in to the Creekside application prior to 1 o'clock.

So I'll make that commitment to you that if you want to take off and come back by one to be -- and whether we reconvene exactly at one or not, it will depend on when we leave, but it won't be any earlier than one, so --

MR. GRAHAM: Thank you, Mr. Chairman.

CHAIRMAN STRAIN: You're welcome.

Okay. As soon as we clear the room a little bit, we'll call up the speakers.

MS. ASHTON-CICKO: Mr. Chair, will we be using the three-minute timer?

CHAIRMAN STRAIN: No. I never did like that timer, Heidi.

MS. ASHTON-CICKO: Okay. Just checking.

CHAIRMAN STRAIN: Okay. And just so the residents who are here, or any speaker who's here, to talk about the Top Hat application -- during the discussion we had this morning -- I'm going to read to you kind of where they're at right now, so if it influences your position, we certainly want to know that.

We definitely have on the table a discussion about operating hours. The rear setback to the buildings for accessory or primary uses will be 500 feet. The car wash will be -- will have its blowers mounted on the west side of the building, and they will adhere to the standards within the Land Development Code for car washes.

The lighting will be shielded from neighborhood -- from runoff or runover glare to the neighborhood, and they're going to further reduce the lighting at a certain point on the master plan as we have all seen.

They're going to have walls along the northern 15-foot buffer and a wall along the eastern buffer. There's going to be no lighting around the lake. They've taken out the entire retreading. They have taken out No. 7, which was the auto body work.

The loading area will be along the north side as they've shown on the plan, and that's where we are at.

COMMISSIONER BROUGHAM: Hours of operation, Mark?

CHAIRMAN STRAIN: Yeah, I said that's still on the table for discussion.

COMMISSIONER BROUGHAM: Okay.

CHAIRMAN STRAIN: And that's where we're at so far. Now, the reason I wanted to reiterate that to you, going forward from here, if it goes forward with a recommendation of approval with stipulations that make it more easy for you-all to accept and then it goes to the Board of County Commissioners and the board feels that it's a viable project and they want to vote for it, generally they accept the Planning Commission's stipulations, which further protects you as a neighborhood.

If this board votes no based on all the input that you may have and as we hear the rest of the presentation, we don't have stipulations attached to it. And then when it goes to the board, it starts all over

again. And I don't know if their stipulations would be as intense as ours.

So we'd have to just wait and see where it goes. I want you to be aware of that, though, before you speak, because we always have what I call Plan A and Plan B. Plan A is that the outcome that we stipulate is the right one. Plan B is, if we don't have stipulations, you need to know what's going to happen.

So with that in mind, if you could call the speakers. And you guys can use either microphone. And we don't have a strict time limit. I ask that you just don't be too redundant.

So, Ray or Nancy, whoever's going to call.

MR. BELLOWS: Yeah. Howard Williams?

MR. WILLIAMS: Yes, good morning. My name's Howard Williams. I live at 6868 Lone Oak Boulevard. I've been there for 15 years. And I would much rather see a well-run, well-established car dealership than the noisy amusement park we have now. I just feel that it would make the living conditions in our development better and also protect our property values.

Thank you.

CHAIRMAN STRAIN: Okay. And with the stipulations that we have talked with the applicant about this morning --

MR. WILLIAMS: Yes, sir.

CHAIRMAN STRAIN: -- do those make it more compatible for you, or is that --

MR. WILLIAMS: I think it's fine. I mean, especially the wall with, you know, the separation of the -- it would be almost like a separate entity -- well, it is -- but, I mean, a separate entity from the development.

CHAIRMAN STRAIN: Thank you. Appreciate it.

Next speaker, Ray?

MR. BELLOWS: David Pezzullo?

CHAIRMAN STRAIN: By the way, all the speakers should have risen and have been sworn in when we started this morning. If you weren't sworn in, just let us know so we can do that little bit before we go too far.

MR. PEZZULLO: Thank you very much.

I am David Pezzullo, a resident at Walden Oaks, and I've been asked to speak on behalf of the community by our master board.

Walden Oaks, as you have heard, is directly adjacent to what is now King Richard's.

As you have seen from the maps, we share a border on King Richard's northern and eastern sides. This fact alone that a proposed car dealership about a residential community on two sides is exceptional.

Naples You (phonetic), just north of us, will be breaking ground soon building high-end residential, then JL Homes is in the process purchasing and developing over 100 acres of citrus -- Temple Citrus to our south and east.

So this inconsistency, a car dealership in a sea of mostly residential and some light commercial, will, over time, only become more noteworthy.

Last spring several of us residents of Walden Oaks were in this room to strongly support the rezoning application for 6900 Airport Road, which we also border on two sides. That changed from agricultural to residential use after working closely with the perspective developers.

This time, however, after carefully considering the proposal by Top Hat Auto, we are here to ask that you not recommend the rezoning of King Richard's and presented the commission members copies of a petition signed by a Walden Oaks members emphasizing this judgment.

Many of us attended the public hearing in the fall and, subsequently, our master board voted unanimously to resist this application for a rezoning.

We understand, and it has been repeated here by everyone, Mr. Anderson, Mr. Hancock, that when Collier County Growth Management Plan came into effect in 1989, King Richard's, as an existing C4 usage, was allowed to continue even though it did not fit within the plan's logic.

It was stipulated, however, that any new use for this property would have to be equal or of lesser intensity than King Richard's, and that's what we are here to discuss. Essentially, this has been grandfathered in.

By that very clear standard, "equal or less intensity," the application now being considered by the

board does not qualify. Whether measured in lumens for the outside lamps, decibels, the machinery, hours of actual operation in a week, number of employee hours, amounts of chemicals used, be it lubricants, paints, glues, solvents, fuels and other toxins, coverage of asphalt, amounts of machinery utilized on an hourly and daily basis, the car dealership being proposed would generate far more activity than King Richard's now produces.

There are two principal reasons for this, and I will be short. It's not much longer.

CHAIRMAN STRAIN: That's quite all right. Don't worry.

MR. PEZZULLO: One is that King Richard's is very -- is not very active at all. While its official hours of operation seem extensive -- and you questioned about that previously -- hours of actual activity are limited usually to only a few hours a few days a week.

Most of the time and most days of the week the outdoor rides are not being utilized. And when they are, most of the noises come from kids screaming happily on the rides or the crack of bat on ball in the batting cage. Some may judge King Richard's, as the previous speaker did, an unsightly mess, but it is hardly a hive of semi-industrial activity.

What noise and lighting it does produce is sporadic. We have not been privy to all the information received from the advocates for this rezoning. But from our very close observation -- and several of our residents have owned, operated, and worked for dealerships -- the most moribund car dealership in Naples would be more active than King Richard's is.

The second reason for this proposed new use would represent far more intensive activity is that the business planning that motivated and justifies any such multi-million dollar investment has to assume a good deal of activity to be financially feasible. Any dealership on this 12- or 11-acre parcel surrounded by residential and right commercial would have to be an uphill of semi-industrial and heavy commercial enterprise to remain viable.

Cars will be delivered, moved, and washed daily. Air compressors for both the body shop and mechanical shop will be churning. Air chisels, grinders, and sanders in the body shop will be whining. Air wrenches in the tire shop will be screeching. It will be noisy. And bay doors, as we all know, are not always closed. In fact, very seldom.

The intensity of activity, and particularly regarding high-powered machinery from lifts to high-pressure air tools, will be significantly greater than King Richard's simply to cover the investment.

We have admired how the very well-regarded lawyer and engineering firm hired by Top Hat have created an idealized version of what this proposed car dealership would be like.

We know, however, that in the real world noise, lighting, contamination and, most importantly, activity will be greater than what now exists.

Perhaps comparing the child's scream to the shriek of an air wrench comes down to a subjective judgment. But if one enterprise is occasional and mostly light commercial most of the time while the other is daily semi-industrial and constant throughout most of the day, a comparison of intensity of activity is not difficult to make.

Some may say this new use would represent an improvement despite the more intensive activity, actually due to the more intensive activity. It would be better organized and maintained, more secure, and aesthetically more pleasing. That may or may not be the case.

But based on the criteria for new use set by the Growth Management Plan, namely less or equal intensity of activity, we would have to hide all real-world evidence and business logic to conclude that the car dealership being proposed here to replace King Richard's would meet that standard.

So we, respectfully, propose that this not be rezoned. Thank you very much.

CHAIRMAN STRAIN: Okay. Does the issues put on the table by the applicant so far today that I read before you spoke --

MR. PEZZULLO: Yes.

CHAIRMAN STRAIN: -- have any influence in changing the way -- the outcome of what you spoke today, what you said?

MR. PEZZULLO: While we understand the logic of Plan A and Plan B, and if this has to go through, we would prefer a better outcome than a lesser outcome. We still strongly believe that this does not

meet the standard of less activity. But thank you very much.

CHAIRMAN STRAIN: No, I appreciate it.

And, Diane, did you have a question?

COMMISSIONER EBERT: I do have one question. If the automobile dealership would agree to have closed doors at all times other than bringing automobiles in and out, would that help?

MR. PEZZULLO: Surely it would help. First of all, I'm not in a position to talk for all the people of Walden Oaks on negotiating these points, though I do appreciate that it's very important that we try to find a wiggle room and a compromise.

I've worked at a car dealership. We can promise, but it's very hard to deliver. You have to move the cars in and out. People don't stop working. It's not like, let's say, a golf tournament where they hold up a sign and say "silence" while they move out cars and bring in cars. That's the nature of the business. I'm not criticizing it. I think it's a great business.

But this inconsistency, this oddity that it's right next to a residential area, causes the problem. And we do think there will be more activity. So it would help but that, I don't think, would be determinative.

COMMISSIONER EBERT: Thank you.

MR. PEZZULLO: Thank you.

CHAIRMAN STRAIN: Okay. If you had more time to work with the dealership, would that help at all? I mean, say this got continued to a point where they could have a series of meetings with you to try to figure out how to alleviate your concerns, do you have any --

MR. PEZZULLO: We're more than happy to talk to anybody about the possibility of reaching a compromise yet we do believe that as it stands and based on being a neighbor, real information next door, that this still is a much higher level of activity.

CHAIRMAN STRAIN: Okay. I mean, there are things like studies and stuff that can be done to show that the distance may equate to a less intensity.

MR. PEZZULLO: Understood.

CHAIRMAN STRAIN: I'm just trying to understand if there's any -- how hard the door is shut or if there's still a crack open to have further discussion. And if the applicant ever wanted to do that, they might want to consider that, so --

MR. PEZZULLO: I think we would all welcome a discussion to see if there is an area where we can reach an accommodation.

CHAIRMAN STRAIN: Okay. Thank you.

MR. PEZZULLO: We'd be very open to that.

CHAIRMAN STRAIN: And, Melissa?

COMMISSIONER KEENE: Has the community had a chance to review everything that is optional in C4? Meaning, if this didn't go forward, we're probably going to continue to see similar applications coming through.

I think the odds, just from previous experience of making low-density residential work there, the numbers don't work. So I think we're going to -- if this does not move forward, we're going to see something similar and could be worse.

So I just wanted to see if that's been given any consideration.

MR. PEZZULLO: That's an excellent point, and it has been. Our analysis, obviously, is not particularly sophisticated, but we do realize, given the state of King Richard's and its need or desire to sell, something else is coming there, and it's not going to be, you know, a state park, we understand, as presently zoned.

So we appreciate what you're saying. And we understand. We're trying to balance what this is next to what could be, given the fact that the economy is beginning to move again, and options for King Richard's will multiply over the next couple years.

COMMISSIONER KEENE: Thank you.

MR. PEZZULLO: Thank you very much.

CHAIRMAN STRAIN: Not a lot of people are familiar with our zoning codes. C4 has a long, long list. May be well over a hundred -- well, yeah, there is over a hundred listed uses. Have you ever looked at

all those uses?

MR. PEZZULLO: No.

CHAIRMAN STRAIN: Okay. So if you had an opportunity to look at those in conjunction with a reconsideration of this, it might spur some interest at least to take a look at them, because you may find that any of those could then be substituted for what's there now.

And I just -- I just want to throw that on the table because it may help if you want to consider -- if there's any time request to consider this -- any further negotiations with your neighborhood.

MR. PEZZULLO: We appreciate that. And the word of caution is well received.

CHAIRMAN STRAIN: Thank you.

MR. PEZZULLO: Thank you.

CHAIRMAN STRAIN: Appreciate it very much, okay.

Next speaker, Ray.

MR. PEZZULLO: Thank you.

MR. BELLOWS: John DeAngelis.

MR. DeANGELIS: Good morning, Commissioners. I must confess, Mark, I didn't know that you'd ever left, but welcome back.

CHAIRMAN STRAIN: Some people think I've left for good in a lot of ways, but I'm here.

MR. DeANGELIS: I'm here to --

CHAIRMAN STRAIN: Thank you.

MR. DeANGELIS: -- speak on behalf of the Willow Park businesses and association, which is adjacent to the current King Richard's property.

Our -- I actually am in an ownership with several properties that butt up against the go-cart tracks currently and have been there as my primary office literally sitting at my desk one commercial setback away from the go-carts for the last 11-and-a-half years.

So I think the statements that were made before that the activity at King Richard's has somehow been reduced or isn't on a daily basis, it's only a few days a week, I think it actually speaks to support this next use as a lower use.

The reason I say that is because I can tell you, sitting next to the go-cart track for the last 11-and-a-half years, that there's significant activity on a daily basis. Now, it may not start until 11 in the morning, but it definitely goes past 6 o'clock in the evening when I leave.

And it's not just the engines from the track, but it is the high-pitched screams that were mentioned. And I've said it before, I have four children, and I'm okay with high-pitched screams. After that long, you get used to that.

But I will say that when you're having a meeting and you're on the phone and you do hear these screams on a very consistent basis -- they have this ride here. I don't know what it's called. It's like a fear fall thing where it drops you, and you feel like you're -- I mean, I wouldn't know from using it, but I can look out and see it. And it elicits screams every single time it goes down. It's, like, guaranteed to elicit screams.

So all I can say is, whatever is placed on this property that isn't what is there now, in my opinion, is going to be a better use than what's there now. And the fact that the residents may only think that this is active a few days a week, I think, really supports the fact that this will be a much lesser intensity use from the standpoint of noise generated from this site.

I certainly appreciate the concerns, though. We've all been involved in other noise issues.

So I will say one other thing. And I don't have a personal relationship with the owner, but I can say just from being in town for 30 years, a resident of Collier County and watching the Zellers family being very active in not just business and providing jobs for the local community, which is very, very important, more important now than ever, and also being very, very generous with the fruits of their labor with charity, churches, and other charities -- most recently, although I wasn't able to attend, they donated a Ford Mustang to the Salvation Army recent event, and I believe Mrs. Zellers hosted that event.

So they're a family that has great moral authority in this community from what I can see as an outsider. When I say that, moral authority, what I'm saying is that what they say and what they do are the same thing, and their actions and their convictions and their beliefs and their behavior are in alignment. And

when they say that they're going to close doors and -- you can say, well, car dealers, you know, they're not honest, or whatever you want to say, whatever you can say, all I know is, in watching this family for 30 years from a distance, it certainly looks to me like they have great integrity and great character.

So on behalf of my ownership interest in the property next door and the association at -- of Willow Park, we are -- we couldn't be more supportive of this dealership.

Thank you.

CHAIRMAN STRAIN: Thank you.

Next speaker, Ray?

MR. BELLOWS: Paul Boileau, I think.

MR. BOILEAU: Close. Paul Boileau.

Good morning, Commissioners. I'm Paul Boileau. I'm a resident of Walden Oaks. I'm going to make mine real short and real brief, because I know we want to get out of here. And I just want to give you an overview. I don't know if any of you have seen what the residential area looks like around us and what is perceived possibly coming in.

CHAIRMAN STRAIN: I was lost there last night for quite some time or night before, so, yeah, I saw it.

MR. BOILEAU: I'll just -- can you hear me all right?

CHAIRMAN STRAIN: Yes, sir. Is that okay for the court reporter?

THE COURT REPORTER: (Nods head.)

CHAIRMAN STRAIN: Okay.

MR. BOILEAU: In the yellow, which is the Walden Oaks, okay, that's our boundary coming around, this Airport-Pulling coming through, Naples View is going to be being built this year.

CHAIRMAN STRAIN: I don't mean to interrupt you, but I just thought of something.

Nancy, could you give him that portable mike, because I remembered we are being broadcast, and they may not be able to hear you, so --

MR. BOILEAU: I'm sorry. Hear me now?

CHAIRMAN STRAIN: Thank you. My mistake. Thank you.

MR. BOILEAU: Okay. Again, in the yellow is our boundary of Walden Oaks. As you can see, it's a pretty good-size shape. And in the red is Naples View, which is going to be built this year, and it's going to be residential, okay.

The orange grove. The orange grove is in the early stage of proposal for residential. That's going to come all the way from Livingston all the way around the back side of Walden Oaks and along the south side, okay, and that's going to eventually proceed all the way out to Airport-Pulling.

Now, we have Willow Park, which is right here. It's nothing but office buildings. Of course, no noise generated.

Above that is where we've got the King Richard's which, yeah, there is a lot of noise, but the noise don't really happen till latter part of the week.

So -- and, okay. I just want to jump up above the map here too. This is a plan -- I believe this is still in the early stage of proposal for the senior rental on the other side. So you can see we're starting to be surrounded by residential here, here, here, up here. This is the Baptist church. And we have the auto dealership coming in here.

Now, if you were to look on Airport-Pulling Road, we have 17 auto dealerships. And as far as I can see, not a one is bordered by residential. So here again, this will be the first one being bordered by residential on Airport-Pulling. It's not the right fit. That's all I've got to say.

COMMISSIONER EBERT: I have a question.

CHAIRMAN STRAIN: Okay. Go ahead, Diane.

COMMISSIONER EBERT: Sir, could you please, on -- where the red line is, the Naples View residential, what is to the north of that? Is that also part of that? Is that going to be commercial?

MR. BOILEAU: Right now that's -- what do you call that? Agricultural. In this part right here that goes up to Orange Blossom right here.

COMMISSIONER EBERT: Yes. But with the Naples View residential, is that not part of theirs?

MR. BOILEAU: No, not at this time from what my understanding is. Naples View is just this area right in here.

COMMISSIONER EBERT: So you -- so where the nursery is, that is not -- that is not going to be commercial?

MR. BOILEAU: I have no idea yet. It is owned -- this is my understanding. It is owned by Pulling, this area up area.

COMMISSIONER EBERT: Okay.

MR. BOILEAU: And eventually something's going to go in there, but it's going to be -- we don't know. We hope it's going to be residential with maybe light commercial.

COMMISSIONER EBERT: Okay. I'm thinking of something that was already put through that was going to be commercial there.

MR. BOILEAU: No, nothing I know of.

COMMISSIONER EBERT: Thank you.

CHAIRMAN STRAIN: One point that I -- when I met with three of the people from your organization or from your community, I got the sense that you-all would like to see residential there, and I think anybody, naturally, would, as long as it wasn't multi stories looking down on your backyards.

But that property as commercial is going to be much more valuable to somebody. The fact that it could have C4 there pretty much -- pretty easily makes it even more valuable.

I understand the desire to somehow make that happen as residential, but I think that's an extremely impractical application at this point in time. And you would be far better off working closely with someone who is flexible enough to work with you than having something go through that you can't get as much compromise out of, because it's no question allowable in that district.

Right now there's a question over that -- of the project that's there, which then allows for more discussion. But if you are off the books on that at all, you're taking a shot in the dark in regards to what could go there.

And I just want to make sure you-all understand that, because residential, while that may be desired, may not be the most profitable with that isolated C4. C4 is a valuable tool. So -- and I understand your argument, and I'm certainly not trying to contradict you. I just want to make the residents keenly aware of what could go on there.

MR. BOILEAU: Understood.

CHAIRMAN STRAIN: Okay. Next speaker, Ray.

MR. BELLOWS: The last speaker is Kenneth Poa.

MR. POA: Good morning, Commissioners. My -- for the record, my name is Kenneth Poa. I'm vice president of the Walden Oaks Homeowners Association, and I'm here to represent our group.

You've heard our report. We concur with you. We will try to discuss the issues with the applicant and so forth.

Yes, our main concern is residential. We accept your report as far as maybe it might not be the practical thing at this point, but with this type of atmosphere and with this type of business that is -- the applicant's proposing, we just don't feel that it's going to be any lesser than what we have now.

So we just ask the commission to weigh the facts, review our proposal, take into consideration what we have done with Naples -- the Naples View project and so forth, and come to a conclusion that it would be favorable for our entire community.

Thank you.

CHAIRMAN STRAIN: Thank you. Okay. That was the last speaker, Ray?

MR. BELLOWS: Correct.

CHAIRMAN STRAIN: Is there anybody else who is unregistered who would like to speak?
(No response.)

CHAIRMAN STRAIN: Okay. I don't know who wants to offer any rebuttal, Tim or Bruce?

MR. HANCOCK: Commissioner, again, Tim Hancock, for the record.

Just trying to address some issues that have been raised. First and foremost, I'd like to indicate that subsequent or at the information meeting I put a stack of business cards on the table, indicated to the

leadership that we are open to meeting with them at any time. I followed up on that last week with a phone call to one of their officers of one of the associations in Walden Oaks, offered to meet with them.

I know, Commissioner, they chose to meet with you earlier this week. We've not received any requests for meetings or any correspondence from the HOA in Walden Oaks despite our offer of being available to do so. That doesn't mean that we're not willing to work on issues centered around compatibility.

One of the primary concerns we heard at the neighborhood information meeting -- and it has been as much as restated here today -- is we don't want this use. We would rather it be residential. I would rather make three million a year playing professional baseball. It's probably not going to happen. So I've got to deal with what I have.

The references to the Naples View project are not valid, and the reason is simple. That was an agriculturally zoned piece of property that was being, in essence, upzoned to a residential intensity, and they worked with them. And that's -- that's great, and that's the way it's supposed to work.

Usually that's what we're dealing with. Usually we're here taking a vacant piece of property, and we're asking for a certain given number of uses, and the discussion becomes how do we achieve compatibility in what is typically an upzoning scenario.

What you have before you today is different. And, Commissioner, I understand we have a shades of gray discussion about zoned intensity as to whether -- where we fall in that. But for all intents and purposes, when you look at the myriad of how we measure intensity and impacts, zoning is certainly one of those measures, but there are a variety of others.

If you look at, for example, parking generation, by itself a parking demand does not dictate intensity. And I mentioned earlier a rock crushing operation may only have four parking spaces, but it's an intense use. But if you have retail to retail or you have office to office or office to retail or you have people coming and going and you look at the required parking, that can be a valid element of looking at intensity.

The existing approved master concept plan for the Princess Park PUD has approximately 227 parking spaces shown on it. There wasn't a breakdown in the zoning of how the parking was arrived at, and the existing parking field is very similar, although some of the spaces are not striped.

The proposed project has a parking demand of 224 spaces. Of the 224, 130 of them are driven by service, and the reason is each service bay requires three-and-a-half parking spaces. Now, I promise you there's not going to be 130 people waiting in the service department for their oil change.

The reason we have those numbers of spaces is because many times you'll drop your car off, it will be addressed during the day, or may it's sitting waiting for a part. So even in that 224 spaces, a lot of those are temporary storage of vehicles awaiting service. So even -- when you look at those two, we have a comparable measure of intensity.

When we look at zoning districts, you mentioned, Commissioner Strain, that accessory can be up to 49 percent. And service is an integral part of any new or used automotive dealership. And as I spoke with Mr. Zellers, how do you measure the percentage of the dealership that the service is? Is it area? Is it funding? Is it -- I mean, how do you -- number of employees? I mean, there's several ways to do it. But it clearly is accessory too.

And I don't think any of us can think of a single new car automotive dealership that has been built in this town in the last 15 or 20 years that doesn't also have used cars and also have service. They're part and parcel.

You don't build a new car dealership -- and this is where the LDC -- when I say it's flawed, to imply that you could have a new car dealership with no used cars -- these businesses take trades. What do you do with the trade? You could just wholesale it and never have -- but in all practicality, it doesn't exist in the real world.

So a new car dealership, every one I can think of has a used car component, a service component. Even if we were to take all those service components and separate them, there's a point at which, if they were to exceed it using the formulas we've discussed, it becomes a wash with what's being proposed. I haven't run those numbers. I don't know what they are.

But our position, and it's backed up by your staff report and the OI, is that the uses are similar -- similar, equal to, or less intensive from a zoning standpoint as well as other measurements; the ones that we

can't really quantify.

How do you quantify noise? If I live on Ilex Circle -- I'm sorry, not Ilex Circle. Tannin Lane, which is the closest street to the eastern property line of the project, and I put my condominium up for sale, when the realtor arrives and opens the door, would they rather hear go-carts and screams or an enclosed service building 500 feet away? I don't think that's a contest. I think it's fairly straightforward. And that really is the decision today. It's between two uses. It's not what would you like.

Traffic is another substantial measure of intensity. When we were doing our OI, it was made very clear to us by Mr. Weeks that the Board of County Commissioners in the past has deemed, with respect to public-facility impacts, for traffic to be the most significant indicator of intensity. Again, no question. We are substantially lower than what the existing zoning would allow.

The deviation that was discussed -- I just want to clarify. The reason the deviation is in there is a little bit of a defensive move on my part. At some point down the road, Carolina Valera, who currently reviews the architectural, agreed that the buildings would not require to be four-sided architecture if there were two buildings on site, but I was afraid if poor Carolina got hit by a bus, that her replacement would disagree.

So the deviation was really to say, things that are visible from Airport Road will be treated as primary facades and those aren't won't. That's the crux of the deviation.

This project was proposed for residential use. In 2007 Toll Brothers came before this body and requested a residential rezone. The Planning Commission in a split vote supported it. There were no speakers.

When it went to the Board of Commissioners, they never got to the speakers. The commissioner of the district at that time indicated right out of the chute he would accept nothing more than six units to the acres, and another commissioner said, really? I thought three.

So the residential rezone for multifamily buildings in three- and four-unit -- four-story buildings never saw the light of day, and it was opposed vigorously by the residents of Walden Oaks at the board level, as evidenced by their attendance at the hearing and a show of hands when the commissioner asked who was there to oppose it.

So you're the property owner. You've tried to sell to someone who was going to build a residential community and been denied, de facto denied.

So what do you do? You finally find somebody who's willing to take the site and produce a viable business, expansion of an existing company, in a similar to lower intensity. Certainly you would think that would be well received.

We agree with the staff comparison. And David made a comment that I think is very, very valid. New car dealerships are C4; used cars, a conditional use of C4. Indoor recreation is C4; outdoor recreation is conditional use of C4.

We can numerically equate a hundred different ways to evaluate that, but on the face of it, that is comparable and consistent.

Our proposal -- oh, and I want to mention. Someone asked about Orange Blossom Road and Airport. Actually, at Orange Blossom and Airport where you have the library on the northeast corner, the northwest corner is mixed-use commercial/residential, and it has been -- the Growth Management Plan has been amended that the Orange Blossom subdistrict on the northeast and southeast corners are mixed-use commercial with a required integrated residential component typically on the second floor. So there you have both uses.

On the southwest corner, commercial. The Italian American club has actually been rezoned for commercial use. The piece to the south has been included in the Growth Management Plan amendment, that five acres, to be eligible for commercial zoning. I don't believe it's come through at zoning yet.

As you continue south, you have a 10-acre piece that is vacant. It is not eligible for commercial; 12-units-to-the-acre apartment complex. And then you start getting -- and then another apartment complex.

And now, if you looked at that aerial, caddy corner to the Willow Park professional project, that area right there where my pen is indicating, straight industrial. There's a gas station there. The reason I bring this up is to characterize this as a predominantly residential area with growing residential needs is not an accurate

assessment.

The Airport Road corridor has existing and proposed commercial uses even north of Orange Blossom. The 22-acre Buckley project, mixed use; 165,000 square feet of commercial with 330 residential units.

Again, we need to look accurately at what's there and how this fits into current and proposed. We're not asking to take raw land and upzone it. We're asking to take an existing zoning district and modify it for a new use that, by all intents and purposes, is comparable to or less intensive.

The one thing I want to mention is, and I -- I believe it was Mr. DeAngelis who made a comment about the character of the Zellers family. And I have no reason to disagree with him, particularly since it's my client, but --

CHAIRMAN STRAIN: But that isn't relevant to the zoning, so try to tie it to the zoning.

MR. HANCOCK: It is not. Well -- and that's what I'm doing. That's what I'm trying to do.

Mr. Zellers, as we were getting ready to come back, indicated a couple of things to me. Number one, the 500-foot primary and accessory building separation, or for primary accessory uses, fine. We're willing to agree to that; not a problem.

The thing he also said, and this is -- I'm used to suggesting to a client that they may have to consider something in order to garner the support of this body. He proposed something to me that I think helps significantly. And I wasn't even aware these things existed.

The only door in the service bay that will open and close that faces a residential component is the one on the east side of the building where cars will exit. The cars come in and they enter the south side of the building where there will be a door that they go in, and then there's three quick lube service bays. Again, they all face south. They face the Willow Park commercial project. They don't face to the east, and they don't face to the north.

So the primary door where noise can come in and out is that door. What Mr. Zellers indicated to me he'd be willing to install there is called a speed door with automatic closer. What that means is there's a sensor that as a car pulls up to the door, it goes up quickly, and as the cars exit, it goes down quickly. And then, yes, the last few inches is a soft close. But it's called a speed door. I didn't even know they had these things, but, you know, he felt that that would address the issue of someone saying, oh, wait a second, you're going to leave the door open all day. No. It will be an automated speed door with an automatic closer.

With that, you know, Commissioner, our -- the main issue that we see with the adjacent residents is simply they don't want an automotive dealership there. I can't do anything about that. We can't change who we are and what we are. We can only make the request based on the facts put into evidence and the testimony provided.

And with that, I'll turn it over to Mr. Anderson to wrap up, unless there are any questions of me by this body.

CHAIRMAN STRAIN: Well, normally the rebuttal's wrapped up in a shorter period of time by one, but you and him are tag-teaming, and so that's okay. And I certainly have some comments to both of you before this is -- before you're both done, so --

MR. HANCOCK: Thank you.

MR. ANDERSON: Thank you, Mr. Chairman.

I would initially point out that what the residents of Walden Oaks really ought to fear is what their own PUD already permits. I don't know how many of them are aware that, as a matter of right today, a 24-hour convenience store with gas pumps could be constructed there.

Let me address the official interpretation that was issued. There was an opportunity to appeal that interpretation. It was a 30-day window, but no appeal was filed; therefore, the official interpretation is binding and final on this board, on the County Commission, and on any judge that would ever look at this case.

And the determination was made that the intensity of the proposed rezone is equal to or less than the existing zoning. That determination has been made.

The county likes to now claim that they are business friendly. This is a case where we determine whether that's just a slogan or the real thing. This is a family-owned business that's been in operation here for

40 years in Naples. They're going to create at least 40 new jobs, and they have carefully crafted their site plan so that it is considerate of their neighbors, and additional steps have been taken today at the initiative of this commission, as well as the applicant itself, to further address concerns.

Do we want to encourage successful local businesses to expand and create jobs here in town? I would respectfully submit that if you do you should vote to recommend approval of this application.

Thank you.

CHAIRMAN STRAIN: Now, Mr. Anderson or Tim, or Mr. Hancock, either -- you guys, we had a lot of discussion, and there's probably a lot of new information that was put forth today and a lot of compromise on the part of your applicant for certain items. You didn't have a -- what it sounds like -- a productive meeting with the owners of Walden Oaks other than the neighborhood information meeting. That's more of a formal meeting. There was no follow-up informal meeting.

I think after all that's been revealed here today, they might take heart to listen to your proposal a little more closely and see where their major obstacles are and try to work those out. Can't be done any further today. We're at the end of this rope.

But if this board were to agree to hear a final hearing on this matter combined with a consent hearing when you could have time to -- giving you time to get together with the folks from Walden Oaks for one last shot, would you feel that would work for you? And this would be at the request of this board.

I'm assuming nobody on the board would object to that kind of request? We much -- it's much preferred to see a project go to the Board of County Commissioners with a compromise rather than going with a split vote of any kind that throws that particular board into a longer period of analysis and detail that should have been revolved at this issue.

So I'm desperately trying to give that board a better outcome. And I still don't know if it would be the perfect outcome. But I strongly believe after what the residents may have heard here today and the fact they haven't even reviewed the other uses that up to C4 can have, they may want to look closely at trying to compromise somewhere.

So I'm asking you to consider that continuance until a meeting to be determined by you-all in the future at this board's request.

MS. ASHTON-CICKO: If we could continue it to a date concern, then we wouldn't have an advertising issue.

CHAIRMAN STRAIN: Right. And I'm hoping that if they go along with this, then we'll get a date certain.

MS. ASHTON-CICKO: Okay.

MR. HANCOCK: Commissioner, we obviously have to come back to this board in two weeks on the consent agenda if an action were taken here today in any event.

Our concern is that we really cannot jeopardize the March BCC date. There are --

CHAIRMAN STRAIN: You wouldn't do that if we combine them.

MR. HANCOCK: I agree. It would be helpful for us as the petitioner in dealing with any additional issues raised by the residents -- because I feel like we have been fairly comprehensive in the items we have addressed -- to have a fair understanding of the direction and intent of this body; if not a final vote, a direction from you as to where you are.

I think that would be helpful in meeting with the residents, because the issues we can't resolve is being something else. All other issues we're willing to discuss but, you know, we would like to have a direction of this body, if at all possible, in moving forward in two weeks.

CHAIRMAN STRAIN: You mean you want to -- until I know that -- until -- I'm concerned that the residents haven't had an opportunity to discuss the new issues that they may have learned today.

I still have a concern over the intensity use. It dovetails to the way the residents have expressed their concerns over the intensities today. Coming back, I would hope that we could clean up your application on those references that David didn't use in his analysis as a C5 and that you used but, inadvertently, didn't need to use. And then weighing that would be a -- probably different outcome than I may have today, for me.

So if the rest of you want to talk about it, go right ahead, if any of you want to weigh in.

Paul?

COMMISSIONER MIDNEY: Yeah, my feeling is that the project, as proposed, is the same or lower commercial intensity. So in my judgment, I could see it going ahead as it is.

COMMISSIONER KLEIN: If a motion were made, I would probably go along with that also.

COMMISSIONER HOMIAK: And so would I.

COMMISSIONER VONIER: I feel the same way.

CHAIRMAN STRAIN: Okay. Well, it looks like you would have the votes today if you wanted to go forward. It's up to you.

MR. HANCOCK: Commissioner, we want to try and address as many issues as we can. Based on what we've just heard, we would agree to a two-week continuance to come back before this body for a final vote on this matter, and we would be happy to meet with the residents in the next two weeks to address any potential further stipulations dealing with compatibility and noise issues.

CHAIRMAN STRAIN: I appreciate that very much. Oh, now I'm getting a no.

MR. HANCOCK: I have been overruled by my client who would ask, based on the timing -- unfortunately, the issues we're under -- that we go ahead and have a vote of this body today.

I will convey to this body that we will still meet with the residents of Walden Oaks, and when we come back on consent, if there are additional limitations we choose to impose upon ourselves from those meetings, we will offer those up at that time.

CHAIRMAN STRAIN: Okay. Then let's walk through the stipulations so if there's a motion to approve the stipulations to the extent they have been listed, they'll get on record.

The hours of operation. You need to state what those will be, because they need to be in the document, or at least I think they do, and the motion maker can decide on that.

Do you have hours of operation that you'd like to offer up?

MR. HANCOCK: If you will continue with your list, let me verify.

CHAIRMAN STRAIN: Okay. There will be -- the 500 rear setback language will be addressed in regards to the accessory buildings and principal buildings. The development standards table says 100, so that's got to be corrected.

The car wash will have blowers on its west side, and it will meet the car wash criteria in the Land Development Code.

Lighting will be shielded from the neighboring -- from the neighborhoods to the -- around -- surrounding the property. They will have two types of lighting; one for display and one for more security, and no lighting past the points noted on the map in front of us. That will be more articulated in the master plan that comes forth on the consent hearing.

You're going to have walls along the northern property line at the 15-foot buffer mark and along the eastern property line. And the same kind of wall; I believe it's a 6-foot.

There will be no lighting around the lake. They've deleted the tire retreading as a use. They -- or as an accessory use. There will be no -- Accessory Use No. 7 will be removed.

Loading area will be on the north side only. The bay door that will open to the east will be a speed door with an auto closure.

COMMISSIONER EBERT: Yes.

CHAIRMAN STRAIN: And that's what I have in my notes. Does anybody on the Planning Commission have any other?

COMMISSIONER BROUGHAM: I might have missed it, but did you include loading on the north side of the building?

COMMISSIONER HOMIAK: Yes.

CHAIRMAN STRAIN: And did we have a discussion or any results on the hours of operation?

MR. HANCOCK: Yes, sir. I'll do this in three tiers. Operating hours would commence at 7 a.m. for both sales and service. Monday through Friday, service would end at 6 p.m., sales at 8 p.m. On Saturday and Sunday, both service and sales would end at 5 p.m.

This would still allow for, just as the current site has, special events subject to LDC permits. If you were going to have -- you know, so we know there's a special-event provision, and sometimes auto dealers will do those things, but that's subject to LDC provisions. We just want to make sure that that is not

precluded, that special events are allowed in accordance with the LDC.

CHAIRMAN STRAIN: Okay. So those hours will be offered as a stipulation as well. And with that, we'll close the public hearing.

And, Barry, did you have a comment?

COMMISSIONER KLEIN: No.

CHAIRMAN STRAIN: Any discussion on the part of the Planning Commission?

COMMISSIONER EBERT: No. I -- Mark, I did like to say that I have seen automobile dealerships with the closed door, and it makes a big difference.

Thank you for that.

CHAIRMAN STRAIN: Okay. Then is there a motion?

COMMISSIONER KLEIN: I'll --

CHAIRMAN STRAIN: Barry?

COMMISSIONER KLEIN: PUDZ-A-PL2012000726, I move that we grant the application.

CHAIRMAN STRAIN: Okay. Is there a second?

COMMISSIONER MIDNEY: (Raised hand.)

COMMISSIONER HOMIAK: Second.

CHAIRMAN STRAIN: Ms. Homiak seconded.

Do you also agree to the stipulations that were read as read?

COMMISSIONER KLEIN: Yes.

CHAIRMAN STRAIN: Okay. And, Ms. Homiak.

COMMISSIONER HOMIAK: Yes.

CHAIRMAN STRAIN: Okay. Is there any discussion on the motion?

(No response.)

CHAIRMAN STRAIN: Okay. I will not be supporting the motion. I do not feel that the compatibility of the uses as a whole are consistent with Policy 5.4 or 5.1, which means that the PUD Findings 1, 3, and 4 would fail, and Rezone Findings 1, 6, 9, 10, 12, 13, 14, and 15 would fail.

COMMISSIONER BROUGHAM: Mark, comment.

CHAIRMAN STRAIN: Go ahead.

COMMISSIONER BROUGHAM: I also will not be supporting the motion. It's -- I've read this application three or four times since I received the material, and I've spoken, as I said, with Mr. Anderson, and I've listened all day today, and I just can't get around the intent, the original intent of the Growth Management Plan for this tract of land irrespective of the fact that the amusement park was grandfathered in. I keep going back to why was the Growth Management Plan very specific in the intent of that land use. So on that basis, I'm going to vote no.

CHAIRMAN STRAIN: Had the applicant come back with a reapplication addressing the C5 issues, I would have been more comfortable, but since the OI was based on C4 issues and the application on C5, I'm still concerned about that inconsistency. And that's what I had hoped the two weeks would have provided. But since we aren't going there, it's off of the table.

So that is -- any other comments?

(No response.)

CHAIRMAN STRAIN: Okay. We'll call for the motion. This is a motion in favor with --

COMMISSIONER EBERT: One more quick thing. You still are going -- Tim, you still are going to have a discussion with the residents of Walden Oaks?

MR. HANCOCK: Yes, ma'am.

COMMISSIONER EBERT: You will -- that was in there. And will you bring up to them all the C4 that could go in there?

MR. HANCOCK: Yes, ma'am.

COMMISSIONER EBERT: Okay, thank you.

CHAIRMAN STRAIN: Okay. So I will call for the motion. This is a vote in favor with the stipulations.

All those wishing so, signify by -- raise your hand and signify by saying aye.

COMMISSIONER VONIER: Aye.

COMMISSIONER MIDNEY: Aye.

COMMISSIONER KEENE: Aye.

COMMISSIONER HOMIAK: Aye.

COMMISSIONER EBERT: Aye.

COMMISSIONER KLEIN: Aye.

CHAIRMAN STRAIN: One, two, three, four, five -- wow, that's 7 -- no, six in favor.

All those against?

Aye, same sign.

COMMISSIONER BROUGHAM: Aye.

CHAIRMAN STRAIN: Two against. Motion carries 6-2.

Thank you all. I know it's been a long morning, and I certainly appreciate all the interaction we've had here today.

With that, this commission will take a recess until 10 after one and come back and onto our next issue.

(A luncheon recess was had.)

CHAIRMAN STRAIN: Okay, everyone. Welcome back from lunch. And before we go right into the next hearing, we have a request by Mr. Hancock to address the board.

MR. HANCOCK: Commissioner, Tim Hancock with Davidson Engineering, co-agent for the applicant that preceded this one.

I'm going to do the unthinkable and ask that our -- the vote for approval, the 6-2 vote, ask that it be -- a motion be made for reconsideration with a subsequent continuance to the first -- the next CCPC hearing so that we can address some of the issues that were identified by this board.

CHAIRMAN STRAIN: Okay. I'm grateful to hear that. I think that will be -- you'll gain a lot by talking to the residents a little bit further, and maybe your application can be better addressed in some of the issues that needed to be.

COMMISSIONER EBERT: I'll make a motion.

CHAIRMAN STRAIN: But the -- someone from the affirmative side --

COMMISSIONER EBERT: I will make a motion.

CHAIRMAN STRAIN: Okay. Ms. Ebert made a motion --

COMMISSIONER EBERT: To reconsider.

CHAIRMAN STRAIN: -- to reconsider, and so did Mr. Klein, second it.

All those in favor, signify by saying aye.

COMMISSIONER VONIER: Aye.

COMMISSIONER MIDNEY: Aye.

COMMISSIONER KEENE: Aye.

CHAIRMAN STRAIN: Aye.

COMMISSIONER HOMIAK: Aye.

COMMISSIONER EBERT: Aye.

COMMISSIONER KLEIN: Aye.

COMMISSIONER BROUGHAM: Aye.

CHAIRMAN STRAIN: Anybody opposed?

(No response.)

CHAIRMAN STRAIN: Okay.

Tim, then what we'll see is -- you'll be first up on the next agenda in two weeks, and it will be for both the -- finish the hearing and the consent at the same time so you guys won't lose any time.

MR. HANCOCK: And I believe that is a date certain February 7th hearing; is that correct, Ms. Ashton?

MR. BELLOWS: That's correct.

MR. HANCOCK: In which case, our March 12th BCC date is in no way jeopardized? That is very important for us.

CHAIRMAN STRAIN: I don't know why it would be, since we -- yeah, the consent's held -- does -- Ray, do you have a comment on that?

MR. BELLOWS: I just want to have a clarification. The motion for reconsideration is to do it now so you'll hear it and vote on it at the 7th meeting.

COMMISSIONER EBERT: Correct.

CHAIRMAN STRAIN: That's correct.

MR. BELLOWS: Yes.

CHAIRMAN STRAIN: And does that, in any way, affect the schedule they have with the BCC?

MR. BELLOWS: No, since they were going to be on the summary agenda that day anyways, it should not affect their BCC date.

CHAIRMAN STRAIN: No, you wouldn't have known if they were going to be on the summary or not because you wouldn't know what the vote is.

COMMISSIONER BROUGHAM: Right.

MR. BELLOWS: Yeah, but we normally calculate that in in setting the BCC date.

CHAIRMAN STRAIN: Okay. So the BCC date isn't jeopardized. They're good to go?

MR. BELLOWS: Correct.

MR. HANCOCK: Thank you.

CHAIRMAN STRAIN: Okay. Please express to your applicants we appreciate it very much. That would help with a better hearing.

MR. HANCOCK: Thank you very much.

COMMISSIONER EBERT: Yes.

CHAIRMAN STRAIN: Thank you, Tim.

MR. BELLOWS: With one caveat that that summary's approved on that same meeting day.

COMMISSIONER EBERT: We did.

CHAIRMAN STRAIN: No, no, not us, the BCC, right?

MR. BELLOWS: No. The CCPC consent agenda.

CHAIRMAN STRAIN: It is. We already said that. That's part of the -- we're going to do both on the same day. So when you schedule it through the agenda, he's first up for both issues the same day.

MR. BELLOWS: Correct.

CHAIRMAN STRAIN: Okay, good.

Thank you, Tim.

***Okay. We have another hearing to finish up today. It's -- and I'll announce it, and then we'll go through the process.

It's PUDA-PL20120000111. It's the Creekside Commerce Park commercial planned unit development.

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

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

CHAIRMAN STRAIN: You know, that would have been easier said just to have everybody who's not going to speak stand up. It's the first time I've seen the whole room rise.

We'll start with disclosures on -- down by Phil.

COMMISSIONER BROUGHAM: I had a conversation with Mr. Yovanovich.

CHAIRMAN STRAIN: Bill?

COMMISSIONER VONIER: Staff, Mr. Yovanovich, Jim Johannsen, and Lyn Hunerberg from Collier's Reserve.

CHAIRMAN STRAIN: Okay.

COMMISSIONER MIDNEY: No.

CHAIRMAN STRAIN: No, Paul?

Melissa?

COMMISSIONER AHERN: Mr. Yovanovich.

CHAIRMAN STRAIN: Okay. And I had meetings with Mr. Yovanovich and Mr. Arnold, and then -- oh, the residents. I went to their facility and met with -- I think there were seven or eight people in that

meeting, and I talked to Patrick White a couple of times.

Okay. Ms. Homiak?

COMMISSIONER HOMIAK: I spoke to Mr. Yovanovich.

COMMISSIONER EBERT: None.

CHAIRMAN STRAIN: Diane? Barry?

COMMISSIONER KLEIN: I spoke to Mr. Yovanovich.

CHAIRMAN STRAIN: Okay.

COMMISSIONER EBERT: Rich won't spoke to me, so --

CHAIRMAN STRAIN: Boy, look out. You're going to be getting a lot of calls now.

Okay. With that, we'll move into the applicant's presentation. Richard?

MR. YOVANOVICH: Good afternoon. For the record, Rich Yovanovich on behalf of the petitioner.

I have Dave Borden with Barron Collier Companies with me on behalf of the property owner; Wayne Arnold with Q. Grady Minor & Associates, the land planner for the project; and Norm Trebilcock, our traffic consultant.

Keeping in the spirit with the earlier meeting, we, too, will recognize that if there are any mistakes in this document, they're all Tim Hancock's fault.

CHAIRMAN STRAIN: Oh, I'm sure he'll be glad to hear that.

MR. YOVANOVICH: On your visualizer outlined in yellow is the Creekside PUD, which is an existing project of approximately 105 acres. It's comprised of basically two zoning districts within the existing PUD. There's the industrial commercial portion of the project and the business district portion of the project.

And I'll put the current master plan on the visualizer for you. As you can see, the business district portions of the property basically front Immokalee Road, and the industrial commerce portions of the project are further back from Immokalee Road and also front onto Goodlette-Frank Road.

The existing industrial commerce area is approximately 41.6 acres and allows up to 620,000 square feet of development. The business district is approximately 19.1 acres and allows for 150,000 square feet of office and 40,000 square feet of retail.

The purpose of today's amendment is to add three potential new uses to both of these subdistricts, and they're in addition to the square footage that is already approved in those subdistricts. And as I'll explain later on, we did that to do a traffic analysis that was conservative as to the potential impact.

The three uses that we're requesting they be added to the PUD is a hotel, maximum of 240 rooms; group housing limited to senior housing, which is independent, assisted living, skilled nursing, or CCRCs; and an intermediate care facility, which is similar to a nursing home, but it's more intense. It's for people who are too healthy to stay in the hospital, not quite well enough to go home. They need some additional care and some additional therapy. There's no actual surgery or hospital-type services provided in these facilities. It's a place that you go in between the hospital and going home.

Now, there's a cap of the last two categories that I mentioned of the skilled -- of the group housing and this intermediate care facility of a total of 400 beds.

It may be confusing. I know one person asked me, is it 400 for each of those categories? No, it's 400 for both of those categories. So I wanted to make sure I made that clear.

We've done an analysis and believe that the three uses we're requesting are compatible with the other uses in the project as well as compatible with the neighbors and uses around us.

As you all are aware, we have the North Collier Hospital across the street to the north and other medical uses, so the intermediate care facility and group housing is a natural to go along with the hospital.

And we believe that the hotel is a good use for this particular piece of property, keeping in mind that it would be nice for people who have people staying in the hospital have easy access to a place to say so they can visit whoever's in the hospital or who may be in the intermediate care facility, as well as having some natural users already within Creekside or adjacent to Creekside that frequently bring visitors to Collier County, such as an Arthrex that does a lot of training of medical staff that they're bringing in. It would make some sense to have a nice hotel nearby.

So that's the thought process in adding the hotel use to this particular piece of property. And we do believe that residential neighborhoods in the area will also take advantage of a hotel in that area, but it would serve both the existing business uses as well as the residential neighbors in the area.

From an overall project intensity standpoint, we're not increasing the floor area ratio that currently exists in the project. The project has a cap of a .35 floor area ratio in each of the districts, the IC district, as well as the business district.

So these three new uses, although they're on top of the already approved square footage, will not be higher than the .35 floor area ratio for each of these three districts. So that overall cap will remain the same.

We have asked for a floor area ratio on an individual parcel of up to .6 for these three new uses, but that doesn't change the overall project intensity of .35. It would just be on a parcel by parcel basis that we may be able to go to a .6 FAR.

Likewise, for properties on the west side of Goodlette-Frank Road -- if I've got my north, south, east, and west right -- west would be -- this is Goodlette-Frank. The properties on the west side we're not asking for any changes to the already approved heights in the PUD. It's only the properties on the west side, which is basically vacant, except the --

CHAIRMAN STRAIN: East.

MR. YOVANOVICH: East side. I knew it. I jinxed myself the minute I said something about knowing my directions.

On the east side of Goodlette-Frank Road, which is mainly vacant other than the self-storage facility that is on the southern portions of the ICPs -- that we're asking a change in height from the currently existing zoned height of 50 feet with no expressed actual height, because this PUD predated the requirement that you include it in an actual height -- to a zoned height of 75 feet with an actual height of 85 feet.

We are -- and that is -- and Wayne will get into greater detail as to what -- the already zoned heights around us, but that is consistent with and actually less than other projects in the immediate vicinity of this particular project, namely the hospital, Collier's Reserve, and the Naples Daily News.

We did a traffic analysis of these three additional uses and how they would impact either Immokalee Road, Goodlette-Frank Road, and even U.S. 41. And if you want to get into a lot of details with Norm Trebilcock, he's available to answer those questions. But we analyzed it as if we did the 620,000 square feet of industrial, the 150,000 square feet of office, the 40,000 square feet of retail, the 240 beds of hotel, and the 400 beds of either intermediate care or senior housing. So we analyzed it as if everything was going to land on that site recognizing, from a practical standpoint, we won't be able to fit it all, but we analyzed it as if it was all going to be built on the project and the road system and the transportation system function within the adopted level-of-service standards for those roads.

So we believe we've analyzed it on a worst-case scenario, and everything works out fine, and I believe your staff agrees with that in the staff report.

We had a formal neighborhood information meeting, and then we had an informal neighborhood information meeting. Most recently the informal neighborhood information meeting occurred November 19th at Collier's Reserve. They hosted us. I know there were people there from not only Collier's Reserve. They were from other communities that were invited by Joan, or whoever else from Collier's Reserve. But we had a meeting at which we explained to them, those attending that meeting, in detail our request and why we needed what we were requesting.

We made it very clear that we needed these three new uses, and we needed these three new uses to be above the current 50-foot cap.

Subject to reaching an agreement on setbacks and buffering, it was our understanding that the senior housing, the group housing, and the intermediate care facility, going to 75 feet would not be an issue, again, subject to reaching an agreement on setbacks and buffering, but there was an issue regarding whether or not the hotel should be allowed to go above 50 feet.

Now, people may disagree, but I did ask a couple of times to make sure I was on track as to what the major issues were. We got done with the meeting, and I requested and I was told I would receive a comprehensive list of all of the concerns, because I didn't want to deal with it piecemeal. I wanted to know everything, respond, and do that.

I followed up by email asking for the list of what are the concerns. I did that on three occasions. Most recently, on January 4th, I was advised that they had retained the services of Patrick White to advise them on the process as well as the uses that I'm requesting.

I immediately, that day, contacted Patrick and said, hey, here's what I understand are the issues. Are there any others? Please let me know so we can respond.

I received a strikethrough and underline version of the PUD, and I think you all have it in your packet. I believe I received that on the 9th of January. I think it was the day after Patrick went to the Board of County Commissioners on a public petition pertaining to one of the permitted uses in this project.

And we immediately started a dialogue back and forth as to, you know, did you really mean that I can't have any of my new uses above 50 feet and that I can have existing uses above 50 feet based upon the different setbacks that I understood to be, from Goodlette-Frank Road the setback would be from 50 feet -- anything over 50 feet I'd go back another two for each foot I went up, and from Immokalee Road I would go back -- for everything over 42 feet, I would go back 6 feet for every foot I -- no, we would go back 6 feet for every foot I went up. Because I was confused, because I thought I made it pretty clear that I needed to go higher than 50 feet for the three new uses. I was advised that, no, that was correct. The intent was to limit us to 50 feet for the new uses.

So we exchanged emails back and forth, and finally we got together in person this past Tuesday to discuss the proposal -- their strikethrough and underline document and our need to go above 75 feet. And I would say that the discussion predominantly focused on the hotel.

And the concern, as I understood it, was that they didn't want a certain bank building that occurred on the corner of -- not on the corner, but on Vanderbilt Beach Road to occur on Immokalee Road. That bank building is adjacent to a Walgreens in case we -- I don't want to name names. But that building is about 120 feet tall, and it's probably set back about 50 feet from the road based upon the only C4 zoning district requirements.

We understood that, and they didn't want that, basically, on the hard corner. And when I refer to the hard corner, I'm talking about --

CHAIRMAN STRAIN: Rich, you've got to use that walk-around. Thank you.

MR. YOVANOVICH: When I'm talking about the hard corner, I understood it to be what I'll probably slip in and out of as the Western B piece. So that will be this piece.

COMMISSIONER HOMIAK: East.

MR. YOVANOVICH: That's Western B.

MR. BELLOWS: Oh, Western B.

CHAIRMAN STRAIN: Why don't you call it B1 and the other one B2? Maybe that will make it easier.

MR. YOVANOVICH: Okay. This B piece they didn't want the hotel on. And we had a dialogue about, well, what if we make sure we don't put the hotel on this B piece, and maybe we'd put it here, maybe we'd put it there.

We, ultimately, settled on discussing putting it here on the IC piece, being what we believe the furthest away from Immokalee Road, which seemed to be the biggest concern of, you know, having a hotel or a big structure close to Immokalee Road.

So we looked at that. And we made a proposal to look at -- moving the hotel to that IC piece, and I said, we may need a little bit of this B piece to make the hotel work on the IC piece. And we would -- and the natural question, and rightfully so, was what's a little bit, because I didn't have an answer then, and we would have to get back to them as to what's a little bit of the B piece.

We've had a chance to look at that, so I think I can identify what a little bit of it is at this point. But we are -- and we also said, in order to move the hotel there, we wanted to go to a setback of 50 feet, and for every foot above 50 foot, we would go back one foot. So it was a foot one-for-one above the 50 feet.

So you could still do the wedding cake starting at 50 feet. Once you reach the 50-foot height of the building, then for each foot above that -- which was similar to their original proposal which was 50 feet and then for every foot you went up, you went back 2 feet was their original proposal to us, as I understood the strikethrough and underline document from Goodlette-Frank Road.

And since we would not be fronting Immokalee Road, I understood the Goodlette-Frank Road segment to apply. Now, we wanted to go one-to-one. They wanted it two-to-one from the original proposal, but we wanted to continue to be at 75 feet for the hotel.

We had a long meeting -- it lasted about three hours -- where we talked about the issues and talked about setbacks and talked about height. And eventually, as I understood the proposal -- and let me take a step back. I neglected to mention the setback that we had proposed for Immokalee Road.

The Naples Daily News PUD provides that for that project, which fronts Immokalee Road, the setback would be 50 feet, and then for each portion of the building above 50 feet you would go back another 2. So for every 1 foot, you'd go back 2.

We proposed the very same setback for our project for the two B pieces that front Immokalee Road. We would follow the guidelines of the Naples Daily News proposal.

So that was our proposal to address the concerns that we heard, which was hotel at the corner, we don't really like that, concerns about height, concerns about setback. So we had proposed changing the setback from Immokalee Road to be the same as the Naples Daily News, and we would -- we would have a little bit greater setback on Goodlette-Frank than we originally proposed. We had proposed just a flat 50-foot setback for the entire building, and relocate the hotel to where it could not be on the corner.

I understand -- and as of -- as of most recent discussions this morning, that the proposal -- the proposal that was made to us that evening was we could have a maximum zoned height of 60 feet, a maximum actual height of 70 feet, I understood that we would have a 50-foot setback for the first 50 feet of the building height, and for each foot above that we would go back three-to-one. Which I immediately recognized was worse than what was originally proposed for Goodlette-Frank Road in the document we received as a strikethrough and underline, because that was a two-to-one ratio off of Goodlette-Frank Road.

Now, it was better off of Immokalee Road, but it made development of the hotel on the IC piece even more difficult with the required setback at a three-to-one ratio.

That's the proposal that I took to my client and we discussed. And Patrick and I had a brief email exchange, I think it was yesterday, regarding would we accept their proposal, and I said, no, we couldn't accept their proposal. We really need the 75 feet zoned height, to which the response we had was, no, we can't agree to 75 feet zoned height.

So our offer of moving the hotel to the IC piece, using a portion of the B piece to -- as part of hotel with the setback of basically 50 feet plus 1 foot for every foot we go back off of Goodlette-Frank Road and the setback of 2 feet for every 1 foot beyond 50 feet on Immokalee Road is still on the table. The relocation of the hotel is still on the table.

As far as the B piece goes, how much do we need of it? We looked at the hotel. Moving it to the IC piece, we can assure that no portion of the hotel that is greater than 50 feet in height will go onto the B piece.

We looked at that, and we may need to put some of the meeting space, which will be less than -- 50 feet or less. We may need to put some of the meeting space that will be accessory to the hotel on that B piece, but we can agree that no portion of the structure of the hotel will be within 500 feet of Immokalee Road with the setback we originally proposed of the 50 feet and then 1 foot back for everything above 50 feet on Goodlette-Frank Road.

So we think that that far exceeded their original request of a 312-foot setback from Immokalee Road. It allows us to build the hotel we believe we need to serve the communities that we have. And we think that that is responsive to the concerns that we heard both at the informal neighborhood information meeting as well as the rather lengthy meeting we had the other night.

That's an overview of kind of where we are, what we're proposing, what we're requesting. I'm going to ask Wayne to go through some of the planning relating aspects relating to why our project is consistent with the Comprehensive Plan and surrounding development.

And with that, then we'll be available to answer any questions, unless you have questions now that can't wait until Wayne gets done, but we'll -- either -- we're at your discretion on how we proceed with our presentation.

CHAIRMAN STRAIN: Anybody want to ask a question now?

(No response.)

CHAIRMAN STRAIN: The only thing I'm going to ask is that after Wayne gets done, one of you address where you think you're at with the Immokalee Road height and setback issue. I'm not clear. You said so many different numbers, I'm not clear where you're at.

MR. YOVANOVICH: Okay. Let me -- right now we have asked to keep the 75 feet throughout the PUD, okay; 75 feet, right, zoned, 85 feet actual. The setback from Immokalee Road for that type of structure -- now, keeping in mind the hotel won't be up there. It would be either the group housing, senior housing, or the intermediate care facility would be on the B pieces.

That setback would be 50 feet for the first 50 feet of the building and then 2 feet for each additional foot above 50 feet, similar to the Naples Daily News PUD. That's the setback for a 75-foot zoned building, 85-foot actual height, from Immokalee Road.

CHAIRMAN STRAIN: Okay. I understand.

MR. YOVANOVICH: Okay. That's what we discussed with the residents the other night.

CHAIRMAN STRAIN: Okay. I understand what you're after. Thank you.

MR. YOVANOVICH: Okay. Anything else before we --

CHAIRMAN STRAIN: Go ahead.

COMMISSIONER KEENE: Rich, I just have one question; I want to make sure I understand. There -- originally the request was to be 300 feet from Immokalee Road?

MR. YOVANOVICH: The way I understood the original request -- now, keep in mind I had 50 feet -- I have 50 feet today with a 50-foot setback from Immokalee Road as well as Goodlette-Frank Road.

What I understood is they wanted to bring me down to 42 feet with a 50-foot setback. And then for each foot I went above 42 feet, I had to go back 6. So if I have a normal 10 or 12-foot -- let's just say 10-foot wall, that 10-foot wall would be another 6 feet back, and then so on and so on until we got to -- and the graphic they provided to us showed a 312-foot setback, and that's where I came up with 312 feet. If I miscalculated it, I'm certainly happy to be corrected.

COMMISSIONER KEENE: Maybe we can get --

MR. YOVANOVICH: Well, that would be 60 feet, right? So it would be 60 feet, plus another 60 feet until we got to 75.

COMMISSIONER KEENE: So would the building 75 feet or higher being on now the Goodlette-Frank side, how far from Immokalee Road does that put you?

MR. YOVANOVICH: The 75 -- well, Wayne, do you know -- because what I just proposed is nothing could be -- the hotel itself can't be -- oh, you're just overall a 75-foot building, not the hotel?

COMMISSIONER KEENE: Yeah.

MR. YOVANOVICH: That would be -- I'm going to let Wayne do the math because I'll probably mess it up.

COMMISSIONER KEENE: Okay.

MR. YOVANOVICH: Oh, a 75-foot building. How far would it be from Immokalee Road as far as

--

COMMISSIONER KEENE: The hotel, I'm sorry.

MR. YOVANOVICH: Oh, the hotel itself.

COMMISSIONER KEENE: Right.

MR. YOVANOVICH: Oh, okay.

MR. ARNOLD: That's what I thought she was asking.

MR. YOVANOVICH: The hotel -- and Wayne probably could tell you. We haven't scaled it off, but any 75-foot portion of the hotel can only be on this piece.

COMMISSIONER KEENE: Correct.

MR. YOVANOVICH: Which is -- we said it had to be -- any portion of the hotel, even a 50-foot portion, had to be a minimum of 500 feet. So I'll have to get a scale to figure out what that number is. But it's going to be every bit of 600 feet. Wayne will scale it, but we'll get you --

COMMISSIONER KEENE: I'm trying to get a comparative of --

MR. YOVANOVICH: It's probably close to double what they originally requested for the 312.

COMMISSIONER KEENE: Okay. Thank you.

MR. YOVANOVICH: Or close to double.

MR. ARNOLD: I have a -- I'm Wayne Arnold, by the way, with Q. Grady Minor & Associates, and I have a to-scale drawing, and it appears that, just roughly scaling it, we're a little over 500 feet to the IC parcel boundary from Immokalee Road. It appears to be. I'm not sure exactly where the right-of-way line is today, but it's approximately 500 feet.

CHAIRMAN STRAIN: So you're 500 feet from Immokalee Road to the edge of the IC parcel, but didn't you say that no structural part of the hotel will be within 500 feet of Immokalee Road? Because if you're now talking about spreading over on the B, that wouldn't work.

MR. YOVANOVICH: I understand that. And from discussions earlier with the engineer who's got probably a little bit better set of plans -- and Wayne doesn't know -- the answer is, I was told we can commit to the 500 feet from Immokalee Road for any portion of the structure of the hotel. So I'm not -- I mean, we're still -- we could still commit to that.

CHAIRMAN STRAIN: Okay. I think you're closer to 600 feet deep on Parcel B from Immokalee Road.

MR. YOVANOVICH: I think you're probably right.

CHAIRMAN STRAIN: It scales on the tax appraiser's site to 607, so --

MR. YOVANOVICH: Okay.

MR. ARNOLD: While I'm here, I guess I'll go ahead and go through a little bit of my presentation, if I can.

CHAIRMAN STRAIN: You've got to be here for a reason of some kind, Wayne.

MR. ARNOLD: In your packet, you also had some documentation from Johnson Engineering, and they had conducted a corridor analysis, if you will, and that transitioned into a study of, essentially, building separations and, thus, then a setback ratio that was established and primarily was used in their determination that we should have a 300-plus-foot setback from Immokalee Road to be consistent with these various ratios.

Well, first of all, the first question Rich asked me is, have we ever done anything like this before to come up with this ratio-based setback? And the answer that I had was, no, I've never seen that utilized anywhere on any other project that I'm familiar with in the county.

So we started off on the premise of, what is it really telling us? And what we realized is that corridor study looked at existing buildings compared to other existing buildings and, in our case, proposed buildings to come up with their proposed setback.

And to us the distinction was a little different because, you know, we had -- this wasn't a surprise to us. We looked at what other PUDs in the area were allowing for height, so we knew what might be an acceptable height to request, because we knew we needed something more than 50 feet for the uses we were proposing.

And we pulled all of our neighboring PUDs. And I think to the surprise of many of the Collier's Reserve residents that we met with, I don't think they realized that their own PUD allows them to have 80-foot-tall buildings 25 feet from Immokalee Road.

And I know they don't have any that are built, but they have zoned heights of 80 feet 25 feet from their property line. And I think that when you look at the health center, which allows the hospital, which is a building that's over 100 feet, and, yes, it's set back from the road; it didn't have to be set back that far from the road.

And, consequently, I would tell you that when you looked at and what we offered was similar to the Naples Daily News, which was a heavily negotiated setback with the increased ratio above 50 feet, and it was done largely with the input of Collier's Reserve. Maybe they weren't all pleased with the final number, but that's where that came from.

But when I looked at the corridor study, I think it was more fair to look at the zoned heights that we have in the area with their setbacks as opposed to just what's been built, because I think we know in Collier County things don't seem to be there forever, and what's a single-story or three-story office building today could very well become something else in five years, 10 years, two years, who knows.

So what I've expressed there are the zoned building heights for the corridor with the required setback per their PUDs. And when I look across Immokalee Road, I see 80 feet, 75 feet, 80 feet, 100 feet, 50 feet,

and 50 feet for their own shopping center at Collier's Reserve. And then as you go to the south side, it's a 50-foot height for retail at Granada shops at the intersection of U.S. 41 and Immokalee Road, but a hotel and office buildings are allowed to go to 60 feet there with a 40-foot setback.

And then you go to, of course Naples Daily News, which we've discussed, which is 75 feet, and then there's a portion to the south of Creekside that's at 35 feet where it abuts the golf course and homes of the Pelican Marsh PUD. And then we have our own 50 feet that we have.

And then as we transition east, that's where we requested the 75-foot zoned height. And, of course, we're across from the hospital structure and the parking garage, and those structures clearly exceed 50 feet at a much less setback that could have been allowed, which means you could easily have more development occur on the front parcel at the hospital site as well that may increase the building height.

So from our perspective, the number of 75 feet that we asked for not only was what we thought a necessary number we needed for these three key uses, because of the vertical nature of many of those, but it was consistent with what not only our neighbors had, but what the corridor permitted.

So from our perspective what we asked for made not only good planning sense from our own perspective, but it was a compatible request based on what's been approved on that same corridor that they analyzed.

Because I only built a one-story building today doesn't mean that I don't have an intention to go back and build a multi-story in the future.

And I think the other thing that we looked at too, if you go look in your LDC and you look at C4-type uses, for instance, which is a district that would allow a hotel, the C4 allows a 75-foot tall building. It requires it to be stepped back if you're above 50 feet but at much less ratio than we had proposed.

So we thought from that perspective, too, we're on sound footing based on your own Land Development Code and what it permits when you would have a C4-type development with a building exceeding 50 feet. So from those perspectives, we didn't see an issue.

And, furthermore, the Comprehensive Plan doesn't contain any reference to building height for your general urban area. There is no expressed height. You can go and request, if we can convince, ultimately, four or five commissioners that 100-foot-tall residential building would make sense somewhere, it's perfectly acceptable to ask for that. It doesn't mean you're going to get it. You're going to be looking at the same factors: Its compatibility, its setback, its relationship to other buildings of that size, and permissiveness throughout the area.

So from our perspective, we didn't think it was a problem. Creekside is a very well-done industrial business park. They have nice mature buffers. They have done a great job with respect to the uses that they have. And there's no reason to think that it's not going to continue on the east side of Goodlette-Frank Road.

One of the things that I also looked at -- and I can show you the heights, graphically, a couple different ways, but I thought it was important, too, just from the standpoint of where, you know, we are in the world and trying to understand the Collier's Reserve issues. I was looking for one more aerial. Excuse me for one second. There it is.

I tried to look at distance, because it's hard to see there. And, Nancy, would you mind zooming that in just a little bit so we can make out the numbers.

But looking at the closest home in Collier's Reserve to the proximity of our corner parcel, you're exceeding a quarter of a mile; obviously, through 6-story, I think, residential buildings, commercial tract, et cetera, just to get to our property line, not to even mention the setback that Rich is talking about with regard to where the hotel would be located. And then I looked at the proximity to their own commercial, which it's a few hundred feet as opposed to more than a quarter mile.

So I think from our perspective we're trying to understand this issue of the height when we know that there are -- their own project would allow height greater than we're requesting because theirs, again, is a zoned height with no actual, which means you can have other appurtenances above your roof line that when you establish an actual height as we have, and that's the tippy top, as Rich has coined the phrase.

So one of the other factors, too, I think that -- and that was a question that I'm not sure who asked, but I just did a simple graphic. That's a quarter-mile offset line, the yellow solid line, from the hospital tract and shows you what's a quarter mile around the hospital. That was sort of envisioned to be that business and

medical and most intensive portions of the business district that we had because of proximity to the hospital.

And, clearly, the IC tract and the business tracts that we're talking about east of Goodlette-Frank Road are within that quarter-mile radius.

It also, from the standpoint -- there were questions about a hotel and how was that really compatible, because we had other hotels in the Collier County area. And, frankly, as Rich said, it makes a lot of sense from varying points of view to have a hotel complex in proximity to the hospital.

The hospital's made a major investment. They have new patient beds, but we also have major employers in Creekside that host many, many people coming in from other parts of the country to train here, to do research here, and it makes sense from that standpoint to also have an ability to have a hotel.

Most business parks have a hotel component. This was a precursor to a business park, if you will. Although we didn't have a business park when Creekside came through the process in 1997, it essentially was meant to be that. It was going to be a clean industrial park, and having a hotel component makes sense.

Your staff questioned the hotel consistency with the Growth Management Plan. We went through a similar analysis that you heard previously this morning looking at intensity. In our case it's quite different, but it's different in the context that we have hundreds of uses approved when you look at all the SIC codes and the multitude of industrial classifications that you have, so it's not as easy as comparing one use to one use.

So we have an analysis that was done a little bit differently, but it looked at impacts of water and sewer, et cetera. And we were deemed to be less intense from that perspective.

And I guess, secondarily, from a zoning perspective, you find hotels that begin in the C4 district and, obviously, we have uses that are industrial, which I think most people would acknowledge is a more intense zoning designation and intensity of use.

So your staff concluded, as we did, that we were consistent with the policies in your Growth Management Plan under Objective 5 that deal with properties that had zoning prior to the -- what we now call our new Growth Management Plan that came along in the early '80s.

So we had predated zoning, we had an industrial park that's partially been developed. So we did that analysis for staff, and they, too, concluded we were consistent with the Growth Management Plan.

From a perspective of other uses and the setbacks that were offered, we think that where we are today is certainly a compromised position from where our neighbors started. The numbers that they were proposing, I understand, on paper that's what they work out to be, but they're unreasonable numbers, I think, from many respects.

To require a 75-foot-tall building to be over 300 feet back from the property line in this one area of the community where we already have a precedent that isn't the case did not make sense for us and didn't work for us, which is why we've been looking at that issue and trying to find the compromise position that would hopefully appease them, but one that we think not only can make sense for us but work for us, because we think the three uses makes sense, and the hotel certainly needs to be 75 feet, as Rich has told you.

So with that, I'll conclude my remarks and answer some questions, if you have any. And Rich, I know -- somebody said they had a question for Rich, so I'll yield the floor to him.

CHAIRMAN STRAIN: Okay. Planning Commission have any questions of the applicant at this time?

(No response.)

CHAIRMAN STRAIN: Well, it's going to take some time. I thought some of these would get killed as we went through it, but I will move into mine.

In your Exhibit A -- and I -- you've already acknowledged that the .35 FAR cap applies to all of the properties as a whole overall, and that the .6 is going to be utilized but -- in those parcels that it's allowed at, but it still would never violate that .35 overall cap, right?

MR. YOVANOVICH: Correct.

CHAIRMAN STRAIN: Did you do a calculation based on how much of that cap has already been utilized to know how much you've got left?

MR. YOVANOVICH: I've got an approximate number, if that will be okay.

CHAIRMAN STRAIN: Yeah.

MR. YOVANOVICH: Approximately 190,000 square feet of business park and a little over -- I think it was 102,000 square feet of industrial commerce based upon the .35 and what's already built and existing today, assuming a reasonable allocation of some of that square footage to the vacant IC piece east of Goodlette-Frank Road. Those are the general numbers. And I think I put about 30,000 square feet of IC use west of Goodlette-Frank Road. I think there's approximately 488,000 square feet of that already developed.

CHAIRMAN STRAIN: Well, your numbers are good. The current PUD monitoring report, I pulled the numbers from, then I had to leave some in based on the typical size that you allocated -- that would be allocated for the empty parcels, and your numbers are about right.

And the reason that's important is that if you were to look at this as the .6, as it originally may have been thought of, to apply to the entire -- the two B parcels and the IC on the east side, you have about, I believe, 20 or 21 acres there in those combined three parcels from -- the best I could tell from the property appraiser's site.

Your .6 FAR for that is substantial, and you're not even going to be able to come close to hitting it with what you've got left, so --

MR. YOVANOVICH: Right. And that was -- again, we have roughly about 290,000 square feet left.

CHAIRMAN STRAIN: Right, you're almost double that with your --

MR. YOVANOVICH: And that would go on the vacant acreage on the east side.

CHAIRMAN STRAIN: And I had done the calculation, but I can't find it, so -- but I know it's substantially more than that. I wanted to understand how you were thinking that applied. I now understand you're kind of in the same mindset that I am that it's -- the .35 is the overall dominance.

MR. YOVANOVICH: Right. And we've always said that. And if I didn't make that clear, I apologize.

CHAIRMAN STRAIN: No. I didn't -- in reading this -- and I'm not sure when I spoke to staff if everybody understood it the same way. But it's fine now. I understand that now at least.

I've got two sections I have to go through, so it's going to take me a minute to find all of my notes. So bear with me here for a minute.

MR. YOVANOVICH: You got out of the swing.

CHAIRMAN STRAIN: No, I've got too much paperwork on this one. I've just got -- I think staff sent me -- because of the backup in the file, I got, like, three copies of the whole PUD, which is creating a whole pile of paperwork.

The numeric thresholds for the DRI issue, you were at 80 percent when you came forward. I wanted to make sure they you didn't broach that threshold now, and I've had confirmation from staff, who got ahold of South Regional Planning Council, and apparently you don't. So that issue's resolved as far as that goes.

There's another issue. And, Nancy, I'd asked you to look into it. I don't know if you could or not. It's the 40 percent commercial issue. Either you or Mike Bosi, one of you acknowledged you would check that out.

There's a paragraph in here that's under the -- it's two -- Page 2-15 of the original, the whole PUD, and it says, Creekside Commerce Park shall be permitted to develop with a maximum of 40 percent commercial uses, and they're as defined in a section.

Did anybody verify that?

MS. GUNDLACH: Good afternoon, Commissioners. Nancy Gundlach, principal planner, department of planning and zoning.

And, Mark, I'm not sure if this answers your question, but I think you're referring to, in the accessory uses, where it says 40 percent.

CHAIRMAN STRAIN: That's one of the places. It also appears on Page 2-15, No. 12.

MS. GUNDLACH: Okay.

CHAIRMAN STRAIN: And they're a little differently worded in both, but I simply was trying to get an acknowledgment that someone is monitoring that and it's been verified that they either have or have not broached it at this point.

MS. GUNDLACH: Okay. I can't answer the question about monitoring it or collecting data on it.

But I think the intent in the accessory uses is that it would not exceed more than 40 percent of a principal use, like if somebody -- like a contractor had a warehouse and he had a little retail area, that was the intent, but actually collecting square footage data --

CHAIRMAN STRAIN: I understand but, I mean, if it's there as a requirement, has anybody bothered to monitor it and keep track of it?

MS. GUNDLACH: Do you want to --

MR. BELLOWS: Well, during the site development review of these projects, they have to demonstrate they're providing that.

CHAIRMAN STRAIN: Okay. Maybe by the time we get to consent --

MR. BELLOWS: Yeah.

CHAIRMAN STRAIN: -- could you find that number out?

MR. BELLOWS: Yeah.

CHAIRMAN STRAIN: And also it has to coincide with number -- on Page 2-15, Item 12, and that's written a little differently than the one that is also a 40 percent threshold that Nancy referred to as a permitted -- or, I mean, as an accessory use number.

I would just want to understand where the number lies today. It may not have a bearing on everything because it may be well below that, but I think we ought to at least -- since we're in looking at this PUD, we ought to acknowledge it, so --

MR. YOVANOVICH: And if I may, in response to that, the uses that we're talking about adding are in addition to the already approved uses. So the way we look at 2-15, we look at that as you would take the 800 -- what's -- 620- plus 190- is 810,000.

CHAIRMAN STRAIN: Yeah.

MR. YOVANOVICH: And you would take 40 percent of that, so you'd have to hit 320,000 square feet. I just want to make sure when we're --

CHAIRMAN STRAIN: No, you're right.

MR. YOVANOVICH: That's how we interpret that. So to be in violation of Page 2-15 --

CHAIRMAN STRAIN: Right. I don't think you --

MR. YOVANOVICH: -- we'd have to exceed that. I don't think we are.

CHAIRMAN STRAIN: I don't think you've reached that threshold. I just wanted --

MR. YOVANOVICH: I'm sure we haven't, but I just want to make sure we're providing information that's consistent with everyone's understanding of the PUD.

CHAIRMAN STRAIN: And I don't care if you provide a foot-by-foot breakdown. I just need someone to check it, make sure that we've monitored and it's okay.

MR. YOVANOVICH: Okay.

CHAIRMAN STRAIN: In the Exhibit 4 that you provided for utility provisions, there needed to be a correction because the beds were not accurate. That has been provided, and it seemed satisfactory. And, staff, we got that; I think you emailed it to us, Nancy?

MS. GUNDLACH: Could you repeat that?

CHAIRMAN STRAIN: Exhibit 4, statement of utility provisions, they were shy on the bed count that they've asked for, and it needed to be updated to the bed count. I believe you emailed us a corrective sheet.

MS. GUNDLACH: Yes, I did.

CHAIRMAN STRAIN: And staff concurred that that sheet is a less intense or equal intensity than what was there before?

MS. GUNDLACH: It's not part of the data. We didn't have time to review it.

MR. BELLOWS: David?

CHAIRMAN STRAIN: Okay. Maybe it's a level-of-service issue, but whatever it is, have you guys analyzed it? In the last project we had, it was 5.9 policy issues. In this project, I believe there's a portion of it attributed to 5.9, and I'm not sure all of it is.

MR. ARNOLD: Mr. Strain, if I might. Again, Wayne Arnold, for the record.

This utility form that was updated, as you pointed out, when we initially submitted, we submitted

with a specific bed count for the intermediate care. And as the application evolved, so did our numbers. So that is a utility provisions form. It's part of the actual PUD zoning application. It's not part of the 5.1 consistency evaluation.

CHAIRMAN STRAIN: Okay. And --

MR. ARNOLD: And this is simply done. I'm not sure why it's a carryover for the last 20 years, but I'm not sure that, given the sophistication of our county utility department and their services, why we need to provide this estimate. But there are no expected level-of-service issues related to utilities.

CHAIRMAN STRAIN: Yeah, I realize that. I just wanted to make sure that -- how I understood it to apply.

Bear with me here a minute while I go through all these multiple copies. I'm sorry. I've got one more. Is the -- you provided us as a mark-up copy only Sections 3 and 4 from the PUD as part of your application, and the whole PUD was, I believe, supplied to us by staff. Why did you limit your -- why did you submit just those sections?

MR. YOVANOVICH: Those are the only sections in the PUD that needed to be amended to add the three uses that we're requesting to be added.

CHAIRMAN STRAIN: Okay. And for the most part you underlined or crossed out all the changes from the original PUD; is that correct?

MR. YOVANOVICH: That was the goal. I hope we didn't miss anything.

CHAIRMAN STRAIN: Okay. But there is one that's not underlined that, when I did a comparison on page per page, I can't explain, so I think it needs to be struck because it looks like it's a typo.

MR. YOVANOVICH: Okay.

CHAIRMAN STRAIN: And that's on Page 4-1, 4.3(A)(1).

MR. YOVANOVICH: I'm sorry, 4-1, 4.3 --

CHAIRMAN STRAIN: 4-1. It's 4.3(A)(1). I didn't find that reference in the original PUD that I've been reviewing.

MR. YOVANOVICH: Well, that -- I will tell you how that happened, is -- bear with me. Let me go back to the strikethrough and underline.

CHAIRMAN STRAIN: Okay.

MR. YOVANOVICH: Okay. So you -- 4-1 in what we provided to you?

CHAIRMAN STRAIN: Your Exhibit B --

MR. YOVANOVICH: Right.

CHAIRMAN STRAIN: -- is -- first page of Exhibit B is 4-1. Section 4, business district. I don't know if it's the first page, but it's part of that Exhibit B. If you go to 4.3(A)(1), which is on Page 4-1, No. 1, I didn't find the auto and home supplies stores group, 5531, in the original PUD. Did I miss it, or did I just look through too many copies, and I --

MR. YOVANOVICH: That is.

CHAIRMAN STRAIN: I'm looking at it right now. It's not there.

MR. YOVANOVICH: No, no, no. I know. Here's how that worked. If you'll go with me to Page -- in our strikethrough and underline version, 4-3.

CHAIRMAN STRAIN: 4-3?

MR. YOVANOVICH: 4-3, Item No. 16.

CHAIRMAN STRAIN: Yeah, that's old language.

MR. YOVANOVICH: That's old language that says, any other use or service which is comparable in nature with the foregoing uses.

CHAIRMAN STRAIN: And it could be --

MR. YOVANOVICH: It could be approved, it could be administrative.

CHAIRMAN STRAIN: By the environmental services administrator, right.

MR. YOVANOVICH: We went and provided documentation to the environmental services administrator as to this category, auto and home supply stores, basically the tire store, that it was -- it met the criteria by which staff could approve that use within this PUD and, thus, it would become a permitted use.

Staff took their determination one step further. They actually took it to the Board of County

Commissioners, put it on their agenda, and advertised that staff had determined that this auto and home supply store's use was -- met the criteria of Item No. 16 in the PUD.

Nobody from the board pulled it or took it off. It was approved six to eight months ago, ballpark.

When we were going through the process of amending the PUD, we were asked to add that use in since it had already been determined to be a permitted use. So it's an existing permitted use; therefore, it's not a new use that needs to be underlined, because of the process we went through under the PUD to have that list of uses added to. And I believe this was something that was brought up as a procedural challenge.

CHAIRMAN STRAIN: I don't care what it was brought up for. Doing it this way is highly irregular. I don't ever -- known it to be done this way. You have to amend a PUD through the proper channels when you do it. You can't amend it by just adding it through a summary agenda that didn't go through this board.

MR. YOVANOVICH: Well, actually --

MS. ASHTON-CICKO: Yeah, I agree.

CHAIRMAN STRAIN: I'm telling you right now, this doesn't stay there.

MS. ASHTON-CICKO: I agree with Mr. Strain on that. Also, for clarification, what the board approved is a tire store with minor automotive repair. They didn't approve a SIC code in the category that's been placed in here. And I agree, it should be underlined as an addition.

MR. YOVANOVICH: If it needs to be -- well, we just want what was previously added before. So if --

CHAIRMAN STRAIN: What do you mean "what was previously added before"? You didn't add anything by a PUD amendment. What you did is you did it through a staff clarification. I'm not arguing with that. It stands on its own. It's done. The board was clear about that, I believe, last week. So why do we need to put it in here outside the process?

MR. YOVANOVICH: Mr. Strain, we were just simply trying to reconcile an action that was taken if we -- as long as it's crystal clear by deleting Item No. 1 and not putting in tire store with, you know, minor -- whatever the language Heidi just said on the record. As long as we don't have to physically add it to this list or we lose it, then that's fine; delete it.

MS. ASHTON-CICKO: I think any changes to the PUD -- if you want to put text in here, it needs to be shown underlined even though the board had already approved the tire store with minor automotive repair. But, you know, if you're putting in the full SIC code category, then that's different than what the board approved.

MR. YOVANOVICH: That was --

MS. ASHTON-CICKO: However you want to handle it.

MR. YOVANOVICH: I understand, I understand.

CHAIRMAN STRAIN: Okay. I can go on about --

MR. YOVANOVICH: I'm not trying to -- again, we were just trying -- we were not trying to get anything more than what we already had achieved through the administrative process, and we thought we needed to make sure that the list was comprehensive --

CHAIRMAN STRAIN: The administrative process stands on its own.

MR. YOVANOVICH: That's fine. As long as --

CHAIRMAN STRAIN: You guys have to stand any way you want with it. If you want to do a PUD amendment through a zoning process that the Planning Commission is required to be involved in, it's got to come through as an amendment, not as an add-on because of a summary approval on a BCC agenda. That doesn't meet the process. Unless the board wants to rule on that separately and tell us from now on they can do that, but that's not what I -- that's not anything that I heard, so --

MR. YOVANOVICH: Okay.

MS. ASHTON-CICKO: I think it would be helpful to put the new underlined text that would reference tire store and -- with minor automotive repair and do a reference to the resolution. It would just make it easier for people in the future to administer.

CHAIRMAN STRAIN: Well -- but, Heidi, where have we done that before? How many administrative approvals have you done -- not you -- has staff done in this county for similar and like

facilities based on PUDs like this? I have never ever seen this done before this way, so why would we make an exception now?

Can you cite one time where we've changed the PUD based on a staff administrative review like this, that it's come back and automatically changed the PUD?

MR. BELLOWS: For the record, Ray Bellows. Staff approached the Board of County Commissioners on another PUD about a comparable -- compatible use determination, something that would be simpler than doing an OI. And the board agreed to a process of where someone would appeal a zoning letter determination, and we're in the process of codifying that process in an LDC amendment.

But there have been, I believe, four other PUD -- or uses within other PUDs that were -- or use the same process.

CHAIRMAN STRAIN: I don't mind the process. I'm not complaining about that. But where does it require -- where does it enter into the PUD without an amendment to the PUD?

MR. BELLOWS: No, you're correct about that part.

CHAIRMAN STRAIN: Okay. Then let's just leave it. You've got your -- whatever it is -- OI. I'm not even sure what it is. Whatever you've got, you've got. Don't bring this board into that issue, because the Board of County Commissioners, I understood, basically heard it twice. They heard it once when it originally came through and an appeal last week. So it's done. It's over with.

MR. YOVANOVICH: I just -- Mr. Strain, I just want to make sure we're all clear. The fact that we didn't refer to it in this least -- list doesn't in any way affect the previous interpretation and BCC approval. Because historically people have said, if it ain't on the list in your PUD, you don't have it.

CHAIRMAN STRAIN: Right, but --

MR. YOVANOVICH: And I don't -- but, again, I've gotten this approval that's been sanctioned. Now I'm coming through, and I'm amending a PUD, and I'm ignoring this approval. I don't want it to be interpreted as somehow giving up that previous tire store use because it's not on the list.

CHAIRMAN STRAIN: Okay.

MR. YOVANOVICH: I just want the record to say, Rich, don't worry.

CHAIRMAN STRAIN: I'm not --

MR. YOVANOVICH: And that's really more a Heidi question.

CHAIRMAN STRAIN: But I -- here's what you do have. And I'm going to try to find the section again. For that use, apparently -- and I didn't -- I don't know anything about it. I never read the OI. But it happened to occur, what, sometime earlier this year?

MR. YOVANOVICH: Last.

CHAIRMAN STRAIN: And it occurred under Item 16, under the current Item 16, any others use or service which is comparable in nature and foregoing uses otherwise clearly consistent with the intent and purpose statement of the district and which the community development and environmental services administrator determines to be compatible with this district.

Now, that means the staff can make a decision that it's compatible. It was done. It had an appeal period. It's over with. Then it went further and was brought back to life, let's say, was it next -- last week or a week or two ago, and the board ruled again. It's done. And if you want any more than that, I would suggest you then enter it into the PUD as an amendment to the PUD and go through the process.

Other than that, Richard, I don't see -- I don't see a way it should enter into today's process at all. I mean, you've got your standing, you've got your appeal. Even that failed. So you've got the right, by everything I can tell, based on, twice, the BCC hearing it.

MR. YOVANOVICH: Again --

CHAIRMAN STRAIN: I'm not sure why the PUD is relevant in this case, especially when it didn't come forward as an amendment.

MR. YOVANOVICH: I'm just asking -- you know what, if you want to just call it, like -- I like what Heidi says. Let's say tire store as approved in resolution blah blah blah, blah blah blah.

CHAIRMAN STRAIN: I'm not going to call it anything. I don't think it belongs in this document unless you go through an amendment.

MR. YOVANOVICH: Well, it would be part of this amendment. It would be shown as an already

approved use.

CHAIRMAN STRAIN: Is it advertised as part of this amendment?

MR. YOVANOVICH: Yes. The whole section was advertised.

CHAIRMAN STRAIN: No. Was the advertisement specific for that new use being added?

MR. YOVANOVICH: But, Mr. Strain, I'm not adding the use to the PUD. The PUD already allowed that use under Item No. -- current Item No. 16.

CHAIRMAN STRAIN: Then what are you complaining about?

MR. YOVANOVICH: Again, I'm -- all Heidi has to say to me is, Rich, don't worry, you didn't lose the tire store because you didn't show it as a list on this use, and I'm happy.

CHAIRMAN STRAIN: But from the county's perspective, I don't know how she could say anything but that. You've got a twice approval.

MR. YOVANOVICH: Then let her say it.

CHAIRMAN STRAIN: She's not the zoning director. The zoning director's already said it. That's sufficient.

MR. YOVANOVICH: But she's the -- this is my legal concern. I'm just asking if I have -- if I'm not

--

CHAIRMAN STRAIN: The tire issue is --

MS. ASHTON-CICKO: The county's position is that you have an approved permitted use for a tire store with minor automotive repair.

MR. YOVANOVICH: And the fact that this PUD document doesn't reference that prior approval does not take that away?

MS. ASHTON-CICKO: I don't -- no, the resolution still stands.

MR. YOVANOVICH: That's all I needed on the record. That's all I wanted.

CHAIRMAN STRAIN: You've got a resolution that I'm sure is linked to this project. It's part of the project now. I don't know how -- and there's been a lot of people that have had resolutions like that over the years. They don't all get restated in their PUDs. They're just separate documents. So I'm not sure why we're even going there, Richard.

MR. YOVANOVICH: Fine.

CHAIRMAN STRAIN: Okay. We left off -- I had just -- that was the last issue I had to discuss on the items I have right now.

And is there any other questions of the applicant at this point?

(No response.)

CHAIRMAN STRAIN: Okay. Rich, can we -- all right. You guys are done, so we're going to go to staff next.

MR. YOVANOVICH: Thank you.

MS. GUNDLACH: Good afternoon, again, Commissioners.

Staff is recommending approval of this petition, as it's consistent with the Growth Management Plan and Land Development Code. And also, regarding your question before, Commissioner Strain, about the Exhibit 4, the statement of utility provisions, I just received word that the new statement is still consistent.

CHAIRMAN STRAIN: Okay. Thank you. And I just started thinking about my conversation with Mike Bosi about the 40 percent, and I think he said that there -- he didn't believe there was any way they could have reached that. I may not have then asked him to verify it. But if you guys can verify it just to be sure by the time we get to the consent, I would appreciate it.

MS. GUNDLACH: We can do that.

CHAIRMAN STRAIN: Okay. So do you want to provide us -- do you have -- that's all you wanted to say for your staff report?

MS. GUNDLACH: Yes.

CHAIRMAN STRAIN: You're getting really short and to the point, Nancy. Thank you.

I want to make sure I don't have anything for you.

COMMISSIONER BROUGHAM: I do.

CHAIRMAN STRAIN: Oh, Phil, I'm sorry. Go right ahead.

COMMISSIONER BROUGHAM: More of an observation than a question.

On Page 9 of 17 of the staff report and also on Page 15 of 17 of the staff report, if it's customary for an ALF to have a .60 FAR, as referenced on Page 9, and as referenced on Page 15, the LDC has been recognized as an outdated development standard for these facilities, is there any initiative to update the LDC and avoid any confusion in the future?

MR. BELLOWS: For the record, Ray Bellows.

We did have an LDC amendment in the last cycle to alter the floor area ratio for assisted living facilities to increase it from 0.45 to 0.60. The Planning Commission at that time recommended that it be withdrawn because they -- it was determined that it makes sense to have the applicants request that as a deviation and provide justification to go higher.

Now, staff is also looking at revising other aspects of what's called the group housing provisions of our Land Development Code, and we'll get to that as soon as we tackle the administrative code and get that squared away.

MS. GUNDLACH: Thanks.

CHAIRMAN STRAIN: I think at the time staff -- we didn't have an analysis as to how applicable the .6 would be on a normal basis compared to the .45, and you are going to do further review of CCRCs. If you come back, that -- a majority of the CCRCs basically require the .6, and that would be something to reconsider.

MR. BELLOWS: Definitely. And it's part of the group housing section of our code, which is very antiquated, and we would like to get to that at some point.

CHAIRMAN STRAIN: Okay.

MR. BELLOWS: And that would be part of it.

CHAIRMAN STRAIN: Diane, did you have something?

COMMISSIONER EBERT: Well, I have a question for Ray. Ray, on that, right, .45, but I understand the .6 -- if I'm wrong. This is for the restaurants, this is for the beauty salons, this is for more of --

MR. BELLOWS: Yes.

COMMISSIONER EBERT: -- amenities within? That's why they want to go to a .6; is that correct?

MR. BELLOWS: That is correct. The current market dictates that these ALFs, especially in this county, provide more services and amenities than just the basic housing. And so the 0.45 was deemed to be restrictive to provide those additional amenities.

COMMISSIONER EBERT: Okay. Thank you.

CHAIRMAN STRAIN: Okay. Now we'll move on to public speakers.

Ray, how many public speakers do we have registered?

MR. BELLOWS: A lot.

CHAIRMAN STRAIN: No, that's fine. We'll just move into them then. We don't need to count them.

Is Mr. White the first registered public speaker?

MR. BELLOWS: He can be.

CHAIRMAN STRAIN: Patrick, how much time are you going to need?

MR. WHITE: If you'd like to take a break, Mr. Chairman --

CHAIRMAN STRAIN: No, we're too early for a break; that's why I asked. But we're probably 15 minutes away from a break. Will you be done within 15 -- close to 15 minutes?

MR. WHITE: I believe so, sir.

CHAIRMAN STRAIN: Okay. Then we'll hear you first, then we'll take a break.

MR. WHITE: Terrific.

Good afternoon, Commissioners. Patrick White with the Naples office of the law firm of Porter, Wright, Morris & Arthur.

Congratulations, Mr. Strain, on returning to the board and chairmanship.

CHAIRMAN STRAIN: Thank you.

MR. WHITE: Many of you are new faces to me, but I'm certainly not a new face to the county. And hopefully, as we go through things today, I'll be able to adjust what you have in your packets to address the

concerns that I think have been raised so far by the applicants and, in fact, Commissioner Keene, with respect to your question specifically.

We have a modified proposal, so we'll get to all of that.

But let me first tell you that in terms of who we have present from the team I've worked with, we have the president of the association, Lyn Hunerberg with us today. We have board member Tom Graham. We have two other committee members, Bob Ochs, Jim Johannsen, who participated in this process, and I believe they all intend to make remarks, as well as the property manager that the association has, Joan Ritchey.

Last, but not least, we've also retained the expert planning services of Laura DeJohn and the Johnson Engineering firm, and she has previously testified as an expert, and I'm assuming that her testimony today would be accepted as same as an expert in comprehensive planning and zoning matters.

With those, kind of, housekeeping issues addressed, I'd like to start with some context. You saw in your Planning Commission packets there was a cover letter provided to Ms. Gundlach from Laura indicating that the proposals we were making in strikethrough/underline were anticipated to be a preliminary, if you will, proposal, and that they were subject to further discussions with the applicant and their agents. And as you've heard from Mr. Yovanovich and Mr. Arnold, those discussions have taken place.

We had some challenges in the process. But suffice it to say that we believe that we're making a series of reasonable compromises given that our clients started from a perspective with respect to this PUD amendment that there would be no uses other than medical uses on the properties east of Goodlette-Frank. That was a promise made to them in informal meetings. It's, obviously, not binding, per se, but it just is offered to the record to explain why it is that some of their expectations and the position they took initially being adverse to these three new uses was so strenuous.

Based on the conversations we've had and the proposal that most recently is being made, we are in a place where those uses would be acceptable with certain locational requirements as to the hotel/motel use, limitations on height, both zoned and actual, as well as certain setback modifications.

I know that there was some confusion in Rich and Wayne's mind about what those were. I know it prompted a question from Ms. Keene. The bottom line is, from our perspective, we don't need to discuss those. We believe that the proposal we're making is the position certainly at this point we're willing to bind ourselves to in terms of what we think is fair and reasonable.

So as to those setbacks, I would simply comment that the prior standard we had proposed was prior to the point where our research indicated that there's a long-range-plan proposal to expand the right-of-way cross-section for Goodlette-Frank and to accommodate and adjust for that and allow for what may be a taking that would move, effectively, the roadway closer to the actual structures. We stuck with the three-to-one as opposed to two-to-one above 50 feet.

The other thing to appreciate is that in this process there have been, obviously, a variety of opinions expressed. Working with a collegial board and membership organization, you from time to time will have those kind of things come up.

So to the extent that there may have been other comments made, I would simply indicate to you that our proposal today is what it is that we think can be substantiated by the association and something that they would put their name on in writing.

As to the various issues of consistency, we understand that the staff's perspective is one where the only thing that needs to be otherwise determined to fall under Policy 5.1E would be with respect to the hotel and motel.

We still have concerns notwithstanding the most recent information about the utilities update in terms of what the staff report itself actually says. Our goal today is to make sure that we have the record before you that substantiates factual findings that you're required to make as well as to support the recommendation.

So we're not here trying to, if you will, knit-pick any aspect of either the applicant's or the staff's materials or presentations. We're simply trying to make sure that, like the discussion the chair had about that use I won't mention -- that the record's complete.

That said, we start from the place where 5.1E and 5.1B do have some relevance in the sense that

these started out as industrially zoned lands. They had a maximum of 50-foot height. We're at a point now where consistency issues -- consistency issues, we're seeing an applicant requesting, effectively, a 50 percent increase in what they would be able to construct as gross square footage.

If you look to the consistency memo provided by the comprehensive planning staff, there are two things that I think are worthy of comment. One is that their first paragraph ends with a statement that there were no increases to the stated caps in the prior PUD, 06-50, as to the square footages, the gross square footages.

In fact, as you've heard today, there are additions to those square footages. So I'm not sure that it impacts the outcome in the analysis or the conclusion reached, but certainly it should be pointed out that it isn't, in terms of an observation, one that seems to be consistent with the most recent version of the proposal.

Second, there are comments with respect to the request about the floor area ratio deviation suggesting that there were none requested. In fact, obviously, you've hear, and we've just talked, there's a request to move it from 0.45 to 0.6 for the group housing. So I just enumerate those for the purposes of the record, as I said.

The, roughly, 29 or so acres that we think are available here, the primary thrust of the residents' concerns flow from what are legitimate public health and general welfare concerns. Aesthetics, visual impact, those are not only real world, but they are regulatory concerns as well.

And in that sense, I just point you to what the urban residential designation says. I'll ask Laura to comment more about it. But the bottom line is is that it comes down to the suitability of the area to the type and pattern of development proposed.

Similarly, with respect to the difference between the theoreticals of what the Collier's Reserve, for lack of a better name, the Tract 22 PUD allows, much of what our comparative analysis was based upon is the built environment, because that's what your analyses and some of your findings require you to do. It doesn't allow you, if you will, the opportunity to say, well, gee, you know, theoretically, someone could come in, raise those buildings on the diagonally imposed corner, and go ahead and construct an 80-foot medical building.

This PUD originates at a point in time where I think it's fair to say the public participation process, the notice process, were nowhere near as vibrant, sophisticated, and accepted as the standard is today.

So perhaps there's some chance that someone may attempt to do that, either on the medical component on the southeast corner of the Collier's PUD, diagonally opposed from this site, or they may choose to do it within the activity center that is at the corner of -- excuse me -- Immokalee and 41. Who knows?

Our analysis was based upon what is built. And in that regard, the Naples Daily News may have had a, you know, over 50, two-to-one ratio, but if you look at where their actual constructed building is, it is substantially further back.

So we're attempting to bring to the record an analysis that shows what is suitable and appropriate based upon what's in the corridor today. Because everybody says that, you know, zoning cases don't establish precedence. Each one's evaluated on its own. But every time you come into a zoning case, what everybody talks about are what are the other things that are out there and what were the prior precedence. So we think it's relevant and something that should be discussed.

I'd point out one other thing that I believe -- in reviewing the materials, I thought it was a requirement at this point that there be a master entity provision for the PUD monitoring. I don't recall seeing it in the underlying strikethrough.

I'd ask the staff and the applicant to take a look at that, and they may desire to add it in. I think it's something that's now intended under the provisions in LDC Chapter 10 to be required.

There was a lot of discussion in the applicant's presentation about the hotel height. I'm to remind this commission that those height requests are applicable to all of the buildings for all three of the uses and, hence, why, across the board, notwithstanding what the locational requirement and the discussion we had about the hotel being in the IC piece east of Goodlette-Frank, we understand that those other uses could be constructed not only on the easterly portion but could be redeveloped and constructed in the westerly portions.

Because as to the business district and the IC district, these regulations are applicable, effectively, to

all and why it is that we believe that those are the appropriate standards as to setback.

As to Mr. Strain's observation, which we shared, about the provision pertaining to the 40 percent commercial maximum, that's on, as noted, Page 2-15, and it's under a section entitled "General permitted uses." It does not pertain, as does the similar provision that staff mentioned, to just a limitation of the percentage of accessory to principal uses. It is an outright limit, and we believe that in order for the record to be complete and the analysis you're going to be asked to consider and base your findings on, that that information is essential. So we leave to your discretion the degree to which that is something that you feel you need to have in rendering your recommendation today.

I'll kind of go back to the beginning and then wrap up as to consistency. Under 5.1E, there's essentially a two-part test. And if you can get over the first part of the hurdle and reach the conclusion that industrial's the most intense use in our hierarchical euclidian zoning that we use, then -- as to the 50-foot height issue and now going up to 75, then the second part the test pertains to, effectively, a comparative analysis of the Category A public facilities.

We know, based on the utility analysis that we were just provided, that they've readjusted the count. Mr. Weeks has been kind enough to point out that, as to the bed count relative to the hotel/motel, that hasn't changed. And at this point I don't think we want to make further comment about it.

But I would note that as to the other Category A public facilities, the staff report expressly states -- and we cannot find anything in the record otherwise -- that there would be an increase as to the parks and rec element and component.

So we would hope that in order to reach a determination of consistency, even if it's only to the hotel/motel in that use in this project, that at some point we have something in the record that demonstrates how it is that a comparative analysis that reached a conclusion that there was an increase in this particular Category A public facility is supposed to be dealt with, because the materials that we've been provided based on our requests, I don't have anything other than what's, essentially, in the statement of compliance from the old PUD ordinance, 06-50.

And that is, in and of itself, pretty much a bare and bald conclusion of compliance without any real substantive analysis or findings.

And just to touch upon the FAR, I don't want to make a big deal out of this, but to the extent that there has been a comment put on by staff today about the justification, what was in the record before was simply a statement, effectively, that it's justified because everyone else has been asking for it and they got it.

So I'm glad to hear that, you know, we're doing a little bit more in terms of this project to assure that the need is there to justify the deviation request.

But I agree with the good commissioner that, you know, if a deviation can be analogized in some ways to a variance, that one of the tests, obviously, for a variance is does it makes more sense to just go rewrite the rules rather than ask for the deviation.

But I understand staff's comment from Ray that there's been some direction from the Planning Commission, and I hope we could just get to the place where, soon, it's resolved both as to group housing and other types of floor area ratios.

At this point I'm prepared to turn over our presentation to Ms. DeJohn to touch upon some of the finer points that we would comment on about the strikethroughs that we think still should remain, as well as the other aspects of the PUD.

And, in particular, I'll end with the rather sensitive subject of the process that the county's used with respect to that use I won't mention and point out that we continue to believe that since this is kind of a heritage PUD, one that was prior to the case I'd mentioned recently, Gulf Coast American Blinds where there was an official interpretation and appeal, and my belief was that, as the then county attorney, the minimum you would be able to do is an official interpretation for something like that.

I believe that the further recommendation that flowed from that case was that, as to any PUD amendments coming forward, given the potential for the lack of adequate procedural due process and notice that we feel may have occurred in this case, that it makes more sense in this PUD to strike it, and in the future, this and all other PUDs, I would argue, ought to come forward with at least an official interpretation request, if not an actual PUD amendment.

And with that, unless there are some questions from commissioners, I'd be happy to either take a break or turn --

CHAIRMAN STRAIN: Well, depending on if there's any questions, we probably will take a break. Are there any questions?

(No response.)

CHAIRMAN STRAIN: Well, I have a clarification.

MR. WHITE: Sure.

CHAIRMAN STRAIN: The issue of the expansion of Goodlette Road came up in my discussion with the residents when I met with them. After that I got ahold of transportation and I confirmed through transportation that the right-of-way will not be expanded, doesn't need to be expanded; they have all they need there already.

So the concern that drove you to require a setback at that location may be then considered in regards to the fact that transportation is not going to be needing additional right-of-way there.

MR. WHITE: I believe that's helpful information and --

CHAIRMAN STRAIN: Reed Jarvi's here. If he disagrees with me, come on up. You gave me the information. But he looks like he agrees with me.

MR. WHITE: I've never known Reed to disagree with you, Mr. Strain.

CHAIRMAN STRAIN: Well, I do get things wrong.

COMMISSIONER EBERT: You're in trouble.

CHAIRMAN STRAIN: I want to make sure that I was, you know, restating it correctly.

COMMISSIONER EBERT: Can I ask Reed?

CHAIRMAN STRAIN: Go ahead.

COMMISSIONER EBERT: Reed?

CHAIRMAN STRAIN: Oh, no. We'll get to that later.

COMMISSIONER EBERT: Okay. I wanted to talk to Reed.

CHAIRMAN STRAIN: Let's just finish with Patrick.

COMMISSIONER EBERT: Okay.

CHAIRMAN STRAIN: Okay. With that, we will come back in -- let's come back in 15 minutes, for -- let's see, 40 -- let's come back at 10 minutes to three.

(A brief recess was had.)

CHAIRMAN STRAIN: Okay. If everyone will please take their seats, we can resume the meeting.

We left off with the public discussion. And since there are some experts for the public's position, we are accommodating more time for them. Hopefully that -- not everybody will think they are going to be afforded the same amount of time.

We don't try to stick to a time limit. We just ask that you try not to be redundant. We're here to listen to the public, but at the same time, we've got to get done today, too. So please keep that in mind as we go on with the speakers today.

Okay, Laura.

MS. DeJOHN: Thank you. Laura DeJohn, principal planner with Johnson Engineering, here today on behalf of Collier's Reserve Association.

Really the reason I'm here and what I'll be addressing is the points relevant to review criteria that you must look at for PUD rezones. Specifically, I'm going to speak to Criteria 1 for a PUD rezone, which states the suitability of the area for the type and pattern of development proposed in relation to the physical characteristics of the land, surrounding areas, traffic and access, drainage, sewer, water, and other utilities.

I'm going to speak to Criteria 4 for a PUD rezone. That's the internal and external compatibility of proposed uses which conditions may include restrictions on location of improvements, restrictions on design and buffering and screening requirements.

And, finally, Criteria 2 of rezone findings, and that is that the Planning Commission must be taking into account and fully considering the existing land use pattern.

The information I'm presenting is the basis for the neighborhood's concerns, and their concerns are about suitability of the area for the type of development proposed and the external compatibility of the

proposed uses.

This will also be the basis for the conditions on location, design, buffering, and screening that the neighbors propose. They're different than the ones that were in the back of your packet, and I'll spell them out clearly and concisely as soon as I go through the justification for them.

An assessment of existing conditions and surrounding neighborhood character needs to take into account the variety of existing uses, building types, and land use characteristics to ensure that the proposed PUD amendment is suitable and compatible and that existing land use patterns have been properly studied and considered according to the LDC requirements.

The primary guide in determining development patterns and the type of -- and scale of development appropriate for a given area begins with the Growth Management Plan. I'm going to put on the overhead the Future Land Use mapping for this area.

I have a piece of paper that doesn't quite fit on the visualizer. But what we have to show is the Immokalee Road corridor starting at U.S. 41 on the west all the way to I-75 on the east just to give a sense of what we could consider the neighborhood. It's a few miles of Immokalee Road.

To -- the westernmost intersection at U.S. 41 is an activity center. There's another activity center, per the Future Land Use Map, at the intersection of Immokalee Road and Airport Road, which you can see kind of as the dumbbells on the visualizer.

I just want to read into the record that a mixed-use activity center is a concept designed to concentrate almost all new commercial zoning in locations where traffic impacts can be readily accommodated and to avoid strip and disorganized patterns of commercial development and to create focal points within the community.

Allowable land uses in the mixed-use activity centers include the full array of commercial uses, residential uses, institutional uses, hotel/motel uses, community facilities, and other land uses as generally allowed in the urban designation.

I'm bringing this to your attention to justify why you heard earlier that there are some more intense, some 80-foot-tall buildings allowed at the corner of Immokalee Road and U.S. 41 within a designated activity center.

The applicant's request is for Creekside Commerce Park, which is not in an activity center. It's in the urban residential land use district. There's also a prior industrial zoning that's been deemed consistent and, thereby, there are additional uses allowed on this site, but it still falls within and is surrounded by urban residential land use categories, and those activity centers are much more further apart from this --

(The power went out.)

MR. WHITE: I've never heard a presenter have that impact.

CHAIRMAN STRAIN: We're off record, so let's just stop for a few minutes, and I'll try to find out what's going on. Maybe KD knows. Let's just break here for a bit.

(A brief recess was had.)

CHAIRMAN STRAIN: Are we back to normal, or at least whatever normal is?

MS. DeJOHN: I think so. Can you hear me?

CHAIRMAN STRAIN: Yeah. We're fine now. Thank you. Let's go back on record.

MS. DeJOHN: There are a few exhibits I had loaded on the computer. That's going to take a minute to get back up, so excuse me if I get crossways with my exhibits.

So we'll move on beyond the Future Land Use Map noting that urban residential is the category for this area. It's the category for the Collier's Reserve Association where they live and what they consider to be their neighborhood.

To further define the context of the area, we inventoried the development parameters for the developments in the project vicinity, all of which are PUDs. That was part of your packet. And I think it's something Wayne Arnold was referring to, and we talked about what the parameters are for a development in the surrounding PUDs.

Many of the PUDs, precisely six of them, including Creekside, up until this zoning action, stick to height limits of 50 feet, 45 feet, 40 feet, in that range. Several of the PUDs also utilize the sliding scale of setbacks that increase as building heights increase so that buildings are further back from the street.

We've provided a photo exhibit of how the buildings appear along about a one-and-a-half mile stretch of Immokalee Road within this neighborhood. We wanted to capture the context and scale characteristics that should be taken into account.

You could see from the photos that were in your packet landscaping and setbacks are generally provided in this area in excess of code minimum requirements or in excess of the PUD standard, creating a more spacious feeling along the corridor.

We agree that there are certain buildings taller than 40-, 50-foot height range. The hospital is allowed at 100 feet. That is kind of a single-purpose building that's been granted 100 feet due to the nature of it.

The Naples Daily News facility is kind of a special-function building that's been granted a 75-foot maximum height due to the function of it. And we don't believe that's a precedent to have 75- and 85-foot buildings proliferate along the whole corridor.

The height and width ratio diagram that was mentioned earlier -- I am pretty excited that I was able to introduce something new to Wayne and Rich. It is a method used in planning I think you can find in many urban planning principle, kind of, manuals and even ITE -- Institute of Traffic Engineers uses the method -- to measure the relationship of buildings along a corridor.

And we did that measurement. It's a height-to-width ratio, different than the height-to-width ratio that we talk about when we talk wedding cake setbacks on a building, because those are always measured from the property line and drawn back into the property.

This is a measure of how a person experiences the corridor and how the buildings across the street from each other relate, because we do have that interesting element that's somewhat common on this corridor of having the setbacks apply to buildings like Naples Daily News and the hospital. So we captured in a mathematical way how that relationship works.

And our findings were that the primary range of height-to-width ratios along that area was between one-to-six, one-to-12, very suburban in nature. I mean, an urban area would be closer to one-to-two or one-to-three, and we're characterized in this area by a much broader, much more sprawling, kind of, built environment.

That was the reason for a recommendation initially of a one-to-six relationship that would be applied to the setbacks of buildings on the proposed development site.

Since the original recommendations were put in your packet, there have been the new discussions between Collier's Reserve and the applicant. It seems like we're close but not quite have a cigar here because the Collier's Reserve recommendation -- and I'll spell it out at this time -- is to, like Rich stated, have the hotel/motel -- only one hotel/motel pushed back into the IC district as he described. Then all the other buildings that are currently going to be allowed at 75-foot zoned height, 85-foot actual height per the PUD request, the recommendation from Collier's Reserve is to have a minimum setback from Immokalee Road or Goodlette Road of 50 feet.

The proposal is for a sliding scale of the setback of one foot -- of 3 feet for every one foot of building height. And when I say sliding scale, that's the difference from a wedding cake scenario where the building is held at 50 feet, and then portions of the building that are taller than 50 get set back in a wedding cake appearance.

The recommendation today is for the entire setback to move as the building gets taller, and that's been done on some other PUDs in the area so that a 50-foot building is 50 feet back. A 60-foot building would be 80 feet back based on a three-to-one ratio of anything over 50 feet in height. A 70-foot building would be 110 feet back. Those are just examples.

Collier's Reserve recommends a maximum building height of 60 foot zoned and 70 foot actual.

And now I can get to one more drawing. I don't know how to get there.

The recommendation is to have a buffering condition similar to the one that's been approved for Naples Daily News. I have the diagram that was approved as part of the Naples Daily News PUD that just -- thank you -- illustrates some enhanced buffering and signage placement that the Collier's Reserve folks have found acceptable and would hope would apply to this site as well.

That concludes my remarks. Unless you have questions for me, I'll move on to the next speaker.

CHAIRMAN STRAIN: No. I probably -- we may have some questions. Anybody have any questions of Laura? Phil?

COMMISSIONER BROUGHAM: Just a question, not on what you said, Laura, but what -- I'm a little confused as to where the offer versus the petitioner is at this point. I mean, we're going to listen to more speakers, but maybe that can be cleared up later. But where do you -- what's your perception of where your offer stands? Let me ask you that.

MS. DeJOHN: My perception is that we've come to terms on the hotel/motel being in the IC designated area east of Goodlette Road.

As far as setbacks from Immokalee and Goodlette Road, we are different. For all other buildings -- that's what I'm going to refer to, all other buildings -- Rich seemed to be proposing -- and I actually don't want to try to paraphrase him. I'll tell you what we're proposing.

CHAIRMAN STRAIN: Could you approach it slightly differently, because I am absolutely losing track --

COMMISSIONER BROUGHAM: I am, too.

CHAIRMAN STRAIN: -- between the applicant's statements and yours so far as to where anybody is on this thing. I've been trying to write it down, but every time I hear another discussion, it changes. So I'm all -- I've got everything all scratched up. Let's start --

COMMISSIONER BROUGHAM: I'm glad I'm not the only one.

CHAIRMAN STRAIN: And I'll do this separately with the applicant after all the discussion is done. What is -- there's three parcels. There's a corner B parcel, there's a B parcel to the east, and there's an IC parcel to the south.

MS. DeJOHN: Correct.

CHAIRMAN STRAIN: There's two frontages, Goodlette Road and Immokalee Road.

Let's start with the B parcel on the corner. What height issue -- where are you guys at with your height concern? What maximum height are you looking at?

MS. DeJOHN: Sixty zoned and 70 actual.

CHAIRMAN STRAIN: And what kind of setback are you looking at?

MS. DeJOHN: A 50-foot setback, and then any portion of a building height that is over 50 feet tall, which you could get to a 60-foot or a 70-foot-tall building, three-to-one ratio.

CHAIRMAN STRAIN: Okay. What about the B parcel to the east?

MS. DeJOHN: Same.

CHAIRMAN STRAIN: Okay. What about the IC parcel to the south?

MS. DeJOHN: Same.

CHAIRMAN STRAIN: What about the setback to Goodlette Road?

MS. DeJOHN: Same as --

CHAIRMAN STRAIN: Okay. Now, the previous statement, I think, by Patrick was that the setback to Goodlette Road increasing from two-to-one to three-to-one was because you believed that you needed additional right-of-way for Goodlette Road.

Transportation has acknowledged that's not going to happen. They've provided me with documentation that says it's not going to happen. Do you have a concern about keeping that three-to-one then?

MR. WHITE: If I may respond to that, Mr. Chairman.

CHAIRMAN STRAIN: Yeah.

MR. WHITE: We've had a -- I've had a primary conversation with the two authorized representatives of the association here today. I've indicated to Mr. Yovanovich that we would be willing to engage in a further dialogue about that particular development standard. And it may be that we would be able to come to some agreeable standard with respect to the right-of-way setback for Goodlette-Frank. I don't know.

CHAIRMAN STRAIN: Well, if you were at two-to-one before because -- before, and then you found out there might be an expansion of Goodlette Road that required you to go to three-to-one and now you don't have to, what's wrong with -- what's your concern about going back to the two-to-one?

MR. WHITE: It's the actual absolute difference, I think -- I believe theirs applies in a wedding cake fashion, and ours is to have the entirety of the facade moved back with the setback.

CHAIRMAN STRAIN: Okay. Thank you.

MR. YOVANOVICH: So I can maybe use some --

CHAIRMAN STRAIN: I'd rather you wait until your rebuttal to ask --

MR. YOVANOVICH: I'm not trying to rebut. I'm trying to understand the proposal so while the speakers are speaking, maybe I can get some analysis done in the interim.

CHAIRMAN STRAIN: Okay. Fair enough.

MR. YOVANOVICH: If that's okay.

CHAIRMAN STRAIN: Yeah, go ahead.

MR. YOVANOVICH: I'm trying to understand the latest proposal from a setback standpoint.

Previously it was a wedding cake proposal, correct, which meant that 50 feet back for the first 50 feet in height, and we would step the building -- the portion of the building that was greater than 50 feet back at a three-to-one. That's the proposal as I understood it.

What I'm hearing now is no more wedding cake. You're going to take the total height of whatever the building is; in their example, a 60-foot-high building will now have the entirety of the building set back 80 feet. There will no longer be -- for the first 50 foot in height, a 50-foot setback. Is that the latest proposal?

MR. WHITE: That is not only the latest; that has been the continuing position since Tuesday.

MR. YOVANOVICH: Well, then that's okay. Since Tuesday after we met or before we met?

CHAIRMAN STRAIN: Richard, that's fine. Thank you.

And you're -- Mr. White, I think Laura was up making her presentations. Did you have anything you wanted to add right now? All we needed was some clarification on that one issue. I think we got it.

Laura, did you have any -- I think we understand. And let me reiterate. You guys are at a non-stepped-back setback based on 50 feet minimum plus a three-to-one for every -- I mean, three-to-one -- basically, 3 feet back for every foot in height after that.

MS. DeJOHN: (Nods head.)

CHAIRMAN STRAIN: Okay. And you're still -- your heights are 60 feet with 70 actual for all three parcels, including the hotel?

MR. ARNOLD: Yes.

MS. DeJOHN: Yes.

CHAIRMAN STRAIN: Okay. And then you also suggested the Naples Daily News buffer?

MS. DeJOHN: (Nods head.)

CHAIRMAN STRAIN: Okay. Because then when we're all done, I want to run all this by the applicant and see where we're standing.

MS. DeJOHN: Okay.

CHAIRMAN STRAIN: With that in mind, we'll go to the next speaker. And we have two podiums, whichever's easiest for you.

Ray?

MR. BELLOWS: Tom Graham.

MR. GRAHAM: Mr. Sachs is going to go first.

MR. WHITE: If I may, Mr. Chairman, just to complete what it is that our proposal is, we're, as I mentioned in my presentation, also asking that the provisions dealing with the comparable use analysis be stricken and that --

CHAIRMAN STRAIN: I'm familiar with your document, Patrick.

MR. WHITE: Okay.

CHAIRMAN STRAIN: Again, you did say that. I remember you saying it.

MR. WHITE: And just one last comment. In 3.4(C)(1), I believe the applicant acknowledged that because that doesn't front on Immokalee as to the IC portion, that the words "Immokalee Road" could be stricken.

CHAIRMAN STRAIN: Okay. Next speaker, please.

MR. BELLOWS: Edward Sachs, Jr.

MR. SACHS: I'm Edward Sachs, Jr. I go by Ted. I live at 1315 Remington Way. I'm a director along with another director, Michel Potier, of Remington Reserve, which is a condominium association. And so I'm speaking as an adjoining property owner and also in support of Collier Reserve's good work, because we're reciprocal neighbors and also have, in many cases, reciprocal social arrangements. So it is very much one community, at least as I see it, and I think as many of the residents at Remington see it.

A point of detail that's incorrect, the closest Collier's Reserve PUD building is actually our clubhouse pool house, which is about 500 feet from Block 1, I guess you're calling it, so that's a substantial misstatement of fact.

We are part of the Collier's Reserve PUD, Remington. And we were developed with quite a bit of buffering. There's a preserve. We are protected property. And it strikes me that the petitioner is sort of moving against a decision that was made in developing that side of Immokalee Road, the west end toward 41.

It looks as if there's been a lot of planning and coordination, I mean, just judging by the fact that we are a protected preserve.

In another life, I was a plan commissioner once, and I think you've got the world's worst job. I came away with a personal conclusion that the most -- the source of the worst decisions I ever made as a plan commissioner were situations surrounding elevation, actually roof line. How high is a roof line? And -- that and the cushioning of side yards, front yards, which in this case I guess would be a setback issue, to me were the greatest zoning issues that I ever confronted or failed at confronting properly.

So I guess the legacy I'm leaving to me as a homeowner is don't ever let it happen again. Because you've made mistakes as a plan commissioner, if you ever have a chance to bang your fist down on a table, do it. And in this capacity I'm doing it as a homeowner.

Oh, Remington has 48 units in 12 buildings, so it's a fairly substantial community.

I think that -- oh, there was one other question. Is there any consideration made for environmental permitting because of the odor from the sewage treatment plant? I mean, we're talking about assisted living. We're talking about healthcare facilities.

What other requirements, if any, given the environmental issues?

CHAIRMAN STRAIN: Whatever they are, they're probably outside the purview of this board at this time, so we're --

MR. SACHS: Those are the only comments that I have.

CHAIRMAN STRAIN: Thank you, sir.

MR. SACHS: Thank you.

CHAIRMAN STRAIN: Okay. Next speaker. Nancy or Ray, whoever's calling them.

MR. GRAHAM: Mr. Johannsen.

CHAIRMAN STRAIN: Well, I mean, that's Ray, would you -- okay. I've got to ask the audience to let the staff do their job.

MR. BELLOWS: I have Hank Shafer, but --

CHAIRMAN STRAIN: Mr. Johannsen wants to go next. I don't care about the order. But, Ray, you'll have to call them out.

MR. BELLOWS: Come on up.

MR. JOHANNSEN: Sorry. We're just trying to be efficient. And I don't think all of us are going to speak, but we wanted to make sure we had enough time.

For the record, my name is Jim Johannsen. I live at 813 Barcarmil Way in Collier's Reserve. I've been a full-time year-round resident for 10 years, and I continue to work. I took a day off of work to be here today.

This is one of the last major intersections with undeveloped property in the county. Many of us moved here versus other parts of Florida because of not wanting -- because of what the City of Naples and what much of the county of Collier County has been careful about for a long time, and that's a heritage that we've got a responsibility for, which is why Collier's Reserve is so involved in the broader area surrounding that part of the county.

So we want to -- we want to make sure it's done right and not with excessive heights and with significant setbacks.

It was my understanding at the November 19th meeting that we had that there could be four buildings put on this property where the amendment is four actual height buildings of 85 feet.

If that's the case, it's immediately across from the hospital that's 120 feet. That would be five buildings at one intersection that are greater than 50 percent beyond what the zoning originally was, all of which would have been granted, including the additional sixth one, which is the Naples Daily News, all of which would have happened in the last eight years. I think the Naples Daily News was six years ago.

So when does this exception become the rule? You're going to come down that street and you're going to have four 85-foot buildings, essentially, close to a corner.

What we said to Rich at our November 19th meeting, and he repeatedly said -- it's recorded, by the way -- that objections we had were height, height, and height, and obviously related to setbacks. We never objected to the senior living. We never objected to anything that was related to medical care. And we continue to be that way, but we've always objected against the height, and we've compromised on that.

As it relates to hotels, we look at what's the comparable setbacks for other hotels in the county. The Doubletree Inn, which is off of 41 -- I may be incorrect on this, but this is a layperson doing it on the Internet. But I think this is approximate. It's approximately 80 feet setback to the one-story restaurant, Charlie Chiang's, and about 150 feet to the motel, which is a three-story motel.

The Inn at Pelican Bay on Vanderbilt Beach Road is approximately 100 foot from Vanderbilt to the edge of the hotel but about 150 feet to the entrance and about 300 feet to the end.

The Doubletree is angled, as you know, sort of diagonally off of 41. The Inn at Pelican Bay, similarly, you know, has very little frontage to Vanderbilt because it's angled back. And that's important. You know, if you think about those two and you drive by them, you don't really know that they're necessarily there, which is also, by the way, good for the people who are -- the residents or the occupiers of the property.

What we don't want, and I'll say it, is the Fifth Third Bank building kind of situation where you have a huge mammoth building with very little setback and really no opportunity to have landscaping that gets -- you know, that protects the visibility of it.

That's the difference between Naples and Collier County and so many other counties in Florida that have ignored something. That's our issue.

I'd like to continue for a minute with just a few other motels. The Best Western on Pine Ridge actually has a 125-foot buffer, and I think it's about 160 feet to the building, about 200 feet to the entrance, about 350 feet to the end.

The Homewood Suites sits back -- on Pine Ridge sits back 250 feet with a single-story building in front. And the Inn at Naples, which I think is actually in the city, but if you think about it, it's right north of the Northern Trust bank building there, Park Shore, again, angles back so you don't see very much of it. But even that frontage is about 100 feet.

The Hilton's about 200 feet. The Staybridge is, you know, 150, 175 feet. So when we talk about 110 feet, that's less than what you're talking about at smaller hotels.

Height, height, and height, setback. Somebody's got to care to make sure that that's done right. If it was the Barron Collier Companies that were actually building and managing and owning and running the businesses there, it might be less of a concern. If they sell the property or give a 99-year lease to some outside organization, you know, who knows. This is our one chance to do it right, and we encourage you to do it right.

Just compare those visibilities with others. There are very few hotels of that size. Most of them are on the beach in a completely different zoning situation.

So we appreciate that consideration. For us it's always been height, height, height, setback, and buffering. We already have an area with the wastewater treatment plant; we have the recycle center there. You know, let's do something positive.

Thank you.

CHAIRMAN STRAIN: Thank you. Next speaker, please. Ray? Why don't you call two so that the next person behind those, that they're ready to go.

MR. BELLOWS: Hank Shafer will be followed by Judy Shafer.

CHAIRMAN STRAIN: They're --

MR. BELLOWS: Let's go to the other pile then. Roger Williams?

CHAIRMAN STRAIN: No.

MR. BELLOWS: Bill Evan?

MR. EVAN: I'll pass.

MR. BELLOWS: Ron Nasser?

MR. NASSER: I pass.

MR. BELLOWS: Tucker Tyler?

MR. TYLER: Pass.

MR. BELLOWS: Howard Fernkel (phonetic)?

MR. FERNKEL: Pass.

MR. BELLOWS: Maybe we should say, who wants to speak?

CHAIRMAN STRAIN: I don't mind, yeah. Whoever wants to speak, let's just come up one at a time, because this is going to get confusing. I probably assume you-all put your name in to reserve time for others. That's -- the next board up operates like that; we don't. So you don't have to worry about that.

UNIDENTIFIED SPEAKER: We didn't know that.

CHAIRMAN STRAIN: I know.

UNIDENTIFIED SPEAKER: We don't want to be back.

MR. GRAHAM: Mr. Chairman, nice to see you again, fellow commissioners. My name is Tom Graham, and I am on the board of Collier's Reserve Association. I also live in Collier's Reserve.

So what we're here today to do is to seek governmental integrity. That's what we're asking our government to do for the residents that reside in Collier's Reserve, because at one time everybody that came into that area was pretty much concerned about what was going to be the development in the surrounding area, as most people are when they come into a new development.

And in this particular case, we were pretty much assured that what was going to be done would be restaurants, small retail, and medical office buildings, and that's what everybody was relied upon as to their purchase of a residence in Collier's Reserve.

There's been some mention about a PUD with an 80-foot zoned permission of a building, but at that time it was also inquired with the representatives of the Collier company, and they were told that -- they were told that they would not be building an 80-foot building, that they would build a bank building and allied office buildings right there. And so it was considered to be safe, and everybody felt relief that we were not going to be having a huge building at the corner of the -- of the area.

In a similar -- in this particular case, back when this PUD was initially established, everyone could rely on the fact that the government at that time had set forth a 50-foot variance -- a 50-foot height, actual height on buildings, and they required a 50-foot setback on buildings. And so that was all the reliance until this new attempt to change the zoning and change the requirements of height in this particular area.

And if you will note also that what we have been informed and what we have been advised is that -- and I don't have -- Laura, I need the map showing what area we're talking about. This here. That's what I want right there.

CHAIRMAN STRAIN: You have to use that walk-around mike if you're not going to be in front of the one.

MR. GRAHAM: Can you zoom in this area right there. Thank you.

Now, that is the area we're talking about. And the petitioner has sought the ability to put four 80-foot buildings in this area. That's what they're asking for. And in an attempt to compromise with respect to the petitioner, we offered what we feel was a reasonable compromise that we would agree to a 60-foot zoned, which would allow up, from what I understand from the standpoint of the county, has actually another 10 feet for -- if they want to put a track or some sort of other amenities on top that are not site -- that they could go to 70 feet.

So we attempted to compromise, because if you look at this on the canyon effect, that that's going to occur -- to have four 85-foot building in that small area is going to be unsightly. And that's one of the things we've got to consider about. What is the consistency, what is the compatibility, and what is the complimentary association of that area with the rest of Immokalee Road and Goodlette-Frank Road?

The staff report clearly states that a hotel is not authorized. And then at that point in time there is a rationalization -- and I'm sorry that I'm unable to talk to you about FLUE, GMP, LDC, SIC codes, FAR, and the LDC. I'm not an expert in these areas, and so I don't understand some of these.

What I'm trying to do is just to be simple and practical as to what the effect of this is going to be, because the -- the staff itself has stated that a hotel is not authorized, is not a permitted use, neither were the other permitted -- the other requests that are being asked for, group housing and intermediate care facilities. These were not allowed in the initial PUD. So these are three significant changes to what was believed to be authorized by the initial PUD is what's being changed by the petitioner here today.

And so we're concerned about the height, seriously, with what the look -- what it's going to look like for people coming on Immokalee Road and Goodlette-Frank, to see these huge, what they want, 80-foot buildings sitting on this small piece of property.

Now, the county also, staff said -- and I haven't brought up the traffic report. They did a traffic analysis. You probably have it in your packet. The traffic analysis was done in June. We know how many people are here in June. But that was when the traffic analysis was done. And I guess there is some sort of -- it appears some programs that they can use to try to determine if there's going to be an impact.

And guess what? The county said -- let me see if I can find it -- that the impact is going to be significant, but it was their conclusion, although the traffic was going to be significant, that it wasn't going to be adverse.

Now, this doesn't seem to make sense, that -- if they come in there and they do a traffic count in June, the staff says that it's going to be a significant impact, and then make the conclusion that it's not adverse.

When you start getting the hotel with people coming in and coming out, and you have people coming in to these new facilities, this ALF, you're going to have extensive traffic that's going to be on this particular area.

Now, they say initially the 30-year report was saying they were going to six-lane Goodlette-Frank, but I guess now they say they have the necessary right-of-way, and they don't have to get additional land for that increase in lanes that are going to be in this particular area, which is going to impact considerably what the traffic is going to be in this area.

You also said -- I don't understand anything about the FAR and the public utilities and stuff. But it just -- common sense sort of tells you that if you're in there with the four buildings that are 50 feet high and not 85 foot high, that if you are going to have less use of the public facilities, you're going to have less use of parks and recreational land.

So in this particular case, especially with the hotel, I cannot believe that it's not going to impact on the public utilities to have all of this, to have these medical-type facilities that require lots of care and lots of laundry and things of that nature. Think of the laundry they have in a hotel. I mean -- so, anyway, I just say, when you look at this, you just make -- you wonder from the common-sense application as to how these conclusions are made.

And I guess one of the last things is when the staff was talking about the height, they say the previous PUD allowed a building height of 50 feet for buildings within one-quarter mile of the hospital property. That's the conditional use. Anything that was health related, according to the PUD, within one-quarter mile of the hospital was limited to 50 feet, as was the other portions of the project.

And so, the staff says, however, the healthcare facility allows a building height to 100 feet. That's the hospital. Well, all of us know that a hospital has great public interest and great public use.

So at the time when the hospital was being proposed, Collier's Reserve was 100 percent behind the hospital. We -- in fact, there is a park in the hospital that's named after Collier's Reserve because of our efforts and contributions made.

So -- but if you look at the North Collier Hospital and see how far it's back off to the back -- set back from the road, you actually don't even notice it, because they did a nice job of landscaping.

And so -- but the staff says, well, because that's 100 feet and because the Naples Daily News, which is way to the west of where we are, and -- although it was zoned for 78 feet, we understand -- 75 feet, excuse me, we understand it was only built to 68 feet. And there was a definite, what people call this, wedding, I guess, cake-type building on that.

So, again, with the extensive landscaping that was done with respect to that building, you hardly notice it. But when you have four buildings -- now, see, there's one hospital, one Naples Daily News separated by a long distance, not four 85-foot buildings, which they're requesting in this particular area -- piece of property.

So, you know -- and that's what I'm asking is the commission give support. There's an integrity of government that we can rely that when these matters were done, we don't have exceptions. It appears that what happens, that this is now -- it's not a rule. This is exceptions always to the rule. And what happens is that pretty soon the county, if it goes that way, we're just not going to have the same aesthetic value that we're so well known for.

And I think -- oh, the hotels. They're asking for 240 rooms. For your information -- and that's what I'm saying, if their limit is to a 60-foot hotel building -- the courtyard at Marriott has 102 rooms. The Doubletree, which is just north of us on 41, has 101 rooms. The Hilton -- everybody knows the Hilton, has all kind of conferences and everything at the Hilton hotel and Tamiami Trail -- has 199 rooms. The Staybridge hotel right adjacent to has 122 rooms. Now, can you imagine that what they're asking for is 240 rooms, how huge that is going to be and the impact it's going to have on public utilities, traffic, and everything else?

That's why when we were talking with the petitioner and their attorney we felt that, all right, we know that there has to be an economic return to the landowner. You know, that's accepted, so -- but not to the extent where we're going to have, you know, these huge tall buildings in this small area that they're not going to be attractive when you consider the effect it's going to have on -- the visual effect. So that's why we thought it was 60 feet.

The assisted living facility, they want 400 rooms in those, you know. So -- and we wonder, you know, whether or not the economic on that -- if it's approved, this view on Orangetree (sic), new facility down there that they haven't sold is going to have 600 rooms. We just wonder what -- the need for it.

But if it's a facility that's limited to 60 feet, we also are of the opinion that it's going to be economically feasible for the petitioner.

So I think that --

UNIDENTIFIED SPEAKER: Traffic lights?

MR. GRAHAM: I think that's it. Thank you very much.

CHAIRMAN STRAIN: Are there any questions?

(No response.)

CHAIRMAN STRAIN: Okay. A couple corrections I'd like to make. The reference to significant and adverse. It means it has an impact greater than 2 percent of the capacity of the road, but it's not adverse because it doesn't make the road fail. We have certain levels of service that cause roads to fail, and their impacts are within -- well within that range, so that's why they use the word "adverse."

MR. GRAHAM: Okay.

CHAIRMAN STRAIN: June date, it's purely a calculation that can be done 365 days a year. It's not a measurement of that date. What it does, it's a peak period formula that applies across the board. They just happened to do the report in June. It doesn't mean they were out measuring and counting traffic in June. That doesn't work that way.

The fact that the issues -- staff report says certain things were not -- are not permissible or not permitted, that's why we're here today is because they weren't in the old PUD, so they have to come in and renew them and get them permissible in the new application.

So that kind of -- I just wanted to clarify some of the points you made.

MR. GRAHAM: No, I thank you, Mr. Commissioner, for the input, what adverse -- what adverse means. And I did mention that I thought there was some formula that's used in the traffic. I did not know. I'm not aware of it. I just say it was done in June, and I guess there's some extrapolation that can be done.

But yeah -- but as to the significant change in the use being required of the facility and the height and the setbacks that we have proposed, I think, are rather reasonable.

CHAIRMAN STRAIN: Thank you.

MR. GRAHAM: Thank you, sir.

CHAIRMAN STRAIN: Next speaker -- or does anybody else wish to speak?

UNIDENTIFIED SPEAKER: No.

CHAIRMAN STRAIN: We have -- customarily, the applicant has time for rebuttal, so we will start that with, it looks like, Rich Yovanovich.

And, Rich, in your rebuttal one of the points that was brought up as well as the -- I'm sure you're going to address the heights and the setbacks -- is the buffer at the Naples Daily News. I hadn't heard about that till now. So your thoughts on that as well.

MR. YOVANOVICH: For the record, Rich Yovanovich.

What I want to start with is we're not talking about speculative zoning today, unlike a lot of times you'll have a vacant piece of property without any history. We're talking about an existing business park that, I think we all can agree, has developed quite nicely with the existing buffer requirements that exist along Immokalee Road.

To the extent that for years -- and I drive that road pretty much every day -- I didn't even realize the gas station was there because of the standard buffering provisions that exist in the PUD.

So we believe that the existing landscape buffering provisions that exist should continue to carry through along the entirety of Immokalee Road and should remain in effect.

The Naples Daily News was a specific one-use landscaping plan that I don't believe reflects what the PUD requires. I can be corrected on that. But what we're talking about is our own -- the existing buffer requirements, the streetscape that's quite nice along Immokalee Road, and we've all been able to see it.

You have a developer who has been, obviously, a long-standing developer in Collier County. They've been here long before probably any of us in this room and will be here long after any of us in this room, and I believe they guard their reputation and do a first-class high-quality project in everything they do. And if you look at all the projects they have done in Collier County, I don't think anybody could point to one that is not a first-rate quality project, and this one being one of them.

We will -- what we're saying -- so we believe the landscaping standards should remain as they are in the PUD as they currently exist.

To clarify a few things, we are perfectly fine with the new uses being located only on the eastern portion of the PUD, east of Goodlette-Frank Road. So if there's any confusion related to somehow we could put a 75-foot-tall hotel on the western portion of the property, let's just eliminate that and just say these three new uses are limited to the eastern portion of this property.

We are fine with a limitation on just one hotel. Today is the first time the number of units came up. Didn't come up the other night. Height came up. And as they've said, height, height, height. We've always know that height's an issue.

So we haven't -- that's not a surprise to us other than my side of the table the other night always understood the three-to-one proposal to be a wedding cake proposal for both Goodlette-Frank and Immokalee Road. We never understood the proposal to be, if the building was greater than 50 feet, the entirety of the building moved back. We believed it was 50 feet for the first 50 feet in height, and it would be wedding cake that we're all familiar with in Collier County. Sometimes it's okay. Sometimes it's not okay. But we thought in this particular case the proposal was for a wedding-cake setback and we're prepared -- and our proposal was reflective of that wedding cake that we understood.

We think what we've done regarding the hotel location and moving it off of the western B parcel addressed the concern of a big hotel right there at the intersection and, likewise, we believe that the increased setbacks of a two-to-one that's approved in the Naples Daily News would be appropriate from a setback requirement.

I tongue-in-cheek said to them when we met the other night, my opening salvo was I don't want anything more than you have, and they have 80 feet with a 25-foot setback from Immokalee Road. That's the approved zoning in their project. The hospital has -- and they're not a specialty use. They're not a hospital. They're not the Naples Daily News. They're just regular old office. Now, we ask for that in our request. We asked for lower height and a better setback.

We, too, believe we have worked in the spirit of compromise to try to resolve our differences regarding height. We did it in a way of limiting location as well as increasing the setback from what we had

originally proposed for the hotel as well as increasing the setback for the senior housing and intermediate care facilities.

Your staff has recommended approval of what we originally proposed. I would assume they would be okay with the increases in setbacks that we have offered up today.

We have met the criteria in your Comprehensive Plan as well as your Land Development Code in order for your staff to recommend approval. Mr. Arnold is an expert in the field, and his firm and Mr. Trebilcock have provided all the backup to support those conclusions.

And I would keep -- I would like you to keep in mind that it is the intention of the property owner to partner with an operator for the hotel. They're already doing that in Collier County with LaPlaya. So you know there is a standard of excellence associated with all the projects that Barron Collier Companies has ever done and will continue to do in the future.

I understand the community's concerns. We've tried to address those concerns in a responsive and responsible manner, and we would hope that the Planning Commission could make a recommendation of approval to the Board of County Commissioners based upon the revisions that we've talked about today.

And with that, I don't think I have anything else to add. And then we'll -- happy to answer any questions that you may have.

CHAIRMAN STRAIN: Okay. Phil?

COMMISSIONER BROUGHAM: I just want to be clear, Rich, as to what, specifically, you have on the table now.

MR. YOVANOVICH: I will. Let's do this. Someone stole our -- or borrowed our zoning map, master plan. Do we know where that went? Maybe we took it.

For the -- what we're proposing is that the hotel -- any portion of the hotel that is 75 feet zoned height will be limited to the IC piece. We have agreed that no portion of the hotel will be closer than 500 feet from --

COMMISSIONER BROUGHAM: You're fading in and out.

MR. YOVANOVICH: -- Immokalee Road.

COMMISSIONER BROUGHAM: You've got to almost eat that thing.

COMMISSIONER KLEIN: Tilt it.

MR. YOVANOVICH: We said no portion of the hotel will be closer than 500 feet from Immokalee Road, meaning that if we can't fit everything, including the meeting spaces and other accessory uses in the hotel, we'll cap those at the 50 feet. So they may cross over this IC line onto the -- this B parcel.

Setback-wise, we would be -- from Goodlette-Frank Road, for the first 50 feet of the building height we would be set back 50 feet, and for each foot that we went above 50 feet, we would go back another foot. So if we went to 75 feet total, that portion of the building that's 75 feet would be set back 75 feet from the Goodlette-Frank Road --

CHAIRMAN STRAIN: No.

MR. YOVANOVICH: -- right-of-way, that portion of the building. The 50-foot building would be 50 foot back. We'd stair-step back.

CHAIRMAN STRAIN: You'd stair-step back on the two-to-one. So if you go up 25 feet, you'd be another 50 feet, right?

MR. YOVANOVICH: We had proposed one-to-one. We'd proposed one-to-one, remember?

CHAIRMAN STRAIN: Oh, okay.

MR. YOVANOVICH: They had proposed two-to-one.

CHAIRMAN STRAIN: Right. Well, I thought they proposed three-to-one, but that --

MR. YOVANOVICH: Well -- and then it became a three-to-one. But now we're at three-to-one.

CHAIRMAN STRAIN: Okay.

MR. YOVANOVICH: We're at three-to-one.

COMMISSIONER BROUGHAM: For what?

MR. ARNOLD: One to one.

MR. YOVANOVICH: That's what they're proposing. We're at one-to-one. Do you want my proposal?

CHAIRMAN STRAIN: I was just confused. There's been too many numbers.

MR. YOVANOVICH: We're proposing the wedding cake that originally was there. For the first 50 feet, that portion of the building would be set back 50 feet. For the portion of the building that gets to 75 feet, it would be set back 75 feet. We'd go one-to-one for each foot above 50 feet, okay?

COMMISSIONER BROUGHAM: Okay.

MR. YOVANOVICH: Okay. For buildings that are constructed on the B piece, these two B pieces, we would also do the wedding cake. For the first 50 feet, we would be set back 50 feet, which is what we have today, and then for any foot above the 50 feet, we would go back 2 feet.

So if I do the math correctly, the 75-foot portion of the building would be set back 100 feet. So -- and that is what the Naples Daily News standard is.

And then we would limit it to one hotel, and then we would -- I think that -- and then none of the uses would be on -- all of the -- three of the new uses would be east of Goodlette-Frank Road. I think that's everything.

CHAIRMAN STRAIN: I've got to ask the audience not to comment.

MR. YOVANOVICH: There was a question -- I think Mr. White said there's not a -- there's some confusion or some of these uses could find their way onto the west side, and there was a question as to whether we could go higher on the west side. We just wanted to make sure it was clear that none of these new uses would be on the western portion of this project.

CHAIRMAN STRAIN: Okay. It's not written that way right now, but you're willing to write it that way?

MR. YOVANOVICH: Yeah. We're trying to clear that up. I think that's everything --

CHAIRMAN STRAIN: Okay.

MR. YOVANOVICH: -- subject to being corrected.

CHAIRMAN STRAIN: Are there any comments or questions from the Planning Commission of the applicant or staff for that matter, anybody?

COMMISSIONER BROUGHAM: I'm finished.

CHAIRMAN STRAIN: Okay.

COMMISSIONER BROUGHAM: Bill has one.

COMMISSIONER VONIER: Ray or Rich, in the interest of consistency -- I'm only talking about the ALF, now, the assisted living. It's my understanding that we have approved heights over 50 feet for ALF buildings in the unincorporated area. True or false? Ray?

MR. YOVANOVICH: True.

MR. BELLOWS: For the record, Ray Bellows. I don't recall specific building heights in ALFs. I don't recall.

CHAIRMAN STRAIN: I can tell you from experience, yes, there are some over 50 feet.

COMMISSIONER VONIER: Are they over 75?

CHAIRMAN STRAIN: I know they're over 50. I don't know the heights. I know of a couple that are over 50 feet, yes.

COMMISSIONER VONIER: I think it behooves this board to approve any ALF that is equal -- at least equal to what we have approved before in height. I'd like to know what that is.

MR. YOVANOVICH: I -- I'm fairly certain that we've gone to 75 feet for ALFs. I don't think -- I don't recall being involved in one -- and I'm talking zoned height so we're not being confused. I don't remember being involved in any projects going above 75 feet within the last few years.

CHAIRMAN STRAIN: I was thinking of that big project -- I thought you brought it in down in Orange Blossom -- as one, and there's one in Pelican Bay that is substantial.

MR. YOVANOVICH: Yeah, there are -- in Pelican --

COMMISSIONER VONIER: There's one outside of Eagle Creek.

CHAIRMAN STRAIN: Oh, for what --

MR. YOVANOVICH: And, you know, that's a good one. Hacienda Lakes, which recently went through -- and it's a related issue regarding height. And I know, Mr. Vonier, you asked me earlier about hotels. That one we did, you know, within the last year, and on that one the hotel height was 75 feet zoned,

85 feet actual, ironically enough.

COMMISSIONER VONIER: And where was that?

MR. YOVANOVICH: The Hacienda Lakes project, the big DRI that we just did within the last year or so.

CHAIRMAN STRAIN: Okay. Are there any other questions, Bill? Did you have any more you want to ask?

COMMISSIONER VONIER: Not right now.

CHAIRMAN STRAIN: Well, I mean, we're at the end, so -- do you have any, Diane? Go ahead.

COMMISSIONER EBERT: Yes, I do. And it's Glenview that is quite high. I cannot tell you exactly how high it is. But I originally talked to Rich. He's been having a lot of problems with zoning lately to his ALFs.

I spoke to him and I always said, Rich, you want everybody 60 and above to move into these ALFs. And he said, no, 70. And I said, well, in less than three months you want me to move into one? And he didn't know quite what to say, but he has been -- he's always -- there are so many ALFs that we have out there, not that this -- this is a good place for one. It's a good place for a hotel.

And you're right, there are other ones around. I would believe that the Colliers talked to the people in Collier's Reserve, I hope, and that you're kind of all together on this.

And when this originally was done, the last one was 2006, is that correct, this 50 --

MR. YOVANOVICH: That was when -- that was for the -- related to the Naples Daily News project.

COMMISSIONER EBERT: Okay. So this one was done prior to that. And that was special enough. But is the zoning on this -- there are no homes east; is that correct? There are no homes from Collier's Reserve east of Goodlette, or -- that's correct -- east of Goodlette-Frank; they're all west.

CHAIRMAN STRAIN: Correct.

MR. YOVANOVICH: Correct. Collier's Reserve is -- you can see it, starts --

CHAIRMAN STRAIN: Upper left-hand corner.

MR. YOVANOVICH: Here's -- I think this is Remington; is that right? Which is within the PUD. It's not within the gates of Collier's Reserve. But it starts basically from right around here all the way -- the PUD goes all the way to U.S. 41, because it includes the shopping -- the Riverchase Shopping Center as well as commercial or the office out front here. But all of the single-family and multifamily homes related to the Collier's Reserve development are on the west side of Goodlette-Frank Road and not in front of what we're proposing.

Basically, the hospital is what's in front of us to the north, and the county's sewer treatment plant is to the south, and more medical is over to the east.

CHAIRMAN STRAIN: Do you have anything else, Diane?

COMMISSIONER EBERT: No, not right now.

CHAIRMAN STRAIN: Anybody have anything else of Richard?

(No response.)

CHAIRMAN STRAIN: Okay. Is there any other comments of staff?

(No response.)

CHAIRMAN STRAIN: If none, we will close the public hearing, and we'll have discussion before a motion.

Is there discussion from the Planning Commission side? Does anybody have anything they want to throw into the mix?

(No response.)

CHAIRMAN STRAIN: Well, I made a list of things that have been, I guess, acknowledged, and I made some notes based on all the many, many numbers that were thrown back and forth today more so so I could stop being so confused on them, but I'm not sure the numbers will make everybody happy either way. So I'm going to just take a shot at it, and we'll see where it goes for discussion.

First of all, the limit -- you're going to limit the -- limit your property to just one hotel. Number two, the new standards and the uses only apply east of Goodlette Road. Number three, you're going to delete

4.3.8.1. Number four, there will be no structural part of a hotel within 500 feet of Immokalee Road, and the only portion that may move onto parcel B would be limited to 50 feet in height.

The corner, which I think is the most significant piece of property in this whole thing, I agree with the residents it should be limited to 60 feet in height. The east B, which is the one next to it, that's a little further away, I am very comfortable with 65 feet on that. And, by the way, these are all zoned, and it would be 10 more feet for actual; 65 feet for that one.

On the IC parcel, I have to agree that 75 feet, especially since it's tucked away down closer to the sewer plant and off of Immokalee Road, I think that is doable.

The setbacks, along Immokalee Road a minimum of 50 feet but stepped, but instead of a one-to-one, the step would be a three-to-one, and that would be along both frontages on Immokalee Road.

Frontages on Goodlette Road, a minimum of 50 feet, but it will be stepped again. Above 50 feet it's two-to-one. And I think that's as best of a compromise as I can come up with in listening to everything I've heard today. I'm sure trying to seek the thoughts of this Planning Commission on that.

Paul?

COMMISSIONER MIDNEY: I like those numbers. That seems like it's reasonable.

CHAIRMAN STRAIN: Okay. Anybody else have any other suggestions?

COMMISSIONER HOMIAK: So Immokalee Road, that's -- so they could have a 50-foot building. They could start with --

CHAIRMAN STRAIN: They could have a 60-foot building, but at 50 feet back, if they go up to 60 feet, the top 10 feet was another 30-foot back. So the height wouldn't be -- it would reduce the canyon impact that I've heard as a concern. It would be an architectural improvement than a block, and it would force some architectural improvements. So I think there's some pluses there.

I do agree it's a good location for a hotel having had to use that facility at the hospital myself. So I know that when people come into town, it would be a handy place for people to use, and plus you've got needs within the PUD with some of Arthrex, probably, or convention or who knows what.

So, anyway, that's what was the reasoning behind my issue. And I know that not everybody may like it, but that's the best I could come up with today. If there's --

COMMISSIONER HOMIAK: The actual height is 70 feet.

CHAIRMAN STRAIN: Ten feet above each one of the -- 60 would be 70, 65 would be 75, and 75 would be 85.

COMMISSIONER HOMIAK: Eighty-five down below.

CHAIRMAN STRAIN: Right. Now, as it stands right now, the 50 feet has no cap on actual. So the actual could be 15, 10, 25 feet if they could come up with something they wanted on top of a building. Top Hat. I was thinking of the car dealership ahead of us, so --

COMMISSIONER EBERT: A-frame.

CHAIRMAN STRAIN: Anyway, Rich, I don't -- I really don't know what that does for you, but that's --

MR. YOVANOVICH: Can I ask for a clarification on the height --

CHAIRMAN STRAIN: Sure.

MR. YOVANOVICH: -- and the setbacks?

CHAIRMAN STRAIN: Yes.

MR. YOVANOVICH: I'm assuming the setbacks were being measured from the zoned height?

CHAIRMAN STRAIN: Yes. They always are.

MR. YOVANOVICH: I know. I just wanted to make sure that I understood it.

CHAIRMAN STRAIN: Yeah. No, they always are.

MR. YOVANOVICH: And the general public --

CHAIRMAN STRAIN: And I don't know of a time that we haven't done it that way.

Any other comments?

COMMISSIONER KLEIN: I'd second a motion.

CHAIRMAN STRAIN: Well, someone's got to make one.

COMMISSIONER BROUGHAM: I'll make a motion.

CHAIRMAN STRAIN: Mr. Brougham, you make a motion. Is it consistent with the --

COMMISSIONER BROUGHAM: That it include the stipulations that you listed.

CHAIRMAN STRAIN: Seconded by Barry?

COMMISSIONER KLEIN: (Raises hand.)

CHAIRMAN STRAIN: Any further discussion?

COMMISSIONER BROUGHAM: My motion is to approve.

CHAIRMAN STRAIN: I assume that, yeah. Motion made to approve by Commissioner Brougham, seconded by Commissioner Klein.

Discussion?

(No response.)

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

COMMISSIONER VONIER: Aye.

COMMISSIONER MIDNEY: Aye.

COMMISSIONER KEENE: Aye.

CHAIRMAN STRAIN: Aye.

COMMISSIONER HOMIAK: Aye.

COMMISSIONER EBERT: Aye.

COMMISSIONER KLEIN: Aye.

COMMISSIONER BROUGHAM: Aye.

CHAIRMAN STRAIN: Anybody opposed?

(No response.)

CHAIRMAN STRAIN: The motion carries 8-0.

I thank you all. We had a long day, and I appreciate your patience today. And we'll move on.

And with this, let's take a 10-minute break for the Planning Commission. We'll come back and try to wrap up at 10 after four.

(A brief recess was had.)

(Commissioner Midney has left for the remainder of the meeting.)

CHAIRMAN STRAIN: Thank you, Ray.

We're back from our break, and we're going to try to finish up as quickly as we possibly can. It's been a long day.

***And I had not been on this board when this issue of 10B first came up. And I looked at it, and I thought this is -- these were done in '04, '05, '06, '07. What in the world are we doing with them now?

MR. BELLOWS: For the record, Ray Bellows. We have been directed by the Board of County Commissioners to address what we call staff clarifications. These are memorandums generated by past zoning directors over the years that staff still utilizes and helps explain how certain code provisions -- or the intent of certain code provisions. They don't change the meaning. They're not stealth amendments or, as Brad used to say, the stealth code, but they are published online, and they could be viewed from our website.

But the Board of County Commissioners wanted us to go through them all, take out the ones that have been superseded by other code amendments or subsequent staff clarifications.

So part of the vetting process that we're doing now, getting rid of all the one that have been superseded or withdrawn, and then bring to the Planning Commission for your review and comment to see if you have questions concerning any of these staff clarifications, and then we will bring them to the board.

CHAIRMAN STRAIN: But, Ray, some of these are nine years old.

MR. BELLOWS: Yeah.

CHAIRMAN STRAIN: I would expect that when they were done, they were done for a purpose, which means after you got them done, somebody approved something that reacted to these.

Now, if we're here reviewing them after the fact, and we decide we don't like the way you wrote them, what do you plan to do, go out and tear everything down?

MR. BELLOWS: No. It would be an LDC amendment to change the code.

COMMISSIONER EBERT: To change these.

CHAIRMAN STRAIN: Well -- but I thought the process was that if you have a code that you have

to clarify like this, the next time the LDC amendment process comes through, these get caught up in the clarification.

MR. BELLOWS: Some have; some haven't. The main purpose is we have people who work the front desk, and they get asked a hundred questions, the phone calls come flying in. They're generally the newer staff, and they don't have the history. It's easier for them to be able to -- instead of tracking down me all the time, if they could look at a staff clarification book and find the answer themselves or help figure out the answer themselves in order to explain certain code provisions to the public. That's all this thing is for, to help explain how things work.

CHAIRMAN STRAIN: Okay. But we're going to have to -- if it goes into an LDC amendment, wouldn't that come before us for review --

MR. BELLOWS: Yeah.

CHAIRMAN STRAIN: -- and at that point we'd have them analyze it?

MR. BELLOWS: If a code provision was so poorly written, definitely it's an LDC amendment. But a lot of times it's not that it's poorly written; it's just to help explain things to a new staff person.

CHAIRMAN STRAIN: Okay. Then what is it that you're expecting from us for reaction to these six today, to -- that they should move forward into formalization in LDC amendment language, because then it gets reviewed by the various boards as it should? I mean, I'm not reviewing this as though it's LDC language. It isn't.

MR. BELLOWS: No. These are just basically staff memos that the Board of County Commissioners wanted us to bring to you and to them. This wasn't my idea.

CHAIRMAN STRAIN: Okay. But I'm just trying to understand what we're supposed to do, because it's so many years after the fact --

MR. BELLOWS: Yeah, but --

CHAIRMAN STRAIN: -- that it's just confusing.

COMMISSIONER EBERT: It is confusing.

MR. BELLOWS: They may be issued years ago in some cases, and some are recently done. We did one last year. I believe I wrote one last year. And Mr. Bosi may be at a point to write one soon. I don't know. Here's -- let Mike explain.

CHAIRMAN STRAIN: Hi, Mike.

MR. BOSI: Mike Bosi, interim planning director.

I think that's what it is is simply how those policies have been implemented or instructions on how to implement the policy. I think the action, if any, that we would seek from the Planning Commission would be, if you would identify one that would seem to need further modifications to the Land Development Code for clarity in terms of how it should be implemented, maybe you would make those suggestion to us.

If -- the review of them, basically, you agree with how the instructions are to how they should be implemented, then I think you'd just acknowledge that and accept how the implementation of that policy has been applied by county staff as provided by the clarification.

CHAIRMAN STRAIN: Well, I mean, from my perspective, any of these that had to be issued for a clarification, if it isn't clear, you should take a look at the LDC to make sure we can make it clearer.

And I didn't evaluate these as though they were LDC language, because they certainly are not.

MR. BOSI: Well, I mean -- and a good example is how you measure setbacks from a cul-de-sac utilizing the cord method. I mean, most people -- you might think it's clear. Most people would probably read that and say, you know what, I have no idea how to implement that policy.

CHAIRMAN STRAIN: Right.

MR. BOSI: And I don't think we could provide, you know, a Land Development Code regulation that would have that step-by-step process in it. Maybe we could. But I think that provides an example of how some policies do need a little bit more explanation for how they will be -- how they will be applied.

CHAIRMAN STRAIN: I appreciate you filling me in, because I had no idea. And this is the first time I've seen these after being gone, so I didn't know what they were here for. Does anybody --

COMMISSIONER EBERT: I have questions.

CHAIRMAN STRAIN: Go ahead, Diane.

COMMISSIONER EBERT: You won't believe this, Mark. Yesterday I called --
MR. BELLOWS: I answered.

COMMISSIONER EBERT: -- Ray Bellows, and he answered his phone.

CHAIRMAN STRAIN: Yeah, that is rare.

COMMISSIONER HOMIAK: That is rare. But I want to let you know I was looking at these. I spent so much time, believe it or not, on these, and there does need to be -- I would like to see them bring LDC Section 4.02.01.D back. I just -- it needs to be brought up to date. I spent so much time on it. And I talked to someone who has knowledge on this, and they said it's very confusing from a perspective.

And then the other one was Attachment 4, which is calculating for parking for clubhouses. And there are reasons for that. I spent a lot of time with Ray on that one also. They're talking about -- here's the problem with the clubhouse thing, and I'm seeing it with different ones. You know, there are -- a lot of them are in PUDs in closed -- in PUDs.

And all of a sudden, over the years now, the golf courses aren't going like they used to, so now they're trying to sell the golf courses, and they're bringing in the public to use these, so parking is different. And a lot of them rent out their clubhouse. And I even talked to Ray, and he said, yeah, it probably should be looked at again.

So these are a couple that I'm going -- I'd really like to see them rewritten. I don't know if you want to do it -- well, you know, because you're bringing new ones forward.

MR. BELLOWS: What I was thinking is, if you have questions about any of these staff interpretation or clarifications, that you think the -- that particular code provision needs work, I could schedule something with our LDC amendment coordinator to start logging it or flagging it, and we can work it out with staff, and then if it does turn out that we need to amend it, we will bring it forward.

COMMISSIONER EBERT: Okay, yeah. Seriously, I was spending a lot of time on this yesterday. And Ray was kind enough to call me back on them, a couple of them. He tried to get some clarifications, and then he sent me something. And that's my view on these; they do need some work.

CHAIRMAN STRAIN: Does the staff clarification have an appeal period like an OI or anything else?

MR. BELLOWS: These are just memorandums to staff from the director, so it's --

CHAIRMAN STRAIN: Informational only?

MR. BELLOWS: Yeah.

CHAIRMAN STRAIN: Okay. So -- the reason I'm asking is, maybe the way to approach these is that in the future as you issue these, you copy the Planning Commissioners with them so that at our next meeting when they're relevant, we can talk about them.

MR. BELLOWS: Yes, and that's a good point. I believe it was about a year ago, or maybe a little bit more, we had similar discussion; we put them on our website.

CHAIRMAN STRAIN: Right.

MR. BELLOWS: And I think because of that it triggered a comment from a county commissioner, which resulted in us trying to go through them, vet them, and then bring them through the Planning Commission back to the board.

And I think one of the benefits of doing this is to get input from the Planning Commission and, like Commissioner Ebert, if you think something is still not really well written or clear or the standards aren't appropriate anymore, we can start looking at that as a next round of our LDC amendments.

CHAIRMAN STRAIN: And the Board of County Commissioners actually was involved in this?

MR. BELLOWS: They asked for these things to be brought this way.

COMMISSIONER EBERT: So it must be confusing to them.

CHAIRMAN STRAIN: I don't know how they -- I don't know under what circumstances they were brought into it, so I don't know, so --

Anybody else have any questions, comments, or concerns?

COMMISSIONER HOMIAK: Did they bring them up so that they could use these?

CHAIRMAN STRAIN: They have been using them.

COMMISSIONER HOMIAK: I know, but for more than just on the website? I mean to --

CHAIRMAN STRAIN: Well, I think the recommendation, or what the staff's seeking, is to -- our recommendation on whether or not we should -- these should be moved into LDC amendments; is that a fair -- what is it you're looking for?

COMMISSIONER HOMIAK: We're just accepting these clarifications.

MR. BELLOWS: Well, the first step is to accept them if you think they are appropriate and pull them out if you think they're not appropriate or request that they -- that provision be amended in the Land Development Code. But if you don't think --

COMMISSIONER HOMIAK: We could accept them, but we want the -- some looked at.

MR. BELLOWS: Yes.

COMMISSIONER HOMIAK: So that they can be used as a clarification for anybody, any time?

MR. BELLOWS: Exactly.

COMMISSIONER HOMIAK: And they've been --

MR. BELLOWS: Not only does -- staff might have a question about a provision, the general public has questions about things, or the consultants. They have access to these clarifications online and, you know, it may help them if they search the web for their answers before they call staff for answers to their questions.

So the usefulness of the staff clarification was it helps people find things out on their own before they have to call the director.

CHAIRMAN STRAIN: Okay. Does anybody have any other questions? If not --

COMMISSIONER EBERT: No. My main was one -- there was only two in here where I really had -- and the first one was -- and it's only because I'm thinking of where I live. And at the time it -- you know, with this elevated pad for the air conditioners. And then I brought back to Ray -- I brought back, what about pool equipment. But here it says -- she said, I'm limiting the extent of the encroachment as long as it maintains the required separation distance between structures. Some structures are 5-foot setbacks, so you've got a 10-foot. But what can you put in that 10-foot, you know? And that was the confusing part because, all of a sudden -- I'm just thinking of people -- in fact, one is my house. And I have pool equipment here, and right across -- and we have 10 feet. I have pool equipment here, and the person across from us, the other homeowner -- which was four years later -- has theirs. You can't hardly get between it.

And we have a preserve behind us. And I called Ray and I says, do we have a fire problem, you know. So this is where, you're right, I would really like this --

CHAIRMAN STRAIN: Okay. I mean, it doesn't matter -- I don't have any issue with any of them, only because --

COMMISSIONER HOMIAK: You've been here so long.

CHAIRMAN STRAIN: -- I'm not in a position where I'm going to question them at this late date. It doesn't seem productive to me, but I don't mind reviewing them and saying, I'm fine with whatever staff feels that they want to do with them to move them on. That's up to staff. But I'm not -- if there's other concerns from this board, then you'll have to respond to those.

MR. BELLOWS: Yeah.

COMMISSIONER VONIER: That's what we did with the last batch.

CHAIRMAN STRAIN: What's that?

COMMISSIONER BROUGHAM: We basically accepted the fact these are internal staff memos of clarification to assist in people picking up in the phone and so forth. And if they have reviewed it and said, this is what we're instructing our people to tell people with questions, then it's good enough for us.

But I like Diane's suggestion, and maybe Mark's, that you know what all these are. You've got a list of all these clarifications. You also should be able to come back at some point and say, here's the staff clarifications that we would recommend that we go into that particular LDC section and make a change, and here's a schedule for that and so forth.

MR. BELLOWS: Definitely, we could do that. And, also, if the Planning Commission sees items that they would like to have clarified through an amendment process or -- you know, we'll be glad to do that. I think -- if Commissioner Ebert would like to address a couple of these things in more detail, she can come over, and we'll work on them with her.

CHAIRMAN STRAIN: Okay. Well, at this point, because of the dating of them, I think if we just

accept them for informational purposes --

MR. BELLOWS: Exactly.

CHAIRMAN STRAIN: -- then that's fine. That's as far as it will go. And Commissioner Ebert can talk with you further. And if you guys find some need to revise something, then you can bring it back forward.

MR. BELLOWS: Exactly.

CHAIRMAN STRAIN: So with that, is there a motion to --

COMMISSIONER BROUGHAM: Motion to accept.

CHAIRMAN STRAIN: -- accept these for informational purposes?

COMMISSIONER BROUGHAM: So moved.

COMMISSIONER VONIER: Second.

CHAIRMAN STRAIN: Commissioner Brougham, seconded by Mr. Vonier.

Discussion?

(No response.)

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

COMMISSIONER VONIER: Aye.

COMMISSIONER KEENE: Aye.

CHAIRMAN STRAIN: Aye.

COMMISSIONER HOMIAK: Aye.

COMMISSIONER EBERT: Aye.

COMMISSIONER KLEIN: Aye.

COMMISSIONER BROUGHAM: Aye.

CHAIRMAN STRAIN: Anybody opposed?

(No response.)

CHAIRMAN STRAIN: The motion carries 7-0. Let the record show, by the way, Mr. Midney left a little bit earlier.

***Next item up today is a status on the settlement agreement for the Husseys. They went into shade session. And I don't know who's going to talk to us from there.

David?

MR. WEEKS: David Weeks, again, the comprehensive planning section.

You were provided a memo. The only correction I would make is I notice the date says November 9, 2013, and that should be January.

Other than that, I think it speaks for itself. Basically, your job is put on hold. No review of the so-called GMP amendment component of the proposed settlement agreement. Likewise, the board has directed staff not to do any further review. And we're all in a holding pattern right now.

The -- it's gone back from -- it got pulled into a public venue. And my understanding is it is now back into the private confidentiality venue, which means it's strictly the County Attorney's Office and the plaintiffs. Staff's involvement is only to the extent that the County Attorney's Office contacts us and says, please look at this settlement agreement and provide your comments back to that office.

And that's where we're at.

CHAIRMAN STRAIN: Okay. David, thank you.

Anybody have any questions?

COMMISSIONER EBERT: Not on that particular issue.

CHAIRMAN STRAIN: Appreciate it. Thank you.

***Then the last item up for today is, Mr. Brougham, you added the delivery of meeting materials.

COMMISSIONER BROUGHAM: Yeah, just very briefly.

I think this jumped out at me over the last month because we haven't had a meeting. And I wasn't quite sure for a while how many items were going to be on our agenda for today. It looked, a month ago, like we were going to have five, six, seven, eight items.

And it occurred to me that in the past I've asked, and subsequently received, some materials from a petitioner with the caveat that the staff report -- staff analysis and staff report was not yet completed.

And I'm just wondering if there's a way that we could, as petition -- petitions become final, I'll put it in those words -- I don't know the exact legalities. But as the petitioner has advanced all the materials he's going to advance, and you're busily over here doing an analysis and so forth, is there any way that we could, perhaps, get that material earlier?

Because this wasn't too bad for today. There were only -- there were only two. But you take a Thursday to a Thursday, or a Friday to a Thursday, and considering that a lot of these attorneys want to meet with you or you meet with them, we've got time to drive out for staff and so forth, it becomes sometimes very cumbersome, you know, to absorb all this in one session.

I mean, I'd be willing to come up and pick up some of this stuff if it could be made available.

MR. BELLOWS: Yes, I think that's a great idea. And we've started to try to address that issue. I've put together a list of items scheduled for the next three or four Planning Commission meetings. These are required to be logged in a computer tracking database. When a planner gets to a point of finalizing their review and they project when that's going to be advertised and scheduled for a public hearing, we can generate a list. It gives the title of the petition. And we go out about six months on these or five months. So I can provide you with these on a weekly basis and --

COMMISSIONER BROUGHAM: Can we access that material?

MR. BELLOWS: We'll look at putting it online, too. If that's -- probably might be an easier way. At least you'll know what items are scheduled. And if you want to contact the planner, the planner's name is on there, and then they'll furnish you whatever information you want. So you can get months -- a head start on this.

CHAIRMAN STRAIN: The only thing I'd like to caution is that when I read the packet, because it's a -- I mean, because it's the packet, I go through and I annotate every single item in the packet. I follow it up, and I tab it, I'm ready for them.

If you start issuing multiple versions, then I'm really -- my -- personally, don't give them to me, because I cannot redo that -- I cannot re-read it to see what changes you made from the prior version or double-checking everything.

So for me that would be a real concern.

COMMISSIONER BROUGHAM: I would agree with that, Mark. And my -- I would not like to receive any packet of material from a petitioner that was subject to further revision by the petitioner. Having said that, acknowledging that the staff report may be absent from the material.

No, I don't want any material that's in flux, that's not been formally accepted, tied down.

COMMISSIONER VONIER: Classic example of that was Creekside, because Collier's contacted me many weeks ago, and I got the information early from the petitioner.

MR. BELLOWS: It all changed.

COMMISSIONER VONIER: Any similarity was purely coincidental. So your point is well taken.

CHAIRMAN STRAIN: Well, maybe, Phil, what we really need to do is give staff some time, whether it be a month or whatever, take a look at the process that leads us to our packet, provide us that process so we can sit down and understand it in a discussion with staff at a meeting that's not too jammed, like today, and kind of troubleshoot it with you. Say, okay, here's why you can only give it to us on a Thursday before the meeting.

Then if we see avenues in there that might work better for us, it will give us an opportunity to comment on them.

Right now I think it would be hard for any of us to sit down and know exactly what the process is until we get that packet.

COMMISSIONER BROUGHAM: No, that's fine. I'm just looking --

CHAIRMAN STRAIN: Would that work?

COMMISSIONER BROUGHAM: -- where appropriate, you know, that we can have early access to, if we want to. I don't think it should be imposed on any commissioner. But if we want early access to the material that's tied up --

CHAIRMAN STRAIN: Yep.

COMMISSIONER BROUGHAM: -- then at least provide it.

COMMISSIONER VONIER: But three working days for our packet is not enough.

COMMISSIONER EBERT: No.

CHAIRMAN STRAIN: Just so you know, by issuing the schedule like you're suggesting will help out a lot because I can get 75 percent of the material just from the name of the package, because it's just a matter of running your Laserfiche search through the Clerk's Office and doing title work on it. So I can do that.

COMMISSIONER EBERT: Mark?

CHAIRMAN STRAIN: No. I'm just saying.

COMMISSIONER EBERT: There are some of us that can't. And to be honest with you, I have talked to Ray about the same thing that Phil talked about. Have I not?

MR. BELLOWS: Yeah.

COMMISSIONER EBERT: And that's where he came up with this list. I said, can we see some of this -- what's coming up? And so he said, yes, they have been kind enough to do this. I said to Ray -- long time ago I said, Ray, do you mind if I come in? I like to read it, set it down, think about it, and go back to it. And you're right, when you get it on a Friday and you're meeting the following Thursday, that really isn't enough time.

And I'm thinking about the big cases. But if we can -- even if they're smaller. It was nice getting this and taking the time -- there was really only two of them plus that other little one that caused more confusion. It is better for me if we could have it, even if -- rather than on Friday, if we could get Tuesday, you know, Tuesday --

CHAIRMAN STRAIN: Well, why don't we let staff come back with a rundown, and then we'll troubleshoot it at a meeting when we have more time in the future.

MR. BELLOWS: Yeah. I'll discuss with Mike Bosi and the planners during our next meeting. We'll come up with some ideas and bring something back to you.

COMMISSIONER BROUGHAM: Appreciate it.

CHAIRMAN STRAIN: Thank you.

COMMISSIONER KEENE: Motion to adjourn.

CHAIRMAN STRAIN: Well, no. We've got public comments, and David's sitting there for some reason.

COMMISSIONER EBERT: My -- for me.

CHAIRMAN STRAIN: Okay. You've got public comments? Why didn't you put it under --

COMMISSIONER EBERT: No. It -- well, I have been asked -- and I know there's some -- they're in the growth management on the ALFs. We have a ton of them, and they are in PUDs -- most of them, I believe, are in PUDs, but maybe you can tell me, are there some just separate land?

I would like a map. I would like the ones that -- where the zoning and the growth management have them together -- have them together where it's been done already. If we could know where this is done, David.

And I know that Michele has done a fabulous job so far. If we can just kind of complete this.

MR. WEEKS: So you don't want me. You want Michele, actually?

COMMISSIONER EBERT: Yeah, but you're the head of the department, so if you could please let this person know. I mean, she has started out, because she just was doing one. And I had not seen -- other than what she had done, I had not seen something like that. And I have been asked that we just get all of them so the county knows and we know how many have been approved already.

CHAIRMAN STRAIN: David, if you were to put together a map of CCRCs or ALFs of that type of nature, both proposed and built, then that, I think, would satisfy the issue.

COMMISSIONER EBERT: That's exactly.

CHAIRMAN STRAIN: And I don't think there's any rush on that. But when staff gets -- all the extra time staff has, just fit that into one of your schedules.

MR. WEEKS: List of approved; that means the zoning has been approved, whether it's a conditional use, whether it's a PUD, whatever means.

CHAIRMAN STRAIN: Then be able to tell us which ones have been built.

January 17, 2013

MR. WEEKS: And built.

COMMISSIONER EBERT: And built.

CHAIRMAN STRAIN: And I think you can sort that with your PUD list that you've got, so that might help.

COMMISSIONER EBERT: Perfect. That's what we're looking for. Thank you.

CHAIRMAN STRAIN: Okay. Now, Melissa, did you have something?

COMMISSIONER KEENE: Motion to adjourn.

CHAIRMAN STRAIN: Oh, motion to adjourn. Seconded?

COMMISSIONER VONIER: Second.

CHAIRMAN STRAIN: All in favor?

COMMISSIONER VONIER: Aye.

COMMISSIONER KEENE: Aye.

CHAIRMAN STRAIN: Aye.

COMMISSIONER HOMIAK: Aye.

COMMISSIONER EBERT: Aye.


COMMISSIONER KLEIN: Aye.

COMMISSIONER BROUGHAM: Aye.

CHAIRMAN STRAIN: We're out of here.

There being no further business for the good of the County, the meeting was adjourned by order of the Chair at 4:35 p.m.

COLLIER COUNTY PLANNING COMMISSION


MARK STRAIN, CHAIRMAN

ATTEST
DWIGHT E. BROCK, CLERK

These minutes approved by the Board on 2-20th 13, as presented _____ or as corrected .

TRANSCRIPT PREPARED ON BEHALF OF
GREGORY COURT REPORTING SERVICES, INC.,
BY TERRI LEWIS, COURT REPORTER AND NOTARY PUBLIC.