

January 15, 2015

TRANSCRIPT OF THE MEETING OF THE  
COLLIER COUNTY PLANNING COMMISSION  
Naples, Florida, January 15, 2015

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 Strain  
Stan Chrzanowski  
Diane Ebert  
Karen Homiak  
Brian Doyle  
Charlette Roman

ALSO PRESENT:

Raymond V. Bellows, Planning Manager, Zoning  
Heidi Ashton-Cicko, County Attorney's Office  
Tom Eastman, School District Representative

PROCEEDINGS

CHAIRMAN STRAIN: Good morning, everyone. Welcome to the Thursday, January 15th meeting of the Collier County Planning Commission.

If everybody will please rise for Pledge of Allegiance.

(The Pledge of Allegiance was recited in unison.)

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

COMMISSIONER EBERT: Yes. Good morning.

Mr. Eastman?

MR. EASTMAN: Here.

COMMISSIONER EBERT: Mr. Chrzanowski?

COMMISSIONER CHRZANOWSKI: Here.

COMMISSIONER EBERT: Ms. Ebert's here.

Mr. Strain?

CHAIRMAN STRAIN: Here.

COMMISSIONER EBERT: Ms. Homiak?

COMMISSIONER HOMIAK: Here.

COMMISSIONER EBERT: Mr. Doyle?

COMMISSIONER DOYLE: Here.

COMMISSIONER EBERT: And Ms. Roman?

COMMISSIONER ROMAN: Here.

CHAIRMAN STRAIN: Okay. Addenda to the agenda. We have one consent item and three regular hearings, actually four, and then we have the Land Development Code amendment for automobile service stations last. There are no changes that I know of.

We'll move on to Planning Commission absences. The Floodplain Management Plan meeting that was -- you-all were called about for January 30th has been moved to our regular meeting on February 5th. So we no longer have to keep on our schedules the hearing date of January 30th, and it will be our regular hearing date on the February 5th date, which we didn't have any items on that day anyway, so that worked out pretty well.

Does anybody here know if they're not going to be here on February 5th?

(No response.)

CHAIRMAN STRAIN: Okay. We'll have a quorum.

COMMISSIONER CHRZANOWSKI: Can I ask a question?

CHAIRMAN STRAIN: Yes, sir.

COMMISSIONER CHRZANOWSKI: Heidi, I used to be on the Floodplain Management Planning Committee. Does that matter in this case?

MS. ASHTON-CICKO: No.

COMMISSIONER CHRZANOWSKI: Good.

CHAIRMAN STRAIN: Well, it may matter to us, but --

COMMISSIONER HOMIAK: Helpful.

CHAIRMAN STRAIN: I'm just teasing, Stan.

We look forward to your -- in fact, I have Jack McKenna coming to that meeting. He has a real good understanding of the applications of some of the issues of the floodplain management, and he'll be addressing us for 20 minutes or a little bit longer, and then questions. You'll find he's got a pretty good handle on it.

Okay. Approval of minutes. We have two sets of minutes. December 4, 2014, does anybody have any changes or recommendations of approval?

COMMISSIONER CHRZANOWSKI: I move to approve the minutes.

CHAIRMAN STRAIN: Second?

COMMISSIONER HOMIAK: Second.

CHAIRMAN STRAIN: Second by Karen.

Discussion?

(No response.)

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

COMMISSIONER CHRZANOWSKI: Aye.

COMMISSIONER EBERT: Aye.

CHAIRMAN STRAIN: Aye.

COMMISSIONER HOMIAK: Aye.

COMMISSIONER DOYLE: Aye.

COMMISSIONER ROMAN: Aye.

CHAIRMAN STRAIN: Anybody opposed?

(No response.)

CHAIRMAN STRAIN: Motion carries 6-0.

The second set is December 18th. Same actions.

COMMISSIONER CHRZANOWSKI: Move to approve the minutes.

CHAIRMAN STRAIN: Second?

COMMISSIONER HOMIAK: Second.

CHAIRMAN STRAIN: Second by Karen and Stan.

Discussion?

(No response.)

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

COMMISSIONER CHRZANOWSKI: Aye.

COMMISSIONER EBERT: Aye.

CHAIRMAN STRAIN: Aye.

COMMISSIONER HOMIAK: Aye.

COMMISSIONER DOYLE: Aye.

COMMISSIONER ROMAN: Aye.

CHAIRMAN STRAIN: Anybody opposed?

(No response.)

CHAIRMAN STRAIN: Motion carries 6-0. Thank you.

Ray, our BCC report?

MR. BELLOWS: Yes. The Board of County Commissioners, last Tuesday, heard and approved the Collier 36 rezone, and that was on the summary agenda subject to the Planning Commission recommendations.

CHAIRMAN STRAIN: Good. Thank you.

That takes us to the chairman's report. I don't have anything new to disclose today, so we'll move right into the consent agenda item.

\*\*\*We have one consent agenda. It's for confirmation that the intention of the Planning Commission's directions from the last board were consistently provided by staff in the rewrite. It's for PUDZ-PL20130001813, the Cocohatchee Bay RPUD.

All those wishing to -- well, there's no testimony. We're just going to have questions. So let's -- I don't -- Heidi, there's no swearing in needed for consent, is there?

MS. ASHTON-CICKO: No.

CHAIRMAN STRAIN: That's what I thought. I just wanted to double-check.

Okay. Did anybody from the Planning Commission have any -- find any things that were inconsistent with what we had directed at our last meeting?

COMMISSIONER EBERT: I have a question.

CHAIRMAN STRAIN: Sure.

COMMISSIONER EBERT: The numbers just --

COMMISSIONER ROMAN: The mike.

COMMISSIONER EBERT: The numbers didn't add up. It was 590, and you're adding 30? Wayne, you're adding 30?

CHAIRMAN STRAIN: It was 592. There was two on the other side. So there's 590 in the high-rises and two over on the residential side that already were existing. Is that where you're --

COMMISSIONER EBERT: No. Actually, in the thing -- well, here's what it is, the reason I ask, is I went back to the SDP, and in there it said a total of 590, but then you wanted to add 62 on the east side. So that came up to the 652, correct?

MR. ARNOLD: Correct.

COMMISSIONER EBERT: But in looking at the SDP from 2000, the four towers each have 120 units, and they're all three-bedroom and they have all the thing -- and the transitional tower, No. 5, had 102 units. So that came up to 582.

And then they had eight cabanas at 750 square feet each. So that brought it to the 590.

CHAIRMAN STRAIN: No. The cabanas aren't considered dwelling units, so you wouldn't count those. And the PUD doesn't have to match the SDPs. The PUD just -- the SDPs can't exceed the PUD.

See, most developments ask for more density than they actually build. That's how it happens. They come in with what they'd like to get, and then the SDPs, they build what the SDPs allow them to, but they could have more. So we establish then what's known as ghost density.

COMMISSIONER EBERT: Ghost density.

CHAIRMAN STRAIN: Pelican Bay's got I don't know hundreds of units of ghost density. Projects all over the county are that way.

COMMISSIONER EBERT: Where are these -- can I ask, where are these -- because in looking at the building plans, I did not see any guest suites in there. Are you planning, like, a little --

CHAIRMAN STRAIN: Well, that's not part of the correction. We -- okay. The guest suites they're asking for in the revision are in the document as they portrayed to us last time. Did you find any objection to the way they requested them now? I'm trying to understand what the issue is.

COMMISSIONER EBERT: You were helping them out a lot to come up with the number 30. But other than that --

CHAIRMAN STRAIN: I didn't want it open ended, so that's why we fixed it on a number.

COMMISSIONER EBERT: Okay. Because I was looking at the minutes, and I'm going, wow, it's a good thing Mark helped them.

So it's going to be the 30, then. And what side are you planning those on? Is there any plan at all for that?

MR. ARNOLD: For the record, I'm Wayne Arnold with Grady Minor.

And with reference to the guest suites, those are distinguished from cabanas. But the guest suites, we have added the restriction of 30 for the entire PUD. We made allowances for them to be in either the R1 tract, which is considered the high-rise tract, or the amenity and recreation tract.

COMMISSIONER EBERT: Okay.

MR. ARNOLD: Both on the west side of Vanderbilt Drive.

COMMISSIONER EBERT: Okay. Thank you.

MR. ARNOLD: Yes, ma'am.

CHAIRMAN STRAIN: And, Wayne, while you're up there, I found a clarification I believe is needed.

MR. ARNOLD: Okay.

CHAIRMAN STRAIN: In the references to the guest suites in your PUD -- and it occurs under the uses permitted in the R1 tract and again in the AR tract. It doesn't -- the intention was not that there's 30 in each. It's either one or the other or a mix, and that clarification needs to be shown. And if you believe it's clear, then point it out to me.

MR. ARNOLD: Well, I think the first reference is on Page 20 of 44 in the PUD document.

CHAIRMAN STRAIN: Right.

MR. ARNOLD: And this was with some wordsmithing with County Attorney's Office, but it added the reference to a maximum of 30 guest suites and then Heidi, I believe, suggested -- it says, "for the entire PUD," and then it goes on to further clarify that guest suites shall solely be used by guests of residents of the multifamily and single-family residences within the PUD.

CHAIRMAN STRAIN: Well, what I'm concerned about, the same language occurs in the AR.

MR. ARNOLD: Correct.

CHAIRMAN STRAIN: Okay. And I want to make sure from the County Attorney's Office then, since that language was worked out with them, that the 30 wasn't intended to be for the entire PUD for the high-rise within the high-rise sites, and then another 30 for the entire PUD could be used as guests suites on the AR tract. That's all I'm concerned about.

MR. ARNOLD: It's certainly our understanding it's a 30 maximum for the entire PUD.

CHAIRMAN STRAIN: Okay. As long as it's on record.

Are you comfortable with that?

MS. ASHTON-CICKO: That is my understanding as well.

CHAIRMAN STRAIN: Okay. And, Wayne, the only other thing I had to talk about is the detail on the utilities. I had sent this issue to utilities after I got your new detail, and your new detail was in Exhibit C, and it was numbered 14-1231. That was the new one that has come out as a result of your discussions with utilities.

Are you on that page? Because that wasn't one that was attached in our packet.

MR. ARNOLD: Okay. I'm looking at what's attached to the draft ordinance that is in your agenda packet.

CHAIRMAN STRAIN: Okay.

MR. ARNOLD: And it adds a clarifying note that says if county utility easements overlap public utility easements, a consent from the applicable regulated public utility provider shall be provided at the time of SDP or platting.

CHAIRMAN STRAIN: Can you put that on the overhead?

MR. ARNOLD: Sure.

CHAIRMAN STRAIN: I know the language is there, but the language -- there's language -- oh, Kris VanLengen's here, good.

COMMISSIONER HOMIAK: We have it here.

CHAIRMAN STRAIN: No, that's the wrong one. This is the right one.

Kris, could you put the right one on the overhead.

MR. VanLENGEN: Sure.

CHAIRMAN STRAIN: That one had a problem with it, and we had expressed a concern at the Planning Commission meeting, and the solution by the applicant was the notation down below. When I sent it to Kris, he offered a better solution that made it clearer, and it worked for all the parties.

MR. VanLENGEN: Kris VanLengen, public utilities.

Yes, I think this was the final iteration that we discussed and was approved by the parties. So I think it was just a mistake, a scrivener's error that the earlier version was included in the packet.

CHAIRMAN STRAIN: That's what I thought, too, and that's why it was brought up.

Wayne, do you have any concerns?

MR. ARNOLD: I don't think we have a concern with this. We did see this. I wasn't aware that this was the one that last was approved by our engineer, Jay Westendorf, and county utilities.

CHAIRMAN STRAIN: Yeah. I mean, it came from you guys, so that's why I thought you knew about it.

MR. ARNOLD: Well, I knew about it; I just didn't realize it was the last agreed-to version. So my apologies.

CHAIRMAN STRAIN: Okay. And those are the only clarifications or questions I had in relationship to our last direction. So the consent would need to be cleaned up basically by using this detail instead of the other detail.

Does anybody have any other questions or concerns? Okay.

MR. BELLOWS: Mr. Chairman?

CHAIRMAN STRAIN: Yes.

MR. BELLOWS: Since we do have a public comment speaker, and if they're not -- because of the rules of the consent agenda aren't allowed to speak on this item, can they speak at public comment at the end of the meeting?

CHAIRMAN STRAIN: Sure.

MR. BELLOWS: I think we need to amend our agenda to add that. It's inadvertently not on the agenda, public comment.

CHAIRMAN STRAIN: Okay. Well, we have a public comment time at the end of the meeting, and if anybody wants to talk, they're more than welcome to.

Okay. With that, is there a motion for consent subject to this clarification on the table that was just presented to us, or on the graphic?

COMMISSIONER HOMIAK: I make the motion.

CHAIRMAN STRAIN: Made by Karen. Second by?

MR. CHRZANOWSKI: Second.

CHAIRMAN STRAIN: Stan.

Discussion?

(No response.)

CHAIRMAN HENNING: All in favor -- go ahead.

COMMISSIONER EBERT: Okay. I won't be -- I didn't approve the first one. I won't be approving this one, just to let you know.

CHAIRMAN STRAIN: Okay. Then if you're not going to approve this one, your reason has to be what's wrong with this one that's misdirected from what we directed the first one, the majority directed. Consent is not a -- consent is to just simply acknowledge that the direction of the majority the first time is consistent with what's now in front of us.

COMMISSIONER EBERT: Okay.

CHAIRMAN STRAIN: Now, I know you disagree with the majority, but I've had that happen, too, but on consent we're analyzing a different thing. We're not analyzing the project.

COMMISSIONER EBERT: Okay. That's fine then.

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

COMMISSIONER CHRZANOWSKI: Aye.

COMMISSIONER EBERT: Aye.

CHAIRMAN STRAIN: Aye.

COMMISSIONER HOMIAK: Aye.

COMMISSIONER DOYLE: Aye.

COMMISSIONER ROMAN: Aye.

CHAIRMAN STRAIN: Anybody opposed?

(No response.)

CHAIRMAN STRAIN: Motion carries 6-0.

MR. ARNOLD: Thank you.

COMMISSIONER CHRZANOWSKI: Mark?

CHAIRMAN STRAIN: Yes, sir.

COMMISSIONER CHRZANOWSKI: If there's only one public comment and -- maybe you want to find out how long she's going to take to talk --

CHAIRMAN STRAIN: No.

COMMISSIONER CHRZANOWSKI: -- rather than go way to the end.

CHAIRMAN STRAIN: I closed the public hearing on this at the last meeting. I'm not reopening it.

COMMISSIONER CHRZANOWSKI: No. I wasn't talking about re-opening.

CHAIRMAN STRAIN: There's public comments.

COMMISSIONER CHRZANOWSKI: The item's approved.

CHAIRMAN STRAIN: Well, that's fine. But public comments isn't even on the agenda, and I've -- we've got people here waiting for the other issues. We'll go through the other issues.

COMMISSIONER CHRZANOWSKI: Got it.

CHAIRMAN STRAIN: \*\*\*Okay. The next item up is our regular agenda, advertised public hearing. It's 9A, CU-PL-20130002048.

All those wishing to testify on behalf of this item, please rise to be sworn in by the court reporter. And this is for the Briarwood Planned Unit Development, also known as the man caves.

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

CHAIRMAN STRAIN: Thank you.

Okay. Disclosures on the part of the Planning Commission?

COMMISSIONER CHRZANOWSKI: I haven't talked to anybody about this at all.

CHAIRMAN STRAIN: You haven't?

COMMISSIONER EBERT: No.

CHAIRMAN STRAIN: I've had numerous conversations with the applicant both at the preapp and as recently as this morning, and I've also reviewed all the files and records I could find on this as well as what man -- what is commonly referred to as man caves are on the Internet. It's basically a car collector's operation.

Go ahead. Karen?

COMMISSIONER HOMIAK: Nothing.

CHAIRMAN STRAIN: Brian?

COMMISSIONER DOYLE: No.

CHAIRMAN STRAIN: Charlette?

COMMISSIONER ROMAN: No contact.

CHAIRMAN STRAIN: Okay. Fred, it's all yours.

MR. HOOD: Mr. Chairman and Commissioners, good morning. For the record, Fred Hood with Davidson Engineering.

I'm here this morning representing the applicant, Premier Auto Suites of Naples, for a conditional use to permit a private luxury garage suites development.

The project is a 15.99-acre property located at the northeast corner of the intersection of Livingston and Radio Roads within the Briarwood PUD. Inside the Briarwood PUD, this property has been set aside for nonresidential uses and has a designation of community commercial.

The subject property is bordered on its northern and eastern boundaries by native preserve, residential, and water management tracts of the Briarwood PUD.

The purpose of this conditional use is to provide the applicant the ability to develop these luxury garage suites that I mentioned a bit ago.

The land use has been accepted by review staff as fitting into both the conditional uses in the existing PUD zoning that we were seeking today. Those uses are private clubs, commercial -- private clubs and commercial and/or private parking lots and garages. These two uses can be found in Section 6.2(C) of the PUD document.

As you have seen from the site plan in your packets and here on the screen, the applicant is seeking to construct individual upscale and privately owned garage suites and several buildings on the site.

There will be a total of 159 units for sale and nine buildings with an associated clubhouse/office building varying in size throughout the property.

These private garage suites will be offered for the purposes of individual owners to store and admire their vehicle collections, excuse me.

A common area with a clubhouse will be provided for the auto suites community near the Radio Road entrance. This amenity area and all areas -- all common areas within the project will be for the sole use of owners and their guests. The community, once constructed, will not be open to the public.

The maximum height permitted for the buildings on site is limited to 30 feet above finished grade. Where the project is adjacent to residential uses, we are proposing a 15-foot-wide landscape buffer with Type B plantings, which is required by the Land Development Code.

In the two NIMs that we've held, one in October of 2014 and one in December of 2014, and in separate conversations with staff, we were proposing to utilize the rear of Building No. 4 -- it's the most northern building along the residential tracts of Briarwood, Dover Park to be specific. We are proposing to use the rear of that building and additional security gates at its endpoints to act as the required wall that is needed between the residential properties to the north and our proposed noncommercial use -- nonresidential use, sorry.

The proposed required vegetation, as well as the separation provided by the water management areas

that ring the site on the northern eastern boundary, we feel is a solid alternative to providing that additional wall.

Along with the applicant, it is the opinion of several neighboring residents at the initial NIM that providing this wall in addition to our proposal would create a channeling effect between the two developments.

As I mentioned, we've made every attempt to address any security concerns by placing several gates and other distancing and buffering features of sufficient height where the building would leave a gap.

The project, when finished, will use an -- existing driveway points that are present on Livingston and Radio Roads. No new vehicular access points are being provided right now nor will they.

The traffic impact statement, which was prepared by our traffic engineering consultant, shows a total of 89 p.m. peak hours proposed -- p.m. peak-hour trips proposed. That's based on the luxury condo land use, which we are amending that in the SDP that will be following this application to show we're going to be using marina instead of luxury townhomes, because it's a little bit closely related to what we're using here; people coming, you know, to use their vehicles very infrequently.

So that will drop that number of 89 down quite significantly. But we did use that number of 89 as our absolute maximum of what you would potentially see if everything emptied out at once.

Just in summary, we're seeking two conditional uses that have been identified in the existing zoning. The proposed use will be less intensive than the majority of the commercial uses that are permitted in this PUD in the commercial tract.

The maximum height for the structures will be limited to 30 feet above finished grade. The project will not be open to the public, and no new vehicular access points will be -- are being proposed on Livingston or Radio Roads.

I know there's a couple of other issues that we've talked about, Commissioner Strain, regarding the height, the FAR and, briefly, the wall. So I can answer any questions that you have.

CHAIRMAN STRAIN: Okay. Anybody from the Planning Commission have any questions at this time?

(No response.)

CHAIRMAN STRAIN: Well, Fred, let's start with the square footage.

MR. HOOD: Okay.

CHAIRMAN STRAIN: The PUD has a requirement that the maximum amount of floor area that can be utilized by this parcel is 20 percent of the total commercial acreage, which is B and C. And B and C totaled 15.99.

MR. HOOD: Correct.

CHAIRMAN STRAIN: If you calculate that out, my calculations come to 139,305 square feet rounded up by one square foot.

The NIM meeting, the public was told there would be 159 units, at a minimum, 1,000 square feet each, which comes to 159-. The calculation that's on the acreage on the master plan where it says "building area" comes to 204,000 square feet, and your TIS came in at 200,000 square feet.

I believe that we have to stay with the PUD's top number as a stipulation unless you come in and change the PUD, and that would be a PUDA that is a different process than what you're going through today, because this is a conditional use as allowed by the PUD.

MR. HOOD: That's correct.

CHAIRMAN STRAIN: I just wanted to let you know that's where I'm heading. I don't see any other way around it unless the others do, but we have a PUD that's pretty exact in the kind of square footage there is.

MR. HOOD: Well, let me just respond to that so we can at least get this on the record.

We applied for a ZVL from review staff in December of 2013 to specifically address this issue before we even got into construction drawings or went any further with the conditional use master plan. And the questions that we were asking were whether this use, this proposed use was going to be considered commercial, and if it was not going to be commercial, considered commercial, would we be held to that floor area ratio 20 percent that's in the PUD.



When we got the letter back, that zoning verification letter back, staff construed the 20 percent maximum to apply to the total overall quantity of leasable, salable commercial floor space.

So to that first point, we're not proposing or considering any commercial land use or salable or leasable square footage. So I just wanted to put that out there first.

The second point was that with respect to the parking structures and the facility, staff referred the applicant to the LDC's definition of floor area. That definition of floor area specifically excludes parking structures.

Now, I know that in our conversations that we've started to look at these parking structures as more of a principal use, and that the potential was -- the intent in the PUD and in the LDC was that parking structures were accessory uses to a primary use.

That's not what we were proposing, and that's not what the intent was when we prepared this zoning verification application to be reviewed by staff.

So it is our contention that although we are in a commercial tract and we are proposing a nonresidential use, we're not commercial. We are more closely related to residential, if you will, without the same intensity.

So that's where I was starting to have a little bit of an issue with how it's being looked at. Not on a -- you know, not to anybody personally, but just because if we're looking at it from what we're proposing, there is no, you know, buying and selling of goods that is typically equated with commercial uses.

So looking at that and looking at that ZVL led us to create construction plans and the master plan for this conditional use going forward without looking at the FAR requirements, because they were not going to apply per this letter.

CHAIRMAN STRAIN: I'm going to ask -- when you've finished, I'll probably have Ray talk about the intent and purpose of his letter so that we've got all the facts on the table.

And, by the way, in thinking of that, I also want to reflect on a request that Stan made a little while ago, and I said no, and I'm going to revise my position on that.

Stan, I think you're right. If there's a public comment associated with a project, it ought to be -- it can be moved up. So when we've finished with this hearing, which is 9A, we'll go to public comment on the consent, and then we'll go back into 9B.

But I want to know if the person who is going to speak is still here.

MS. RUPNOW: I am.

CHAIRMAN STRAIN: Okay. That's the only speaker you have, and it's strictly public comment. It is not --

MR. BELLOWS: Correct.

CHAIRMAN STRAIN: Okay, thank you. That will be the change, and so now we'll continue with Fred. Thank you.

MR. HOOD: No problem.

My second point -- and I'm not sure if this is going to shed any more light to your position, but the conditional uses that we're going for here are -- the private club subject to the provisions of the Collier County Land Development Code is the first one, and commercial and private parking lots and parking garages is the second one.

In both of those instances in what we're proposing, neither one of what we're proposing, again, is commercial. So even if these uses were to be allowed on the community commercial tract within the Briarwood PUD; for instance, if we had a private club that came in, and -- would they be held to the FAR requirements being that they're not commercial?

CHAIRMAN STRAIN: I'm looking at your PUD right now. The question you're asking isn't one that I've had time to research other than you just bringing it up, as I told you before the meeting started.

MR. HOOD: Right.

CHAIRMAN STRAIN: The permitted uses in Tract B and C are listed under 6.2. And what you're -- to fit into those permitted uses, you had to qualify your facility as a private club -- because that's one of the conditional uses allowed -- and a parking facility.

MR. HOOD: Correct.

CHAIRMAN STRAIN: Okay. Both of which are allowed as conditional uses to the property. For you to tell us it's more of a residential in nature, how would you fit that onto the property? How would you fit that into the uses?

MR. HOOD: Well, when I say "residential," I'm talking from a pure impact -- traffic impact point of view. So when you -- when we look at --

CHAIRMAN STRAIN: Well, we don't zone by traffic impact point --

MR. HOOD: No, I understand that. But if we're looking at the use and we're looking at private garages and we're looking at private clubs, those are nonresidential uses. That is something that -- that is what the -- those are the uses that we are fitting under.

When I say multifamily residential use as what this thing may be like, I'm looking at a -- I'm looking at a type of use that it most closely equates to when you look at a building.

So if you look at these buildings, which we have renderings of, they look more like residential buildings, but they are nonresidential structures and uses, but they are not commercial uses. There's an in between here that is not being thought of by this PUD and/or the LDC.

CHAIRMAN STRAIN: Under C5 for the conditional use, you --

MR. HOOD: Yes.

CHAIRMAN STRAIN: -- have qualified part of your use as commercial and private parking lots in parking garages. So you're fitting into that line.

MR. HOOD: Now, as I'm reading that, I'm looking at, as commercial and private lots and parking garages, not commercial parking lots or commercial parking garages.

CHAIRMAN STRAIN: But it's still under the commercial parcel who's principal uses are all commercial. So you're saying that this conditional use that you're asking for is a private parking lot?

MR. HOOD: Yes.

CHAIRMAN STRAIN: That's a stretch, Fred, but I don't blame you for trying.

MR. HOOD: That's -- that's what we discussed before we came in with the application.

CHAIRMAN STRAIN: By private parking lot, you're then saying that it's not commercial square footage; therefore, it doesn't fall into the 139,000 square feet.

MR. HOOD: That was the whole point of the ZVL.

CHAIRMAN STRAIN: I think the intent of the PUD was this parcel is this size and here's how much commercial -- here's how much floor area. It doesn't say -- I don't even know -- let me check that.

MR. HOOD: It's floor area.

CHAIRMAN STRAIN: Well -- and, see, that works -- your argument works against you in relationship to the calculation of floor area. Well, no, it doesn't work against you. I guess it wouldn't be the same, because it says, maximum floor area, 20 percent of commercial land area. It doesn't say maximum commercial floor area.

MR. HOOD: No.

CHAIRMAN STRAIN: It says, maximum floor area. So if you're not commercial but you think you're residential, you still fall under that paragraph.

MR. HOOD: Not residential, but --

CHAIRMAN STRAIN: Well, whatever you are.

MR. HOOD: Yes, but --

CHAIRMAN STRAIN: Floor area.

MR. HOOD: That was the whole point of that previous application, to define whether we were going to fit into that FAR requirement.

CHAIRMAN STRAIN: I understand, and I think it's time for Ray to --

MR. HOOD: And I think that Ray needs to --

CHAIRMAN STRAIN: -- tell us his thought process and his intent of a ZVL.

COMMISSIONER ROMAN: And could you focus that, please, so that we can see what's on the screen.

MR. BELLOWS: For the record, Ray Bellows. I'm a zoning manager with the department of planning and zoning.

The zoning letter that staff and I worked on did not specifically contemplate this use. We were looking at the language in the PUD as it pertained to the 20 percent language and make a distinction between what was requested in the zoning verification letter application that referenced floor area ratio. Those are two different concepts, and we wanted to make sure that the applicant understood that a floor area ratio was not applicable in this situation, that they were still subject to the 20 percent rule for floor area, and that's all this letter was really addressing.

CHAIRMAN STRAIN: Okay. In the 20 percent rule in the paragraph that's on here right now, you further clarified it by talking about usable space, and you reference usable space to include mezzanines, lofts, and similar useable space.

MR. BELLOWS: Correct.

CHAIRMAN STRAIN: So, for example, bathrooms or closets or kitchens or things like that, would they be considered usable space?

MR. BELLOWS: Yes.

CHAIRMAN STRAIN: Okay. Because what I expect will probably have to happen, if this project is recommended today with a stipulation capped at what the PUD allows, Fred's going to have to -- if they want to actually do more than that, which their calculations tend to indicate, they would need to amend the PUD which, unfortunately, is a process they could have taken from the get-go.

And I know that there's a discrepancy why that occurred, and I understand. It's unfortunate, but I don't know a way we can get around the zoning aspects of that when the PUD's written the way it is.

And, by the way, I like your product. I've liked it from the day I've seen it. It's a good product, and I'm glad it's going in there. I think it's a much better use than what was planned there, which was a Lowe's hardware store.

MR. HOOD: Yes.

CHAIRMAN STRAIN: So from that perspective, it's better for the community. But I don't know how to get you there today based on what we've got.

Diane?

COMMISSIONER EBERT: Mark, could he withdraw this and bring --

COMMISSIONER ROMAN: Can you use the mike, please?

CHAIRMAN STRAIN: Use the mike.

COMMISSIONER EBERT: Could he withdraw this and bring it back?

CHAIRMAN STRAIN: Yes. That was an option that he and I talked about this morning --

COMMISSIONER EBERT: Oh, okay.

CHAIRMAN STRAIN: -- that might help, and that's -- you can request this to -- you can withdraw this conditional use and then come back in with a PUDA. And I'm not sure what other options there might be.

Could this be continued indefinitely and then flipped over to a PUDA in the review process and brought back to us as that, as a way to help resolve it?

MR. BELLOWS: In the past when situations like this have occurred, that's exactly what happens; you continue this item, and then we will work with the applicant to get them in the right process.

CHAIRMAN STRAIN: That would save the applicant time and money.

MR. BELLOWS: Correct.

CHAIRMAN STRAIN: It may not be as quickly as today and then going to the board, but that's a call you guys might want to consider. I'm trying to figure out the easiest way to get you through the PUDA process. That would require, though, another NIM, because you're increasing the intensity on the property.

MR. HOOD: I think the neighbors are probably tired of hearing about this one.

CHAIRMAN STRAIN: I know, Fred. I just don't know what to tell you.

MR. HOOD: Let me ask this question. If we were to -- I mean, I've --

CHAIRMAN STRAIN: Well, here's what -- you could, if you want to take 10 minutes and confer with your client, we can talk -- we can hear the public speaker and then come back to you right after that if you'd like to take that avenue.

MR. WERCHECK: Is it possible for me to ask you a question?

CHAIRMAN STRAIN: Absolutely, sir. Identify yourself for the record, and we'll be good.

MR. WERCHECK: For the record, Mike Werchek. I'm the builder/developer of the project, the proposed project.

And when you're talking about the structures, if parking is not part of that 20 percent, our whole project is parking. So technically our floor area is bathrooms and mezzanines, if parking garages and park facilities are exempt from that 20 percent.

CHAIRMAN STRAIN: It's under floor area ratio calculations as accessory uses. That's not -- and this is a floor area. It's not a floor area ratio. It's a different concept. And I believe that's probably what started getting the questioning going in the first place in regards to the ZVL. That's the problem.

MR. WERCHECK: So we get no credit for the fact that all we're doing is parking. I mean, that's --

CHAIRMAN STRAIN: Well, you're selling the parking area as a product, and that's different than -- it's a garage that's an accessory use to a residential dwelling or something like that.

MR. WERCHECK: And I know this has been a hard one, because no one knew what -- no one knew what to call us. No one knew where to put us into your -- you know, your boxes here. We just didn't conform to anything.

But there's no -- none of the stuff that they've talked about applies where we can not go through the process of amending the PUD.

CHAIRMAN STRAIN: When I first found this, I approached it just the way you had. I like your project. I think it's a better project than what could have gone there. And I think even at the larger size, it's less intensity; therefore, to me it's a good thing for that location compared to some of the others. I'd love to see this be able to go through easily. I don't know how to do it when the PUD is explicit, and that's the problem that I'm running into.

Mike?

MR. SAWYER: For the record, Mike Sawyer, the project manager for the petition. One possible additional solution might be to go ahead with the conditional use based on the specific square footage allowed by the PUD which would gain them the ability to start construction sooner, and then come back in for the additional square footage that they need with the PUDA.

CHAIRMAN STRAIN: Well, that's another opportunity. We'd have to -- and I would have to ask Heidi this.

If we stipulated in the conditional use to square footage, then they'd have to change the conditional use to match the PUD if they came in with a PUDA. Is there a way we could address it in the conditional use that wouldn't require that to change if they changed the PUD? Like, just tie it to the square footage allowed by the PUD and not put a number there? So if the PUD is amended, then that number automatically amends the conditional use?

MS. ASHTON-CICKO: You could probably do it that way, but I think when he comes through with the PUDA and makes it a -- you know, removes that square footage, you can probably address it as a permitted use, so you wouldn't even need the conditional use.

MR. HOOD: For the record, Fred Hood.

Would it just be better if we held the PUD language where it has the 20 percent there, and when we come in with the SDP, we put the square footage in there and just forego putting square footage at all in the stipulations for the conditional use? We just approve the uses, the PUD handles the 20 percent. We can't go over the 20 percent until we fix the PUD. There's no point in putting the square footage.

CHAIRMAN STRAIN: I see staff nodding.

Explain to me how you understood that.

MR. SAWYER: Basically that's the same thing I was suggesting, just a slightly different version of it. We do, in fact -- I did check with our review staff for the SDP, and they do have comments out on the SDP already, and that was one of the comments that came up was specifically to the square footage.

So, theoretically, we could go ahead, and if we cleaned up the issue relating to numbers of units and approximate size of those units, potentially even adding a specific condition regarding the square footage, we could, again, go forward approving the conditional use. The SDP would come in and would limit the project to that specific square footage consistent with the current PUD. Then the applicant would simply come in at

a later date for that additional square footage.

And once that -- assuming that would get approved, then they would come in with an SDP amendment and do the additional square footage for the buildings.

CHAIRMAN STRAIN: Okay. And according to the article I read about your sales, you're not going to build all those buildings immediately anyway, so that would give you the ability to get started and build out two-thirds of your project before the amendment to the SDP would be --

MR. HOOD: Finished.

CHAIRMAN STRAIN: -- finished, yeah. So I think that would work.

MR. HOOD: We're phasing the project either way.

CHAIRMAN STRAIN: Good. I think that's a good solution, if there's no objections as we go forward, so --

Well, then I guess we -- do you guys still need some time to break and confer?

MR. HOOD: No.

MR. WERCHECK: No. But you're still going to talk about if there's any other issues?

CHAIRMAN STRAIN: Oh, don't worry.

MR. WERCHECK: We could be done.

CHAIRMAN STRAIN: Oh. No, no. I just focused on that one because Fred brought it up. Go ahead.

COMMISSIONER CHRZANOWSKI: How long does a PUDA take nowadays?

COMMISSIONER EBERT: Oh, 10 days.

MR. HOOD: I wish.

CHAIRMAN STRAIN: Anywhere from four to six months depending on -- the PUDA is more dependent on the reaction to the first reviews and how quick the applicant gets information in, as you know, then it does -- reviews are done in 30 days. If the first review came in, 30 days later they'd have the review done. If there are no comments, it could be formatted into a staff report and scheduled for hearing with advertisements. So you're looking three to four months. But with your experience, too, Stan, you know that rarely happens.

COMMISSIONER CHRZANOWSKI: I remember them taking a lot longer than that.

CHAIRMAN STRAIN: Right. So I would expect you might be six months into the loop.

MR. HOOD: How about doing a PDI instead?

CHAIRMAN STRAIN: Can't. You're increasing the -- it's a zoning change. And statute, unfortunately --

MR. HOOD: It's only a number.

CHAIRMAN STRAIN: Well, zoning changes have to go to the board. That's -- they go through the full process, so we're kind of saddled with that.

Okay. Let me go through with the questions I have of you.

Your rear facade of the building functioning as a masonry wall fence. Staff has recommended that we put in the masonry wall be required at 8 feet. And it's a combination question for you and Mike Sawyer.

Mike, when you thought of this wall or you saw this wall as a need, what property lines were you considering that wall?

MR. SAWYER: Again, for the record, Mike Sawyer.

We were looking at just the property lines where we're directly adjacent to the residential units themselves.

CHAIRMAN STRAIN: Okay. Could you put the site plan on the overhead. Now, I don't -- the aerial, I think, showed there was a place down front that didn't have residential, I believe. Yeah, by that lake. So the -- and up in the north end, you've got that little square. I'm not sure what that is.

MR. HOOD: This here?

CHAIRMAN STRAIN: Yeah.

MR. HOOD: That's their recreational area. It's a basketball court, pool, and spa.

CHAIRMAN STRAIN: Okay. So where, Mike, do you feel that the 8-foot wall would be needed?

MR. SAWYER: (Indicating).

CHAIRMAN STRAIN: From there to?

MR. SAWYER: (Indicating).

CHAIRMAN STRAIN: Okay. That's what I thought, and I just wanted to make sure for the record. That isn't a lot of wall, Fred.

MR. HOOD: No.

CHAIRMAN STRAIN: I wanted to make sure I understood what Mike was saying.

The other staff conditions were a speed limit issue. Did you have any problem with that?

MR. HOOD: No.

CHAIRMAN STRAIN: No amplified outdoor sound or equipment --

MR. HOOD: No.

CHAIRMAN STRAIN: -- systems are allowed.

Vehicle repairs not permitted. You don't have any problem with just minor routine maintenance.

MR. HOOD: Right. And just -- we specified if someone was going to be in their unit with the door closed that they could do, you know, oil changes or something like that; just nothing in the driveways.

CHAIRMAN STRAIN: I don't know how anybody could limit themselves to do just that, but anyway.

MR. HOOD: That's part of the POA documents. You get fined if you do it.

CHAIRMAN STRAIN: Okay. Well, I like taking them apart completely.

MR. HOOD: So do I.

COMMISSIONER HOMIAK: You can't buy there, then.

CHAIRMAN STRAIN: Yeah, I know. I'm not going to. I couldn't afford it anyway.

Okay. And the last thing I noticed in the writeup, not the last thing that I have, but in that particular issue, you have a 24-hour operation.

MR. HOOD: Operation is a big word, but yes.

CHAIRMAN STRAIN: Can you explain to us how that --

MR. HOOD: There's access -- access will be provided 24 hours with coded key cards. So if someone wants to, you know, come in and, you know, watch the game at 10 o'clock at night in their unit overlooking their cars, they can swipe their key card then come in and pull into their driveway and go upstairs to their mezzanine and watch the game.

If they need to come in at two in the morning because there happens to be, you know -- and this hopefully won't happen -- a fire and move their car out, they can get into the units. I'm sure EMS and fire will be there before then, but this is a situation where we want to have our prospective buyers have access to their units at all times. It doesn't mean that, you know, everybody will be accessing them at, you know, two in the morning, but if they wanted to, they certainly have that option to.

COMMISSIONER DOYLE: Now, in relation to that, in my neighborhood I can tell you what day of the week it is by what lawn maintenance is going on. So if somebody comes in, you stated that they could watch the game at 10 o'clock. Should they want to -- if they came in from a late night out, say, you've got to see my car, my new man cave, get in there and gear up the vehicle and "waaa" up and down, that's a possibility.

MR. HOOD: That's a possibility, but it is -- that will be somewhat precluded by the owners' documents that they have to sign before coming in. It is not a -- it's not really a -- I don't want to say it's not a zoning issue, but it's really not. It's more of a property owner issue and an issue that they have to deal with their property owners association that they cannot do certain things.

Now, could we limit it to, you know, a certain amount of hours, is that going to stop them from doing that at 2 o'clock in the afternoon? Certainly not.

COMMISSIONER DOYLE: Well, I meant 2 o'clock in the morning.

MR. HOOD: Well, I know, but what I'm saying is that if -- they could do it at any point in time.

COMMISSIONER DOYLE: Right. Well, in the NIM, I noticed somebody asked, is there going to be motorcycles, and it went kind of like over the questions. So we're not limiting it to anything?

MR. HOOD: No.

COMMISSIONER DOYLE: I gather their concern was, what am I going to hear coming out of this

place.

MR. HOOD: Right. No, I understand.

COMMISSIONER DOYLE: Which would be mine as well.

MR. HOOD: Yeah.

CHAIRMAN STRAIN: Which emphasized is the need for the wall by the residential, and I think that is something that, from compatibility, we've certainly got to consider.

MR. HOOD: We don't have a problem providing that. We just figured that if that issue did come up where somebody did rev a motorcycle, what would be -- you have -- if someone did rev a motorcycle -- first, all of these units on this Building No. 4, their front doors are on this side. There's nothing going to the backside, to the north or the east side of any of these buildings.

The same thing is true for Building No. 1. There's no doors -- there's no vehicular doors going to the Livingston Road corridor or the Radio Road corridor. It's all directional to the center of the site. The only buildings that will have doors on both sides of the buildings are Buildings 2, 3, 5, and 8. Those are the only ones that -- actually 8 doesn't either. Actually, no. I'm sorry, 8 does. Those are the only buildings that will have double-sided access.

So if someone were to come and pull their motorcycle out here or open their garage and rev their engine, these buildings are going to be soundproofed anyway. They're going to be insulated to a high extent.

If someone were to pull their motorcycle out, that noise is going to have to travel up and over the building, back here. Now you have noise that's going to be bouncing between this wall, the back of this wall, and the proposed wall. That's what we're trying to avoid if that did happen. We don't think it will happen, but we were avoiding that channelized bouncing back and forth that you get on 75 where you have walls for communities and then the sound wall for I-75. It bounces, and then it goes right over.

COMMISSIONER ROMAN: But you could say the same thing, couldn't you, about the sound that would bounce between the buildings inside the project?

MR. HOOD: You could.

COMMISSIONER ROMAN: You know, there's -- sound can bounce off of hard-faced --

MR. HOOD: Certainly.

COMMISSIONER ROMAN: -- solid concrete structures.

MR. HOOD: That is very correct.

COMMISSIONER ROMAN: And I think that's also a consideration.

CHAIRMAN STRAIN: Well, the intermittent, nontypical sound that may occur on a non-regular basis from something like that happening is far less intensity than the principal uses that are allowed by right without any public hearing for restaurants, cocktail lounges, packaged liquor sales, retail shops, shopping centers, Lowe's, places like that.

So, in the end, I think, yes, there's a potential for some of this sound, but at any extreme it's not going to be as bad as what could have gone there by right, and that's probably how it should be considered.

COMMISSIONER ROMAN: Yeah. I was just addressing his comment about --

CHAIRMAN STRAIN: Oh, I know.

COMMISSIONER ROMAN: -- the sound behind that building. Well, there's also sound in front of the building, and I was just addressing that.

CHAIRMAN STRAIN: I just wanted to make sure that we realize all the other uses that they could have.

On your master plan, Fred -- and I need to ask Ray or Mike what the -- how we could modify this or just delete it. There's a land use summary. In the land use summary, it has the footprint area of the buildings. It's in four-point -- it says 4.56 acres very small; a little hard to read over there. But if you calculate that out, that comes up to 204,000 square feet. So we can't leave that on the master plan. Is it required from your perspective?

MR. BELLOWS: No, it's not.

CHAIRMAN STRAIN: Okay. I'd suggest you delete that line in the table, or I'd suggest you delete the whole table because you're never sure -- not sure which line will affect another, and then you haven't got to mess with it when you come back in.

MR. HOOD: We can do that.

Just another follow-up point on the wall, if you'll permit me.

CHAIRMAN STRAIN: Sure.

MR. HOOD: There was another comment from -- and I don't think it was on the record. It was probably a conversation that either Mike or I had at the NIM with one of the residents or a couple of the residents, actually.

They mentioned that without the wall -- and I know it's in a small area. But that wall would basically be a line of demarcation meaning that their property line -- I'll put it this way. Putting the wall there makes -- they said putting the wall there makes their lots look smaller; whereas, leaving the wall out and having the back of our building as their wall makes it look -- even though it's our land, it makes their land look bigger. There's no barrier that they have to look at, if you will.

CHAIRMAN STRAIN: I would suggest that after today's meeting and after the board hearing, if the wall still is an issue that's on the -- well, we have to be -- we'll -- if a wall is still on as an issue, you might want to come in through the PUDA and address it, but you would need the supporting documents from the adjoining neighbors.

MR. HOOD: That's fine.

CHAIRMAN STRAIN: And I didn't see where anybody -- if anybody's here today that's going to comment on that, that will be helpful, but that might be one solution to that, Fred.

MR. HOOD: Okay.

CHAIRMAN STRAIN: I mean, if it's going to do more harm in the residents' opinion than help, then we certainly don't need it. We're just trying to make sure they're protected as much as they might expect from our code.

MR. HOOD: I understand.

CHAIRMAN STRAIN: By the way, if any of you have any questions, just ask. Diane?

COMMISSIONER EBERT: I was just going to make a comment. I understand the 24 hours, because if you have an RV and you're coming back from somewhere, most of the homeowners associations don't allow those, so they would be bringing it there at all hours just to use it there for parking.

And I have to tell you, my husband did this back in the '60s with airport hangars, and they called it a man cave.

MR. HOOD: And that's kind of the point of the buildings that I was pointing out earlier, 2, 3, 8 and 5. Those are kind of pass-through buildings just for that specific purpose. If someone has an RV, they can, you know, certainly pull in one side and pull it back out the other instead of backing it out.

CHAIRMAN STRAIN: Fred, on your -- in the PUD, we have a different definition of height. It's 30 feet above finished grade. That differs from your request, so I'm -- we need to go back to the height that's in the PUD. And I think you and I talked about that --

MR. HOOD: We did.

CHAIRMAN STRAIN: -- and you felt that was doable.

MR. HOOD: That's fine. We checked with the engineering staff, and we actually meet the 30 feet above finished grade height limitation, so we're okay with that.

CHAIRMAN STRAIN: Okay. And I have another issue that I want to ask both you and staff about. 7.12 in the PUD says architectural review, and this is odd to see this, but it's an older PUD. All buildings constructed within Briarwood must comply with the architectural review standards which shall be specified by the recorded covenants and deed restrictions that go with the properties.

How do we deal with that when it's written so explicitly in a PUD?

MR. HOOD: I'll let staff take this one.

MR. SAWYER: Again, for the record, Mike Sawyer.

CHAIRMAN STRAIN: Nice guy.

MR. SAWYER: Honestly, I did not see that comment come up as part of the SDP review. There are architectural comments in a comment letter.

In most cases -- this isn't the only PUD that has that type of language. What staff has accepted in the past has simply been a letter of approval from the HOA or the masters association, whoever has control of



that PUD. So we can certainly make sure that that -- a letter to that effect is provided at the time of the SDP.

CHAIRMAN STRAIN: I see they're conferring, so let them confer here.

COMMISSIONER EBERT: Mark, if this would have been a Lowe's, would you have needed the same thing?

CHAIRMAN STRAIN: According to my read of the PUD, it says -- that's why -- and, Mike, you're right, it is in some other PUDs, all the older ones, before we realized we don't enforce architectural standards. But that paragraph almost makes us have to address it, because it's in the PUD. If it wasn't in the PUD, we may not have to. Did you guys approach the HOA for this -- to meet this criteria?

MR. HOOD: We did not, because we hadn't gotten to the level of SDP and architectural finality that we would need to discuss it with them yet. We are -- we will be in contact with them. This is another issue, though, if we come back with a PUDA that we can start to address for Tracts B and C to revise that language to discuss it for the commercial property, because the commercial property is completely different than anything else in the Briarwood PUD. Everything else is residential.

So for us to come back and say, you know, this commercial property has to look like the residential components of it is kind of interesting.

CHAIRMAN STRAIN: I don't think it says that. All buildings constructed within Briarwood must comply with the architectural review standards. I'm assuming, then, their standards will be written for all the uses they have. Standards which shall be specified by the recorded covenants and deed restrictions that go with the property.

And I don't think it can wait till your PUDA, and the reason for that is, is because if are you getting the SDP to start construction, well, you come in with a PUDA, you're half constructed and we don't get the letter, we've got a real problem.

MR. HOOD: We'll take a look at it. And if we have to, we'll get the letter. That's not an issue.

CHAIRMAN STRAIN: When? By consent, which would be February 5th or --

MR. HOOD: Yeah, we could probably make that work.

CHAIRMAN STRAIN: Huh?

MR. HOOD: I can probably make that work.

CHAIRMAN STRAIN: Our next meeting, Ray, is February 5th?

MR. BELLOWS: Correct.

CHAIRMAN STRAIN: Okay. Then that would be a stipulation then.

MR. HOOD: Okay.

CHAIRMAN STRAIN: Because we'd need to have that letter on record to get it done.

I think that that wraps up everything I have. We've addressed all the other issues.

Anybody on the Planning Commission have any other questions?

(No response.)

CHAIRMAN STRAIN: Okay. Ray, did you have a --

Fred, did you have anything you wanted to add?

MR. HOOD: Let me just make sure. I think we're okay, yes.

CHAIRMAN STRAIN: Okay. I'm sorry. Mike.

MR. SAWYER: Again, for the record, Mike Sawyer, project manager.

Staff does have -- is recommending approval of the petition. Staff report, last updated or revised, December 17th of last year. Staff is in agreement with the discussions that have taken place today, and I'm here for any questions.

CHAIRMAN STRAIN: Okay. Does anybody have any questions of staff?

(No response.)

CHAIRMAN STRAIN: Okay. Are there any public speakers registered, Ray?

MR. BELLOWS: Not for this item.

CHAIRMAN STRAIN: Okay. Is there anybody from the public wishing to speak on this item?

(No response.)

CHAIRMAN STRAIN: Okay. With that, then we'll close the public hearing. And I'll mention to you the notes that I've made in case anybody wants to include it.

Number 1, staff recommendations would be recommended. Number 2, the height will be measured pursuant to the PUD. Number 3, the maximum square footage allowed will be pursuant to the PUD. And by the time of our consent hearing, the applicant will produce a letter from the -- whatever authority it is who signs off on 7.12 regarding the architectural review.

And I can't think of anything else. Ray, is there something else?

MR. BELLOWS: You were going to have the applicant revise the conceptual site plans to remove the tables.

CHAIRMAN STRAIN: Yes, that's -- remove at least that one line in the table -- well, the whole land use table ought to be removed.

MR. HOOD: This table? Everything else is development --

CHAIRMAN STRAIN: Well, the only thing under development standards --

MR. HOOD: Yes.

CHAIRMAN STRAIN: -- the 30 feet there, that's not the only place it occurs.

MR. HOOD: Okay.

CHAIRMAN STRAIN: But don't -- we just want to make sure it's consistent with the PUD.

MR. HOOD: I'll write it as word for word.

CHAIRMAN STRAIN: Okay.

MR. HOOD: And the setback table is fine?

CHAIRMAN STRAIN: I didn't see anything wrong with that.

MR. HOOD: Okay.

CHAIRMAN STRAIN: Okay. With those clarifications, does anybody on the Planning Commission want to make a motion?

COMMISSIONER EBERT: I'll make a motion.

CHAIRMAN STRAIN: Okay.

COMMISSIONER EBERT: I'll make a motion we approve CU-PL-20130002048 with the stipulated amendments to it.

CHAIRMAN STRAIN: Okay. Is there a second to the motion?

COMMISSIONER HOMIAK: Second.

CHAIRMAN STRAIN: Motion made by -- no, Karen didn't make the motion. Diane made the motion. Motion made by Diane. I keep thinking you because you were the last person I looked at. Seconded by Karen.

Discussion?

(No response.)

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

COMMISSIONER CHRZANOWSKI: Aye.

COMMISSIONER EBERT: Aye.

CHAIRMAN STRAIN: Aye.

COMMISSIONER HOMIAK: Aye.

COMMISSIONER DOYLE: Aye.

COMMISSIONER ROMAN: Aye.

CHAIRMAN STRAIN: Anybody opposed?

(No response.)

CHAIRMAN STRAIN: Motion carries 6-0.

We'll see you in two weeks. And, oh, that's another thing. Motion to recommend for consent.

COMMISSIONER ROMAN: So moved.

CHAIRMAN STRAIN: Second?

COMMISSIONER EBERT: I'll second that.

CHAIRMAN STRAIN: Okay. Anybody opposed?

(No response.)

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

COMMISSIONER CHRZANOWSKI: Aye.

COMMISSIONER EBERT: Aye.

CHAIRMAN STRAIN: Aye.

COMMISSIONER HOMIAK: Aye.

COMMISSIONER DOYLE: Aye.

COMMISSIONER ROMAN: Aye.

CHAIRMAN STRAIN: Anybody opposed?

(No response.)

CHAIRMAN STRAIN: Motion carries 6-0.

Okay. Nobody opposed. We're good.

So we'll see you on consent in two weeks. Please bring that letter with you, make it simpler, and we'll be good.

MR. WERCHECK: Thank you.

MR. HOOD: Thank you.

CHAIRMAN STRAIN: Thank you.

Okay. Pursuant to Stan's comment, and I'm reflecting on it, yes, we will have our public speaker now out of -- it wouldn't be right to hold you here all day.

And so, with that, Ray, do you want to call the public speaker that we have and --

MR. BELLOWS: Diane Rupnow.

MS. RUPNOW: Rupnow. Is this on?

CHAIRMAN STRAIN: Yes, ma'am. Please identify yourself. Could you spell your last name for the record, please.

MS. RUPNOW: Yes.

CHAIRMAN STRAIN: Thank you.

MS. RUPNOW: My name is Diane Rupnow, R-u-p as in Peter, N as in Nancy, o-w, and I'm here today to comment on the 22-page staff report written for the Planning Commission by Bellows, Deselem, and Bosi.

CHAIRMAN STRAIN: Okay.

MS. RUPNOW: My husband and I own a home in Glen Eden on the Lakes, which is the subdivision directly north of the parcel of land termed R2 in that plan that you wrote about. And we form -- our subdivision forms the longest contiguous border with R2. But in the project, we are known as the Village Place. Where that came from, I don't know.

But anyway, I'm here to make sure that you're all aware of something. In the report, it is stated, quote, in our opinion the proposed changes will not affect the living conditions in the area, and that is not true.

When the developer clear-cut the preserve on the west side of Vanderbilt Drive, thousands of animals moved across the road into the preserve directly adjacent to our subdivision.

On November 10th my next-door neighbor took a photo of a pygmy rattlesnake basking on the landing to his lanai. Now, we're accustomed to seeing the little black snakes that are harmless, but now we are watching out for poisonous snakes in our area.

Three weeks ago at 7:15 a.m. a Florida panther, an endangered species, was seen outside the preserve under the orange tree in the side yard of the residence at 14512 Satin Leaf Lane, which is directly across the lake from my house. The panther was described as a very large cat with a curl in his long tail about the height of a Great Dane. Unfortunately, he moved back into the preserve before a camera could be located to take his photo. People who live in Tarpon Cove, however, have also reported seeing this panther.

On the night of December 27th, upon my return to Florida from Nebraska, at 8:15 p.m. a bear was in the tree in my front yard. We do have a video clip showing this bear climbing down the tree and going across my driveway and just walking down the street in Glen Eden on the Lakes.

Also, we've had numerous bobcat sightings. So we do know the difference between a bobcat and a panther.

So in that regard, I think the report is inaccurate. Our way of life has already been negatively impacted by this developer's destruction of the preserve on the west side of Vanderbilt Drive. When we walk

our dogs early in the morning or late at night, we carry mace, a loud whistle, or a golf club in case we encounter a predator in our front yard. We don't feel safe in our own yards.

This will only get worse when the landowner cuts down a huge portion of the preserve directly south of us to build the 62 large homes.

So since our living conditions are being affected, we ask that that be reflected accurately in your 22-page report. We ask that you suggest to the Collier County commissioners that they delay approval of re-opening the 2008 Cocohatchee PUD agreement until you've had time to research the types of wildlife living in the preserve adjacent to us.

Florida panthers are one of the most endangered species on the planet, and the chief reason for their decline is the destruction of their habitat. It should be unlawful to approve this developer's request to re-open the PUD and be allowed to develop R2 as described in the 22-page report.

Finally, I have to say that this report is full of words like "we believe" and "we are of the opinion" because your staff doesn't really know what's going to happen when that property adjacent to us is developed.

What we do know is that this developer does not keep his word. Many of us find it morally reprehensible that he will most likely get everything he's asking for.

The Collier County Board of Commissioners has not yet voted to even re-open the 2008 PUD settlement and yet you, the members of the Planning Commission, are ready to go on record that you approve of everything the developer wants to do.

If someone can't be trusted to keep his word regarding big things, he generally can't be trusted to do what he says he'll do regarding small things. The developer signed an agreement in 2008 because he got lots of concessions. Now he's changed his mind. He has submitted his plans for how he will develop the land labeled R2 in your report.

But once the settlement is open -- and I think they vote on that February 24th -- what will prevent him from changing his mind again? How do we know that he won't -- this plan won't evolve into something totally different or revert back to his December plan of 2013 for multifamily housing in R2?

We are very concerned about the possibility of this happening. We don't trust the developer.

And I want to thank you for allowing me to speak.

I have a photo of the rattlesnake, and I do have a video clip of the bear that I would like to send to you as an email attachment. I couldn't find your email online.

CHAIRMAN STRAIN: Send anything for us to the planner or to the zoning manager, Ray Bellows.

MS. RUPNOW: Okay.

CHAIRMAN STRAIN: It would be Ray -- well, he'll give you his card.

MS. RUPNOW: Thank you very much. Any questions?

CHAIRMAN STRAIN: Okay. Thank you for your time. No, ma'am. But this isn't a hearing on that issue. We already had the hearing --

MS. RUPNOW: I understand.

CHAIRMAN STRAIN: -- but you're more than welcome to express your concerns in front of the board when it goes to them.

MS. RUPNOW: Thank you.

CHAIRMAN STRAIN: Thank you, ma'am.

\*\*\*Okay. We'll move on with the rest of our regular agenda. The next item up is PL20130001345/CP2013-8, and that's going to be heard in conjunction with No. C, which is PUD-Z-PL20131241.

These are both involving Wal-Mart -- well, it's called the Wal-Mart application in Immokalee. I mean, that's how it's commonly known as, but officially it's the SR-29 CPUD.

All those wishing to testify on behalf of this item, please rise to be sworn in by the court reporter. (The speakers were duly sworn and indicated in the affirmative.)

CHAIRMAN STRAIN: Disclosures from the Planning Commission. Stan?

COMMISSIONER CHRZANOWSKI: Yeah. I think I was to a meeting about this in Immokalee a few months ago and talked to a bunch of people, and I talked to Mr. Yovanovich a couple days ago at length.

CHAIRMAN STRAIN: Okay. Diane?

COMMISSIONER EBERT: I talked to Wayne Arnold.

CHAIRMAN STRAIN: And I can't think of anybody I haven't talked to about this project. Certainly staff, most of the commissioners, if not all, the applicant, the applicant's attorneys, oppositions to the applicant -- opposers to the applicant, people in Immokalee. There's been emails, there's been all kinds of stuff, so I've talked to a lot of people on it.

Go ahead, Karen.

COMMISSIONER HOMIAK: I spoke to Mr. Yovanovich.

COMMISSIONER DOYLE: Yes. I had a phone conversation with Rich Yovanovich as well.

COMMISSIONER ROMAN: No contact.

CHAIRMAN STRAIN: Okay. With that, Richard, it's -- are you making the presentation?

MR. YOVANOVICH: Yes, sir, I am.

Good morning. For the record, Rich Yovanovich on behalf of the applicant. With me are David Gensen, who represents the property owner; Wayne Arnold, the planner; Jim Banks, the traffic consultant and marketing consultant; and Russ Weyer, our economic consultant.

You've heard both of these petitions in great detail out in Immokalee. We have two petitions, the Growth Management Plan amendment adding our property to the State Road 29 and Jefferson Avenue subdistrict. You had your transmittal hearing out in Immokalee. You-all recommended approval of the transmittal to the state; so did the Board of County Commissioners. So we're back here today for the adoption hearing on the Growth Management Plan amendment.

You also heard the rezone to CPUD petition out in Immokalee. You continued that hearing because there were things that needed to be added to or addressed in the PUD prior to final approval.

So you have both your adoption hearing on the GMP amendment today and the adoption hearing for the CPUD today.

What needed to be addressed in the PUD -- first of all, the visualizer is where the property is. What needed to be addressed in the PUD today was we needed to -- we had shown you a rendering of what the building was going to look like from an architectural standpoint, but the commission and staff wanted us to put words in the PUD that would result in those renderings. That is in the PUD in front of you.

We took those standards to the CRA advisory board, as we had committed to out in Immokalee, and the CRA advisory board recommended approval of the architectural standards that are in the document.

Your staff is recommending approval of the architectural standards in your document. I believe a member of the advisory board -- CRA advisory board asked staff to go and identify what the deviations were or what the changes were from the existing standards in the Land Development Code. Staff went through and compiled a list -- I believe it's in your staff report -- of what the changes are from your adopted LDC provisions. That list showing the deviations was also sent to the CRA advisory board. I happened to be at their last meeting on something else, so they are aware of the changes or deviations, if you will, from the architectural standards in the Land Development Code. And I don't believe any comments came up that changed their opinion as to the appropriateness of the building architecture.

Another issue we needed to address was the traffic signal at Westclox and State Road 29. We have worked on some language with transportation as well as the division administrator. I will give you the concepts that we agreed to regarding the traffic signal. John has some specific language that he'll share with you. He's typed it up, so I don't have to put on the visualizer my handwritten changes.

But the concept is, as we apply for our Site Development Plan for the project, we will obviously submit a traffic warrant study to determine whether or not the project that we're proposing will trigger the need for a traffic signal at Westclox and State Road 29.

If FDOT says as a part of the SDP and ultimate issuing of a building permit that we need a traffic signal, we will construct the set traffic signal, and it will be operational within six months of the issuance of the CO.

If DOT gets our warrant study and they don't require a traffic signal, we have agreed that we would provide a bond equal to the estimated cost of a traffic signal. The county would hold that bond for three years to see if DOT in that three-year period determines that now a signal is warranted. The money would be there, and we would post that bond at building permit issuance.

So the bond would be in place. If DOT doesn't say up front you need a signal but in the next three years says there's a need for a signal, the county will have the money in its hand and the ability to construct the signal if a signal is necessary from DOT's perspective.

DOT controls whether or not a traffic signal will be built at Westclox and State Road 29. So we are assuring that there are appropriate funds there for a signal should a signal be warranted after we start construction.

If prior to construction they say it's warranted, we would have it in place within six months of the building opening. So hopefully that will address the concerns raised at the last Planning Commission meeting.

DOT typically says you have to have it within one year of completion or buildout of your project, and that was a concern I know that people had.

The second issue -- and also the county agreed to pay its proportionate share of the traffic signal cost based upon actual traffic counts when the signal's up and running and operational. There would be counts, and the county would reimburse whoever paid for the signal their fair share.

The second issue that we need to address is the sidewalk along State Road 29. Staff -- we asked for a deviation because -- for a couple reasons. First, we know that all of the PD&E studies for all the different configurations of State Road 29 include the construction of a 10-foot pathway.

So if we were to build our sidewalk today, it would simply be torn out and replaced by DOT. So we would prefer not waste that money in building a sidewalk.

In addition, we have agreed to provide more than a bus stop to serve this project. We have agreed to basically provide a transfer station opportunity.

So we'll have two buses there. We'll be building two bus stops, and we'll be going above and beyond what would normally occur for this type of project.

So we believe we're addressing the pedestrian traffic issues related to Immokalee. People will probably come there by bus. There will be people that walk there. But the people who do walk there, if you look, going north there's nothing north. So there's really no reason to build a sidewalk going north along our frontage because it's not going to serve anything.

So we believe the combination of, one, this not serving anything to the north; two, that DOT's going to build a pathway anyway; and, three, that we're providing above and beyond regarding the bus stations, we think that the deviation for the bus stop is justified. That's a long-winded way of saying staff now agrees that the bus -- that the sidewalk is not necessary.

They've given us two options. We have the option of either building it or we would agree to provide up to 10 feet of right-of-way along State Road 29 if the existing right-of-way, which is roughly 200 feet, is not wide enough to construct what DOT approves or wants to build in that area.

We have the election. We can build our sidewalk and let it be ripped up and thrown away, or we can agree to give away free land. We'll make that decision at site plan, and that's basically the language we've agreed to.

All setbacks would be measured from the existing right-of-way. All buffers would be measured from the existing right-of-way. Those are the concepts that staff has agreed to, and we'll have to -- frankly, we'll not get that done today. We'll have to come back with the actual wordsmithing, I think, at the consent. But those are the concepts addressing both the sidewalk as well as the traffic signal.

There were some other comments in the staff report. They wanted us to provide for an interconnection to the north on our master plan. This is the revised master plan providing for an interconnection to the north.

There were concerns about being able to actually read Exhibit G1 in the PUD document. So what we did -- G1 was the blow-up of the four elevations. We've now broken that down into -- I guess it would be G1 and G2. We broke the elevations down to where hopefully when you look at that and you copy it and you record it, the wording is big enough that you can actually see it.

So we took the four elevations and created two sheets so hopefully it will be big enough for everybody to see. We'll still have the front sheet that has the signage, the size of signage on it that we made consistent with what staff recommended.

In talking to different members of the Planning Commission, there were some noted duplication or clarifications that need to be made. And I will walk you through those changes. We haven't made those yet, but we will make those as part of the consent hearing.

But on Page 1 of the PUD, Item No. 6 is boat dealers, Group 5551. Well, boat dealers, Group 5551 is already incorporated into Item No. 4 above, so it's a duplication. So we would delete that duplicate reference.

On the next page of the PUD, Page No. 2 of 14, Item No. 17, home furniture, furnishings, and equipment stores with those different group numbers, apparently SIC Code 5735 allows for videos, which is similar to what's allowed in 32, so one of these days I'm going to remember that. But Ms. Homiak caught that, so we would also include for item -- up in No. 17 the reference to SIC Code 5735, we would also exclude adult-oriented sales and rentals, so we'll make that change.

On Page 8 of 14, under the transportation commitments, in addition to what we already discussed as the necessary changes regarding the signal and the sidewalk. Item No. C, it says, "at the time of SDP, the project will construct." I think project should be changed to "developer will construct." That's consistent with how we've addressed everything else.

On Page 9 of 14, Item 3 planning, Letter A, it should say "project architecture and signage shall be in compliance with the conceptual building elevation, Exhibits G and H." So the word "substantial" would come out and "conceptual" would be added before the word "building."

Exhibit G1 I showed you will now become G1 and G2, which are the elevations. I think --

MR. WERCHECK: Signage will be on a separate exhibit.

MR. YOVANOVICH: Well, what I envision is that signage -- if you look at the original G, which we have an Exhibit G, and then we have the blowup of Exhibit G. Exhibit G would stay the same because that's where we have the signage calculations, but the blowups would just become a G1 and G2.

CHAIRMAN STRAIN: So you'd have G, G1, G2.

MR. YOVANOVICH: G2, correct. I didn't redo Exhibit G. There was really no reason to do that. And mine's black and white and you wouldn't be able to read it anyway.

So I think that's everything that we discussed in our conversations, our meetings with staff. I can do a far more detailed presentation, but you've seen all of this before.

So with that, I'll turn it over to questions that you may have.

CHAIRMAN STRAIN: A comment. You didn't give us enough backup information for this one. It was only 660 pages.

MR. YOVANOVICH: But I'm assuming it's the same or pretty close to the same 600 pages we previously gave to you.

CHAIRMAN STRAIN: It was, but we have to read it all to make sure.

So with that, are there questions from the Planning Commission?

COMMISSIONER CHRZANOWSKI: I thought the backup was done by weight.

CHAIRMAN STRAIN: In this case, yeah.

COMMISSIONER ROMAN: I have a question.

CHAIRMAN STRAIN: Go ahead, Charlette.

COMMISSIONER ROMAN: It's more for clarification.

Rich, you mentioned the two bus stops.

MR. YOVANOVICH: Yes.

COMMISSIONER ROMAN: What were you looking at in terms of a possible location for each of those?

MR. YOVANOVICH: We agreed to work with your alternative -- I forget what Ms. Arnold's actual title is. But as we go through the site plan, we'll locate those.

CHAIRMAN STRAIN: Wayne's wife.

COMMISSIONER EBERT: It's called boss.

CHAIRMAN STRAIN: Yeah, boss.

MR. YOVANOVICH: Who he's afraid to talk to and makes me go deal with her.

CHAIRMAN STRAIN: Oh, I hope she's hearing.

MR. YOVANOVICH: We'll address that at Site Development Plan so we can make sure we put it in the right place and we put the right types of covers and facilities.

COMMISSIONER ROMAN: My question has to do with, have you given thought to how people get to those bus stops?

MR. YOVANOVICH: Yeah. And that will all be part of where we put that on the site plan in relation to where the building is, where they'll pull off to the side. Because as you -- it's not going to be in the travel lanes, the parking lot travel lanes. It will be, they'll pull over to the side to give the buses an opportunity to drop people on and off. We haven't figured out where in proximity to the front doors of the -- whoever the building will be yet. That will all be determined as part of the Site Development Plan process.

COMMISSIONER ROMAN: And that's where I think the sidewalks come in or the multi-use paths come in, because I think that if it becomes a transfer station, which I think is very positive, that more people will go to that location in order to access the buses.

MR. YOVANOVICH: Just so everybody's clear, there will be a -- there will be a sidewalk on Westclox on our project.

COMMISSIONER ROMAN: Okay.

MR. YOVANOVICH: So people -- and there are already, I believe, sidewalks running south to north that will get you to the corner of the property.

COMMISSIONER ROMAN: Okay, great.

MR. YOVANOVICH: So it's just going beyond that we just didn't think made any sense since it was going to get ripped out anyway.

COMMISSIONER ROMAN: Okay. Thank you.

CHAIRMAN STRAIN: Diane?

COMMISSIONER EBERT: Rich, I have a question for you. Who's more difficult to deal with, the DOT or Collier County?

MR. YOVANOVICH: I'm going to take the Fifth. I don't know. I don't deal with DOT.

COMMISSIONER EBERT: Don't they take much longer than Collier County?

MR. YOVANOVICH: Again, I can't answer that question. Mr. Banks can answer that questions, but I don't have any interactions with DOT. But I do have interactions with the county, and on any given day my answer can change.

If you want Mr. Banks to get up there and tell you who's more difficult to deal with --

CHAIRMAN STRAIN: Is there any -- any other questions? As I ask mine, if you guys have any issues as we roll along, just jump in.

I want to get a handle on what your traffic engineer, slash, marketing guy, slash, civic leader has to say about his comment from April's meeting that we had in Immokalee, and I'll read what he had said involving the intersection of Westclox and 29.

He says, as far as the intersection of Westclox and 29, it is close to if not meeting signal warrants today. The state is typically slow to move in in putting in a traffic signal. Then he goes on to describe that a little bit.

With the development of the Wal-Mart site, we will be increasing the amount of traffic that will travel through that intersection and, therefore, we're not what triggers the need for the signal because it is imminent, but we do accelerate the need for when it goes in.

Now, you think you may have the warrants from what Richard's saying because of how he's hedging his bet in regards to placement of the signal. How do you feel about that? How unsure are you that you'll meet the warrants based on your statements eight months ago?

MR. BANKS: The signal -- for the record, Jim Banks.

The signal is going to be warranted probably within the next two to three years regardless of this project, okay, because the traffic is going to continue to grow on those two segments.

With this project, as I stated before, we will accelerate that need. In other words, we will ensure that we're going to hit the warrants within the next two to three years. And, in fact, it is very possible we're going to hit the warrants on opening day of this -- of the shopping center.

And so I'm confident that if we do a Wal-Mart, Target, Lowe's, Home Depot center, something to



that magnitude, we're going to be able to go to FDOT and say, this is the end user, we are going to meet warrants on opening day, we would like for you to approve the installation of a signal.

In my 28 years of experience, when we do a project of that magnitude that's going to generate that much traffic, FDOT is quick in their response to allow you to go ahead and install the traffic signal. We're still going to have to design it. We'll still have to submit it to them to review. Because it's an intersection of a state road and a county road, CDOT'S going to be involved as well. Tony and his guys are going to be looking at this thing.

But, again, if we do this type of end user, which we're pretty sure that's what we're going to wind up with, I assure you you're going to see a signal there very quickly.

And then I would like to add one other thing. When Rich mentioned about -- that we would cause the signal to occur within six months of the CO, I would say "up to six months." If we know who the end user is, when we're going through the SDP period and when we're getting our building permits, I'm going to -- if I know that's who we're going with, I'm going to go straight to FDOT and say, we're going to design it now. You guys are going to approve this, because they will, and I want to start the process now.

Because if we're going to go ahead and have a signal there anyhow, we're going to want it sooner than later. But I think that what we wanted was just the flexibility that we have six months after the CO to get it installed, but we're going to want to try and do it sooner than that.

CHAIRMAN STRAIN: Okay. The portion of Richard's suggestion about the three years and the bond, how do you see that playing out?

MR. BANKS: Okay. That's in the event that we go through the SDP and one of these big-box tenants backs out. And let's say it's just going to be a Publix shopping center, you know, a U-Save or something like that. Then when I go to the state, my case for the need for the signal near opening day has, you know, been undermined. And then I think what's going to happen is FDOT's going to say, nope, you're going to have to build the commercial center, monitor the intersection, physically go out there and count the traffic, demonstrate that we meet the warrants. And if you do, then you can move forward. If not, you're going to have to wait until it meets warrants.

Now, I can assure you that FDOT is not going to resist a traffic signal going in there if it is legitimately warranted. There have been concerns regarding safety.

I was out there. I watched the intersection. There are issues with that intersection. And I think that FDOT wants to see that intersection eventually signalized, but they're going to want to base it on true warrants or, again, in the case of a big-box tenant, the fact that we know we're going to meet warrants.

So this three-year timeline is we're going to go in there. If we do something much smaller than what we think we're going to do in there and we don't hit the warrants on opening day, then the way the PUD reads is we have to do an annual monitoring report of that intersection, and we're going to keep presenting the evidence to FDOT as well as CDOT. And if we hit the -- and if we hit the mark, then we will need to go ahead and move forward with doing the traffic signal.

And that's the purpose of the bond is if we meet warrants, and as -- when we spoke with the director yesterday, if we're not diligently pursuing it, he wants to be assured that CDOT can move forward. That was the purpose of the bond.

So if we drag our feet on getting this work done, the county's got the 300,000 or -- 300- or 350- or whatever the signal's going to cost. They're going to have it in place that they can move forward and go ahead and do the design and get the intersection signalized.

And again, Mark, honestly, from our perspective, if we're going to need a signal there and if we're going to do a big-box tenant, we're going to want it there, and so is our end user going to want it there. We're not going to drag our feet on this thing.

CHAIRMAN STRAIN: Well, and of all the issues we had in Immokalee when this was discussed, everything was positive except for this issue of the traffic, and that's why it's so important.

In your experience, if the DOT doesn't have the warrants they need, can the private sector -- has your experience been the private sector being able to put the light in regardless of the warrants because it was, obviously -- it was needed, at least the landowner thought it was needed -- while the DOT did not have the warrants to do it?

MR. BANKS: Okay. If we don't meet the volume warrants, then we're going to need to meet the safety warrants, and we're close to meeting those now, again, regardless of this project. So there's two methods of how we're going to get there.

Now, let's say that we don't meet the volume warrants and we don't meet the safety warrants. Then, in actuality, it's not needed regardless. I do not see that happening if we're going to wind up doing our big-box tenant.

I know we're going to hit the volume warrants. I can assure you we're going to hit those volume warrants. Even if we do a Publix, I know we're going to hit them.

But in the event that we don't hit the volume warrants and we don't hit the safety warrants, we're still going to want that traffic signal in there. And the director committed that the county would pay their proportionate share. We might need to rely upon the director to do a little heavy lifting with FDOT and insist that this is also a county project and it's for the benefit of the public and we're onboard with that, and then that might carry the day with the state.

CHAIRMAN STRAIN: Okay. Is the DOT's position you have to meet both warrants or just one?

MR. BANKS: No, just -- you could either meet volume warrants, or you could meet safety warrants.

CHAIRMAN STRAIN: Okay. And we have a lot more -- I have a lot more questions. I'm sure the others will when we get into this detail, a little more detail, because John Pod needs to address us. If there is a copy of the proposed language available, can you pass that out now so we can read it during our break?

And with that, we'll take a break to 10:45. Hopefully we'll -- John's bringing the copies up, and we'll review them during the break.

Thank you.

(A brief recess was had.)

CHAIRMAN STRAIN: Okay, everybody. Welcome back from the break. We left off talking about traffic.

Rich, did you have something you wanted to add at this point?

MR. YOVANOVICH: If you're done with traffic, I have one further thing.

CHAIRMAN STRAIN: No, we're not done with traffic yet.

MR. YOVANOVICH: Do you want me to wait --

CHAIRMAN STRAIN: No, go ahead.

MR. YOVANOVICH: -- with what I have to add?

CHAIRMAN STRAIN: Go ahead, sir.

MR. YOVANOVICH: On the signs, we discovered -- and we did talk to staff about this. We discovered that in the list of signs on Exhibit G we forgot to include the liquor sign as an allowed sign. It's 1 foot tall. It's 11 square feet. So it adds to the total, brings the total up to 578.34 square feet.

Staff said fine. They're okay with adding that sign and increasing the square footage at 11 feet. So I just wanted to put that on the record, and then I'll let you go back to traffic.

CHAIRMAN STRAIN: Well, there's going to be quite a bit of cleanup on consent, so that will just be another item --

MR. YOVANOVICH: Right.

CHAIRMAN STRAIN: -- that we'll have to take a look at there. And this is the page I wanted to ask a question about, unless somebody else has anything at this time.

I guess the traffic, your traffic fellow, what's his name now? Jim Banks. Jim, can you answer a question for me?

MR. BANKS: Sure, yes, sir.

CHAIRMAN STRAIN: I don't know how many traffic lights on SR-29 this is going to trigger. Are we talking the one -- about the north entrance to, the lineup with that road that's shown on this aerial, to the top of the aerial?

MR. BANKS: What's going to happen is when you --

CHAIRMAN STRAIN: I mean, I know that's not the one we're talking about for the -- I'm just -- I want to get a reference; how many traffic signals are we going to have?

MR. BANKS: FDOT would not let that northern access be signalized because we don't meet their

desired separation on 29.

CHAIRMAN STRAIN: Okay.

MR. BANKS: And if it became a problem where it would -- recurring accidents or something or the volume warrants were so high, they would make it a directional left and then force our traffic to come out on Westclox.

Now, what's going to happen is because the Westclox signal we know is going to be first onboard, people are naturally going to gravitate towards it anyhow when they're leaving the Wal-Mart, so we never -- we don't think that the traffic volumes exiting Wal-Mart are really going to use that northern access to such a level that it's ever going to meet warrants anyhow because, again, it's paths of least resistance; people are going to go down Westclox and out. If they're heading north or they're going to go straight across and head down 29A.

CHAIRMAN STRAIN: Okay. That road that you're aligning with up on that north part of your project that's on the east side of 29, that leads to -- I can't tell what they are. Is that a commercial project? What is that down in there; do you know?

MR. BANKS: That's some kind of medical -- Florida State University medical facility.

CHAIRMAN STRAIN: Okay. When you put your entrance in on the north end, will you be putting in a crosswalk at that location to the road? I mean, without a light you're not going to have any crosswalk.

MR. BANKS: We can't.

CHAIRMAN STRAIN: And what I'm trying to understand is your removal of the sidewalk under the theory that there's nothing to the north that would use it. Now you're telling me there's a school there and that school, the students that would come from that school, do they have a tendency to drive or to walk? Because they may want to use the sidewalk to get to Wal-Mart instead of driving over.

MR. BANKS: If they want to walk to the Wal-Mart, we want them to walk south to the --

CHAIRMAN STRAIN: To Westclox.

MR. BANKS: -- Westclox signal where we're going to put in the actuated pedestrian. We don't want them crossing 29 there at that driveway, because that would -- we can't put a crosswalk in there.

CHAIRMAN STRAIN: Is there a sidewalk on the east side of 29?

MR. BANKS: I don't think so, not up to the -- not that far north. There is. It stops just to the north of the Westclox intersection, though.

CHAIRMAN STRAIN: Okay. Would the PD&E study include one?

MR. BANKS: I'm sure it does, yes.

CHAIRMAN STRAIN: Okay. And when -- I concur with your argument that to put a sidewalk in now and only to have it torn out is a waste of money. So from that perspective -- that's why I asked the question, okay. Thank you.

And I think while we're on traffic, maybe John can come up and explain to us how this deal works.

MR. PODCZERWINSKY: I think you mean sell some snake oil. Good morning. Collier County --

CHAIRMAN STRAIN: Collier County snake oil, huh?

MR. PODCZERWINSKY: For the record, John Podczerwinsky, transportation planning.

In any case, you've all received during the break a very brief synopsis of what the new discussion has been about.

The top half of this document that you have in front of you has Letters A, B, C, and D relative to the intersection, the signalization of the intersection at Westclox and State Road 29.

I want to point out that State Road 29 is currently part of a -- I'm sorry, a PD&E study that's ongoing with FDOT. FDOT has at least three, potentially more intersection configurations that they've presented to us. They are not approaching a final design through the PD&E at this point. But my understanding is that they're eventually moving towards the feasible layout at that intersection in the long range future, so --

CHAIRMAN STRAIN: This was supported by your department?

MR. PODCZERWINSKY: Yes.

CHAIRMAN STRAIN: Okay. As far as the warrants go for that intersection, have you -- does the county monitor the warrants currently, and do you have any insight into that?

MR. PODCZERWINSKY: We'll take a look at it. We don't monitor it actively on an annual basis.

But when we do start to receive complaints and when we do start to notice in traffic studies that the signal warrants are near or being met, that will be identified per our traffic operation department, at which time they would go out and study the intersection to determine if those warrants are met.

In this case, because of the PD&E, we would probably defer that to the state's process. We wouldn't want to do anything that would duplicate taxpayer efforts to study an intersection. If two agencies study it at the same time and come up with the same findings, we wouldn't want to repeat their effort.

CHAIRMAN STRAIN: Okay. And I don't have any other issues at this time, John.

Oh, Stacy is not here.

MR. PODCZERWINSKY: Correct.

CHAIRMAN STRAIN: So do you -- I thought she'd be here to address the sidewalk.

MR. PODCZERWINSKY: I've spoken to her this morning, and I'll be speaking on staff's behalf today.

CHAIRMAN STRAIN: Go for it.

MR. PODCZERWINSKY: You'll notice at the bottom of the document that I handed out to you as well, there was a recommendation change, and this is different from the staff report that you've received from Kay Deselem.

In the staff report, staff is recommending denial for Deviation No. 2. And Deviation No. 2 was an entire deviation, as I recall correctly -- and I'm paraphrasing. It was an entire deviation from the LDC requirement to build or pay in lieu for the sidewalk along State Road 29.

The recognition is that the PD&E is ongoing. The understanding is that there may not be a sidewalk in the location that's desirable for the developer or that the developer could build, that it could be ripped out at some point if the developer built it.

So at the -- at a discussion that we had yesterday with Mr. Casalanguida, the developer agreed to the language roughly that's before you today. It still requires some wordsmithing, but the option would be at the developer's end as to whether or not they provide 10 feet or construct a sidewalk.

CHAIRMAN STRAIN: Well, the option would --

MR. PODCZERWINSKY: Ten-foot reservation.

CHAIRMAN STRAIN: -- be at, really, DOT's end, wouldn't it? If they need it and this agreement is provided, then they'll provide it, right?

MR. PODCZERWINSKY: DOT would drive the need for that, yes.

CHAIRMAN STRAIN: Right. If they -- just out of curiosity, if they paid for construction in lieu of, does that money get paid to the state since they're putting the road in?

MR. PODCZERWINSKY: It gets paid to the county.

CHAIRMAN STRAIN: How does the county justify that if it's the state road that pays for the sidewalk that we've extracted from these people?

MR. PODCZERWINSKY: I understand your perspective. It's --

CHAIRMAN STRAIN: I mean --

MR. PODCZERWINSKY: It's an LD --

CHAIRMAN STRAIN: -- it just seems bizarre.

MR. PODCZERWINSKY: It's simply an LDC requirement and for staff to enforce it. It's a black-and-white development -- or a black-and-white requirement in the LDC.

It's either build it or pay in lieu when there's a project on that. We'll collect that money on behalf of the state, and we would work that out with our state funding at some point in the future.

CHAIRMAN STRAIN: So you believe the state funding has been reduced by the amount of fees we've collected for sidewalks along state roads?

MR. PODCZERWINSKY: I couldn't speak to that. I haven't become that involved in our budgeting process to answer, but I can certainly look into it for you to clarify that.

CHAIRMAN STRAIN: You know, we're hitting on a subject that's probably bigger than what this project is, in essence; it's the way we have this payment in lieu of all over the county, but we don't put the sidewalks necessarily ever where they're being utilized -- where they're paying for.

In your lane miles, do you have any documentation to show that in the calculation of a lane-mile cost

the sidewalks are excluded from that calculation?

MR. PODCZERWINSKY: I had a very brief discussion with Amy Patterson, our impact fee manager, yesterday. And if I recall correctly, the sidewalks are included in a portion of the impact fees, but they're not included for all roads, as I understand it. So I would like to clarify -- I'd like to dig deeper and find out more before I give you a firm answer, make sure that I understand it before I provide the answer to you guys.

CHAIRMAN STRAIN: I'm just surprised that -- maybe there's no attorney capable of challenging this rule, but I'm surprised that some of the attorneys haven't looked at this as kind of a double taxation. I mean, we're paying for it in some cases, it sounds like, twice, and in other cases we're taking money that we're not going to be expending ever for the location that it's being extracted from. And I'm just -- I can't see the rational nexus, so that's a little concerning. But that's another issue for another day. I appreciate your clarification to the extent you could.

And so with that, I don't -- does anybody have any other questions about sidewalks or --

COMMISSIONER CHRZANOWSKI: A comment.

CHAIRMAN STRAIN: Go ahead, sir.

COMMISSIONER CHRZANOWSKI: The sidewalk rule as the county has it is a good rule, but it does get -- and I don't want to use the word "abused," but there are a lot of sites where it just shouldn't be done.

MR. PODCZERWINSKY: Understood. And it's --

COMMISSIONER CHRZANOWSKI: No, you don't have to answer.

MR. PODCZERWINSKY: No, I understand.

COMMISSIONER CHRZANOWSKI: That's just a comment.

MR. PODCZERWINSKY: I do want to address this, though, very briefly. And I know this is probably not required information. But staff has been in discussion with our administrator, and we're working on figuring out at this point if there needs to be an LDC amendment to better clarify this answer for you, to better clarify how payment in lieu and construction of sidewalks is applied.

At this point my understanding is we won't be amending the LDC, but we are going to look at it and see if it's necessary during the second cycle of LDC amendments that are forthcoming this year.

I've got a placeholder in that cycle of amendments, but I don't know if we're going to do anything with it at this point.

CHAIRMAN STRAIN: Diane?

COMMISSIONER EBERT: John, I have a question, because you know I'm a big pathways person, because people are really using the pathways, and half the time I would rather see a 10-, 12-foot bituminous pathway rather than a sidewalk in a lot of these areas. And even with this not knowing where your buses are going to be, it would be a good thing there, but I'm sure that they will work it out with the developer at that stage.

MR. PODCZERWINSKY: Okay. And just to address that, as I recall from one of the State Road 29 PD&E comments, one of the design plans that I recall receiving -- and this is a pretty old recollection, but I think they were looking at a 10-foot pathway, which would be bituminous if they installed a 10-foot pathway. That's the typical standard.

COMMISSIONER EBERT: Thank you.

MR. PODCZERWINSKY: And I'm sure that Stacy, back in the office right now, is probably ready to correct me on something. But if there's any corrections that need to come up from that, I will gladly issue those to you.

Before I let you go, Jim had mentioned to me that he needs to make a correction on the record.

MR. BANKS: Yeah. Thank you, John.

Again, Joe Banks.

The current PD&E shows that the sidewalk that extends along 29 on the east side which terminates at Westclox is not going to be extended to the north. Doesn't mean that it won't happen, but it is not shown on that current PD&E. And John is correct, it is a 10-foot multi-use pathway on the west side, that they are proposed on the PD&E. So I misspoke earlier, what I said.

CHAIRMAN STRAIN: Well, that might bring in another reason why your substitution may be positive. Does -- that 10-foot pathway, does the current right-of-way have enough room for the 10-foot pathway, or will they possibly need that 10 feet?

MR. BANKS: They're not showing a right-of-way take. The current right-of-way is 200 feet in width.

CHAIRMAN STRAIN: Right.

MR. BANKS: So that's pretty ample. They should be able to do everything they need to do, including the multi-use pathway.

CHAIRMAN STRAIN: Okay. Thank you.

Anybody else while we're on transportation?

(No response.)

CHAIRMAN STRAIN: Wayne, I've got a couple questions. Can you put your new master plan up there, the one that shows the interconnect that we're going to have to stipulate's going to have to be included in the final product. Can you slide it down to show the interconnect.

Okay. I had asked when I'd met with you what that square piece of property up to the north was going to be used for, and it was explained to me that actually you're going to redo your entry to provide stacking for 29 and, obviously, then it would probably tie into that interconnect.

When you bring the master plan back on consent, could you clean this up to show us what you're really doing with that entrance or exit on to 29?

MR. ARNOLD: For the record, Wayne Arnold.

Mr. Strain, I'm not sure we know what we're doing. We had originally had a configuration slightly smaller than this. We expanded that notch to the north, if you will, to accommodate a longer throat distance if needed once we get into final design.

CHAIRMAN STRAIN: But do you think that you're going to get a permit to build that exit at that kind of angle onto 29?

MR. ARNOLD: I'm not certain. I mean, I guess we could let Mr. Banks weigh in on that. I mean --

CHAIRMAN STRAIN: I just thought if you knew your -- if you had a better -- you guys told me that you -- that property was going to -- you're going to put a stacking lane in. And you don't show one, and I'm concerned that you won't put one in because you're going to say the master plan doesn't show one.

That's all I'm looking for.

MR. ARNOLD: We can certainly show more detail. Or, Mr. Strain, I could even take that tract line off here and just simply show it as an access point. I mean, there's any number of ways to show it.

CHAIRMAN STRAIN: Just show something with the intention of the stacking. You can put it in a dotted line, I don't care, just so that we know we're not locking -- we are not trying to lock into that tight radius that's close to the 29 right-of-way.

MR. ARNOLD: Okay. We can certainly do that.

CHAIRMAN STRAIN: That's the only point I was getting at.

MR. ARNOLD: Yep, we can do that.

CHAIRMAN STRAIN: The second thing. The CRA approved the project, especially the architectural standards, consistent with the exhibits that you produced, apparently, from what the language is. The exhibits that you gave them, are they the same exhibits we're now adding as G1 and G2?

MR. ARNOLD: They are; however, you have the benefit of those being broken down into two separate sheets for ease of reading the language that's on them. They are the same.

CHAIRMAN STRAIN: I wanted to make sure that their reading was consistent.

MR. ARNOLD: And if it wasn't clear, they also -- and I think this was at maybe Heidi's urging, we took the reference to the Sherwin-Williams paint color off on those exhibits as well.

CHAIRMAN STRAIN: Yes. I had that to ask her about, and it was -- I saw that was taken off on the ones you provided. Thank you.

That's the only remaining questions I have on this project. Does anybody else have any of the applicant?

(No response.)

CHAIRMAN STRAIN: If not, staff report?

MS. DESELEM: It would probably be -- for the record, Kay Deselem. It would probably be appropriate for the GMP amendment to go forth first with David Weeks, and then I'll follow with that.

CHAIRMAN STRAIN: Okay. Thank you.

MR. WEEKS: David Weeks, comprehensive planning staff.

Regarding the Comprehensive Plan amendment, first item, staff is recommending approval. No changes since the transmittal hearing.

I would just make a general comment, as we had during the transmittal hearings, that with this plan amendment and the -- as it would be implemented through the companion rezoning item and the property ultimately developed, it does have the potential to have a positive affect on the Immokalee community, most particularly for the consumers because it would give them more choice, and at least for some of the community they're traveling outside of the Immokalee community to do some of their shopping, and this gives the potential for those shopping needs to be met locally.

The flip side is that for other local businesses in Immokalee, it has the potential to negatively affect those other businesses. Competition, generally, we think is a good thing. That's part of the American way, capitalism but, on the other hand, a part of competition is that sometimes you have a winner and sometimes you have a loser. And there is the potential for some businesses in Immokalee to be negatively impacted.

So just as we did at transmittal, we pointed that out to you. Though we are recommending approval, everybody should have their eyes wide open that there could be some positives and some negatives with the approval of the project, but we do recommend approval.

CHAIRMAN STRAIN: Anybody have any questions of comprehensive planning?

(No response.)

CHAIRMAN STRAIN: David, on the staff report -- and I think it's on Page 2 -- you have a section called "staff recommendations," and then you produced the underlying language that's being added and changed.

The title of that is "Commercial Subdistrict - SR29 and Jefferson Avenue," but in the LDC there is no such commercial subdistrict. There's two districts. One is SR29 overlay, and the other is the Jefferson Avenue overlay. One is not identical to the other, and the one on Jefferson Avenue is quite a ways away from SR29.

This isn't getting any influence from the Jefferson Avenue side of analysis, is it? It's basically they're trying to move into the SR29. Why was it -- why is it considering them in both in the GMP?

MR. WEEKS: I think this goes back to the original Immokalee Master Plan, and that is the way the subdistrict reads. It's the same regulations that are applying to two different locations. So rather than having a subdistrict for the SR29 corridor and then a separate one for Jefferson Avenue, if the regulations are the same, that would be redundant. I believe that's why it was done this way.

Why the LDC might have two separate zoning overlays, I don't know. I don't know if those standards within those two respective zoning overlays have differences or not.

CHAIRMAN STRAIN: Okay. And I know I talked to you about it. I just wanted to understand it better --

MR. WEEKS: Okay.

CHAIRMAN STRAIN: -- or a clarification today.

Your recommendations in the GMP side of things does not mirror the recommendations reported on your behalf by staff on Page 5 of the staff report. It says, based on the above analysis, comprehensive planning staff finds proposed CPUD consistent with the Immokalee master plan contingent upon the following.

And I think some of it's relevant to you, but you've got in here removing Deviation No. 2. What has Deviation No. 2 got to do with the Comp Plan?

MR. WEEKS: I'm at a loss. I'm looking at the staff report for the plan amendment, and it ends on Page 4.

CHAIRMAN STRAIN: Could you put Page 6 of your report on the board.

MR. WEEKS: You're talking about the zoning petition now?

CHAIRMAN STRAIN: I'm talking about the zoning -- yes. The zoning petition is saying comprehensive planning staff. Are you that -- you're comprehensive planning.

MR. WEEKS: Yes, I -- my confusion is that I was only presenting and so far only speaking to the plan amendment.

CHAIRMAN STRAIN: Well, I know, but since this is apparently -- see the second paragraph? If that isn't attributed to you, then tell me who I should be questioning.

MR. WEEKS: Mr. Chairman, it is comprehensive planning. It's me.

CHAIRMAN STRAIN: Okay.

MR. WEEKS: I just got confused when you jumped to the zoning petition when Kay hasn't presented. We haven't really gotten to the zoning petition at a staff perspective.

CHAIRMAN STRAIN: Oh, I figured while you were up there I'd hit you with this instead of having to make you walk back up.

MR. WEEKS: The comprehensive planning staff did have an objection. I think I have to say at this point our position has been trumped by the division administrator, so we no longer have an objection.

CHAIRMAN STRAIN: Okay.

MR. WEEKS: That's it.

CHAIRMAN STRAIN: Okay. Because, I mean, if you had a GMP issue with Deviation No. 2, I wanted to hear it. But if there's no GMP issue, then there's nothing that they have to overcome in the GMP, and we're right back to the LDC.

MR. WEEKS: Not anymore.

CHAIRMAN STRAIN: Okay. Thank you, David.

Kay, do you want to follow that act?

MS. DESELEM: Sure. Why not?

For the record, Kay Deselem, principal planner with zoning.

First thing I want to correct on the staff report is the hearing date that's shown on Page 1. It is not April 29, 2014. It is, in fact, today's date of January 15, 2015.

The staff report is a document last revised 12/19/14. And I won't belabor the issues. You've had this staff report as well as the one that was prepared for the April 29th meeting.

And with the discussions we've had today, staff's recommendation has changed somewhat in that we are now supporting the Deviation No. 2.

So we are recommending that the petition be found consistent with Growth Management Plan and recommend approval with Conditions No. 1 and 2 that are shown on Page 18 of the staff report.

CHAIRMAN STRAIN: Thank you, Kay.

Anybody have any questions from the staff report?

(No response.)

CHAIRMAN STRAIN: Kay, Page 2, Paragraph 4.

MS. DESELEM: Yes.

CHAIRMAN STRAIN: This petition has a companion petition seeking approval of a growth management plan amendment to expand the Jefferson Street overlay onto this site. Actually, it's the 29 that's being expanded onto the site.

MS. DESELEM: Yes.

CHAIRMAN STRAIN: And I want to make sure that, when it goes forward, we have that correction.

MS. DESELEM: Yeah, that is correct. It should be State Route 29 rather than Jefferson Street. Thank you. I forgot to make that correction.

CHAIRMAN STRAIN: I'm moving through the questions that may or may not have been asked yet. And I'll be -- I think that's it. I don't have any other issues. They've already corrected the comments that I had provided to them earlier, so we're good.

I do -- there was -- on Exhibit F, there was only one comment; the word "developer" all through Exhibit F needs to be changed to "owner."

And with that, I don't have anything else. Does anybody else have any questions?



(No response.)

CHAIRMAN STRAIN: Okay. Rich, do you have any rebuttal comments? This will have to go to consent.

MR. YOVANOVICH: Nothing.

CHAIRMAN STRAIN: So -- nothing? Okay. I'm going to read off the notes I made so that we can keep it consistent for our consent.

Include staff recommendations except for the recommendation to deny Deviation No. 2 acknowledging that's been changed to support, include the comp planning staff recommendations in the Comp Plan amendment. We need copyable -- I don't know how that word is spelled. We need a copy of the sign exhibit that can be copied for record.

COMMISSIONER CHRZANOWSKI: Reproducible?

CHAIRMAN STRAIN: What?

COMMISSIONER CHRZANOWSKI: Reproducible?

CHAIRMAN STRAIN: That's a good word. Reproducible copy of that exhibit. I believe it's been provided. We'll need to make sure it is.

Remove the Sherwin-Williams as the paint manufacturer. That's been done. Provide readable exhibits. That's been done by G1 and G2.

Use the master plan that's shown with the interconnection to the north and indicate stacking.

Modify the PUD to delete all dual references under the uses as pointed out, I believe, by Ms. Homiak through Richard, and the excluding the adult video under 5735 SIC reference.

Make the changes to the transportation section consistent with what was handed out to us conceptually. That will be refined by our -- by our consent hearing.

There's a reference to the word "substantial" in one of the exhibits. That will be replaced by the building elevations that have been provided in G1 and G2.

Change the "developer" to "owner" in Exhibit F, and under Exhibit G they're going to be adding the square footage of a liquor sign to that exhibit.

Those are the notes that I made that pertain to our consent hearing.

So with that, if there's -- anybody else want to add anything? Any other questions?

(No response.)

CHAIRMAN STRAIN: Ray, were there any public speakers?

MR. BELLOWS: No one has registered.

CHAIRMAN STRAIN: Anybody from the public wish to speak on this item?

(No response.)

CHAIRMAN STRAIN: Okay. With that we'll close the public hearing, and we'll entertain a motion. Anybody? Stan?

COMMISSIONER CHRZANOWSKI: Which one do you want first, the --

CHAIRMAN STRAIN: The Comp Plan. I'm sorry. You're right.

COMMISSIONER CHRZANOWSKI: Comp Plan. Okay. I move we approve Petition CP2013-8, Project PL20130001345, companion to PUDZ-PL20130001241 with the stipulations that Mark just outlined.

CHAIRMAN STRAIN: Is there a second?

COMMISSIONER EBERT: I'll second.

CHAIRMAN STRAIN: Second by Diane.

Is there any discussion?

(No response.)

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

COMMISSIONER CHRZANOWSKI: Aye.

COMMISSIONER EBERT: Aye.

CHAIRMAN STRAIN: Aye.

COMMISSIONER HOMIAK: Aye.

COMMISSIONER DOYLE: Aye.

COMMISSIONER ROMAN: Aye.

CHAIRMAN STRAIN: Anybody opposed?

(No response.)

CHAIRMAN STRAIN: Motion carries 6-0.

Stan, do you want to make a stab at the PUD as well?

COMMISSIONER CHRZANOWSKI: Yeah. I move we approve PUDZ-PL20130001241 with the stipulations outlined by Mark. And which one of these comes back for consent, just --

CHAIRMAN STRAIN: This one will come back for consent.

COMMISSIONER CHRZANOWSKI: With the provision that it come back for consent.

CHAIRMAN STRAIN: Great, thank you.

COMMISSIONER EBERT: I'll second.

CHAIRMAN STRAIN: Seconded by Diane.

Discussion?

(No response.)

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

COMMISSIONER CHRZANOWSKI: Aye.

COMMISSIONER EBERT: Aye.

CHAIRMAN STRAIN: Aye.

COMMISSIONER HOMIAK: Aye.

COMMISSIONER DOYLE: Aye.

COMMISSIONER ROMAN: Aye.

CHAIRMAN STRAIN: Anybody opposed?

(No response.)

CHAIRMAN STRAIN: Motion carries 6-0.

Thank you all. We will see you in two weeks.

\*\*\*Okay. The next item up is the Golf Club of the Everglades. It's PUDA-PL20140001511. It's known as the Golf of the Everglades Residential 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: Disclosures. Stan?

COMMISSIONER CHRZANOWSKI: I talked with Mr. Yovanovich. We had a nice philosophical discussion about TDRs.

CHAIRMAN STRAIN: Diane?

COMMISSIONER EBERT: No. I just spoke with staff.

CHAIRMAN STRAIN: Okay. And I've met and talked with Mr. Yovanovich as well as staff concerning the TDR program.

CHAIRMAN STRAIN: Diane -- I mean Karen.

COMMISSIONER HOMIAK: I spoke to Mr. Yovanovich.

CHAIRMAN STRAIN: Brian?

COMMISSIONER DOYLE: I spoke to Richard as well.

Charlette?

COMMISSIONER ROMAN: No contact.

CHAIRMAN STRAIN: If I start getting Charlette mixed up with Brian and Brian mixed up, then I've really got a problem.

COMMISSIONER EBERT: It's called old age.

CHAIRMAN STRAIN: Thank you.

Okay. Richard, with that, it's all yours.

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

With me is Mike Heineken with Pulte, and Anita Jenkins with JR Evans Engineering.

You've seen this project before not too long ago. Since it was previously approved for 750 units on approximately 835.6 acres, we acquired the 10 acres highlighted with green hashing on the visualizer. We're

bringing that 10 acres into the PUD. We're not asking to increase the existing density of 750.

Essentially -- I have another exhibit I could show you, but we're making up for the two acres or so of additional preserve down in this area that will be required because we're adding the 10 acres. There's native preservation.

So all the numbers have been updated to reflect the additional native preservation, the additional acreage that we're adding to the PUD.

We had added one deviation which was basically to allow us to use our 169 units of base density first before we needed to start buying TDRs. Staff initially was recommending denial of that deviation. We had a very long conversation explaining why we believe we should be allowed to use our base density first before we would be required to have to buy TDRs.

David Weeks, I believe, will be here to tell you that he has since withdrawn his opposition to the deviation. I had a big long presentation as to why; I had a justification for the deviation, but recognizing that staff has withdrawn its objection to that deviation, I will save you from that long explanation, unless you need it.

So, basically, it's a short, simple PUD -- amendment to add 10 acres. No new density. And to adjust the PUD to reflect the additional 10 acres.

CHAIRMAN STRAIN: Okay. Anybody have any questions?

COMMISSIONER EBERT: You bet.

CHAIRMAN STRAIN: Diane?

COMMISSIONER EBERT: It's just that Rich -- and when it comes to TDRs, you see -- we seem to have a problem with it. And it's probably the TDR program, but it's what the BCC directed the zoning and the planning to do. So unless it comes from the BCC that we discontinue it or change it --

MR. YOVANOVICH: This isn't the first time that we've -- look, Naples Reserve, we did the very same --

CHAIRMAN STRAIN: But didn't the --

MR. YOVANOVICH: -- change.

CHAIRMAN STRAIN: Isn't staff interpreting this as consistent with the Comp Plan and the Land Development Code? Because David's withdrawing his objection.

MR. YOVANOVICH: He's saying we're allowed to ask for the deviation, that we give appropriate rationale for why the deviation would be appropriate. I think -- hopefully what's going to happen as we're going through this review -- and there is a big review that's going on for the program. The review is going to come to the conclusion that people who want to participate in the program should be allowed to use their base density first because it's a disincentive to participate in the program if you have to proportionally use TDRs.

By way of example, if we do not hit the max density of 750 units, we don't get to use all of our base units because, proportionally, I'm leaving density on the table, or somebody's going to come in and do a PUD amendment first for just 169 units. I'll get my first plat approved for 169 units, and I'll come in and I'll amend the PUD to -- I think it's like a \$6,000 fee to amend the PUD to bump my density up, and then I'll use all my TDRs. Because it's far cheaper to amend the PUD than to lay out cash up front when you're putting all your money in infrastructure and everything else.

And David and I had a long talk about cash flow and how projects work; that I don't know that was necessarily considered when the LDC amendment was originally approved.

So hopefully on this restudy there's going to be a change to reflect -- you should be allowed to use your base density first. Right now David agrees the deviation is justified and appropriate.

COMMISSIONER EBERT: Well, I guess I didn't talk to David and staff because they both denied it in this. We had nothing on this. But I do know the other TDRs -- and I do know there's a problem with them, Rich, I really do, but we're going against the BCC at this time, and maybe someone can explain, maybe Mike can. The study is not done yet, and I guess I just do not want to go against what the BCC has in place at this time.

MR. YOVANOVICH: Well, I think we've justified the deviation and the need for the ability to use our base density -- or use our base density first, and that's why we've asked for the deviation. We simply can't wait for a two-year study to get done and changes to be made. We'd like to move this project forward.

And just, Ms. Ebert, understand, we have -- roughly 22 percent of our density is base density; 78 percent is going to be through the acquisition of TDRs.

We are going to very quickly use up our 22 percent, our 169 units, and we'll be into the acquisition of TDRs very quickly. So we will be fully participating in this TDR program, which is the goal is to have people put their lands in sending lands and have us buy those lands, those development rights for them, so we are furthering the goal of the program.

And it's not the first time. We did the very same thing for the Naples Reserve PUD. Because, you're right, I've been fortunate enough to represent developers who are using this program.

COMMISSIONER EBERT: Every single one.

MR. YOVANOVICH: And we're recognizing where there are problems, and we're working our way through that through the appropriate processes.

COMMISSIONER EBERT: Can you bring this to the board?

MR. YOVANOVICH: It will. They're going to be seeing this deviation, and they're going to say, yeah, we agree on this deviation, or they're not going to agree with the deviation. Right now staff is saying we no longer object to the deviation, and we're hoping that the Planning Commission will do the same.

COMMISSIONER EBERT: One other quick question. I notice that -- are you going to take those -- the 10 acres that you have, are you going to take four homes and shift over there? Is it --

MR. YOVANOVICH: That will be part -- it's labeled RG?

COMMISSIONER EBERT: Uh-huh.

MR. YOVANOVICH: Which means residential and golf can be that 10 acres. But we're not -- I mean, we're using the same density that we have available. We're just going to spread it out.

COMMISSIONER EBERT: So you're not taking the four units from the Olde Florida Golf Course?

MR. YOVANOVICH: No, no. They're staying. The four units -- yes, ma'am.

COMMISSIONER EBERT: They're staying there?

MR. YOVANOVICH: Yes, ma'am.

COMMISSIONER EBERT: So you're just kind of spreading them out a little more.

MR. YOVANOVICH: Yes.

COMMISSIONER EBERT: Okay. Thank you.

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

(No response.)

CHAIRMAN STRAIN: I don't have any.

Kay, do you want to do the staff report?

MS. DESELEM: Yes, sir. For the record, Kay Deselem, principal planner with Collier County zoning staff.

And you do have the staff report in front of you, I assume, and it reiterates who the applicant's agents and owners are, what the requested action is, and provides the surrounding zoning and land use as well as the geographic location of the site.

There is a growth management analysis portion and then the analysis from the transportation staff and the CCME people, the environmental staff. And we have reviewed the deviation in this, but as has been stated, the staff's position has changed on that. So county staff is recommending -- or zoning staff is recommending that the petition be found consistent with the Growth Management Plan and we recommend approval of the petition with no stipulations.

CHAIRMAN STRAIN: Well, you anticipated my question.

Anybody have any questions of staff?

COMMISSIONER EBERT: No, I just -- that's not what the -- that's not the information we had, this last-minute stuff as -- sometimes is not good for us, so --

MS. DESELEM: I'm sure David Weeks is here, and he can address --

COMMISSIONER EBERT: But it -- we have both reports that was handed to us on Friday. And so this has changed since this was handed to us, and we have no information on it.

MS. DESELEM: Yeah. David Weeks can address that for you.

MR. WEEKS: For the record, David Weeks of comprehensive planning staff.

Commissioners, I believe this table is in your staff report as part of the comprehensive planning staff review comments. What this is showing, very simply, is that if a project such as this builds out to its maximum density, there is zero -- excuse me -- and with the deviation that they're requesting to build their base density first then build the TDR density, if the project builds out to its maximum density approved, there's zero negative impact to the TDR program.

CHAIRMAN STRAIN: That's their base density, though, right? If they build out to their base density?

MR. WEEKS: No, sir. I'm saying if they build out their entire project, they're asking for -- excuse me. They're already approved for 750 units.

CHAIRMAN STRAIN: Then there's no difference.

MR. WEEKS: Right. If they build out to 750, there will be no negative impact to the TDR program. But you look at the sliding scale on this chart, if they build out at less than the maximum, then that's where there's some impact to the TDR program as in fewer TDR credits are actually going to be utilized.

So why did staff change its position? Number 1, we do agree with Rich from his explanation of a couple things. One, the impact upon the applicant in having to acquire the TDRs and use them up front, the financial cost is significant in this case because of the tremendous ratio. It's almost one unit per acre, I believe, is their density. So it's -- for every one TDR -- excuse me -- one base density unit, they're having to buy almost four TDR credits, so that's pretty significant additional up-front expenditure that the applicant is subject to.

Secondly, as Rich pointed out, there is a get-around or a loophole, if you want to call it that, in that he could come in and amend the PUD, remove all of that TDR density, plat the property, then those units are entitled, and then come back and do the PUD amendment again to add the TDR density back. It accomplishes the very same thing he's asking for now. He just does it through a different process or a repeated process.

Additionally, staff acknowledges that there is a difference in the Land Development Code for how it treats the usage of TDRs in PUDs, which this project is, and non PUDs. If a property comes in in the rural fringe mixed use district receiving lands and simply asks for approval of a plat to -- and that plat shows the usage of additional density by virtue of obtaining TDR credits, there is no requirement to proportionately use those TDR credits. Same thing if they came in simply for a site development plan approval, say, for a multifamily project using TDRs.

So it's only the PUDs that are subject to this proportional usage requirement of the TDR credits. I don't know why. I haven't done the research, but that is the case. Those things combined is why staff has flip-flopped its position.

I would like to also say that Rich made reference to a restudy of the rural fringe mixed use district, and I believe that that's going to be going before the Board of County Commissioners next month for authorization to initiate that study and I think also for additional staffing to help with that.

We don't know what the outcome's going to be. It may or may not result in amendments that change this proportional usage requirement or change the difference in treatment of PUDs and non PUDs. That's yet to be determined.

An additional point has to do with the current market and usage of TDRs, the economic circumstance, I'll say, versus what the potential future circumstance could be.

If the proportional requirement remains the same but the economy changes such that there's an abundance of TDR credits available, that is people are actually sending lands owners or actually severing their TDR credits and making them available for sale and also we have a lot of development activity for projects in the receiving areas that want to acquire and use those TDR credits, the same scenario exists in that the developer has to pay for those credits up front so they have the additional up-front cost.

But if the economy is really strong, if they're able to sell their product faster, then they can recoup those costs faster. So it's a matter of timing.

The current scenario versus a robust economy that includes robust usage of the TDR credits resulting in the landowner recouping their TDR expenditures faster than in a slower developing economic situation. I'm done.

CHAIRMAN STRAIN: Any questions? Charlette?

COMMISSIONER ROMAN: Yeah. I have a couple of questions, David.

When you talk about this project could have come forward with the base density and then later amended the PUD, this board would have seen the petitioner come in and ask to use TDR credits and meet the objectives of protecting some of our sending lands in order to take those credits to a receiving land.

Here we had a project presented to us for the maximum density that involved TDR credits, okay. So we viewed that whole project in our deliberation and consideration based upon the total package.

So while I can understand that base credits should belong to the property owner or to that project, when that petition was brought before us, it was tied with TDRs. We saw sending lands being protected in terms of the goals of the program; we saw the maximum density and how it would be used.

So there has to be some underlying reason why we now want to go with base density versus the total package that was presented to us when we approved this project.

So is this -- what's in it here for this change of course? Is it to tie up TDR credits in advance? Is it to get favorable density on the books so if the program changes that there can be a shift in direction? What do you see as the advantages here outside of the fact that base density belongs to the owner? That's a given. I agree with that.

MR. WEEKS: The only advantage I guess I'd say I see for the county is the potential -- is the removal of a potential disincentive. And I say "potential." I think from Rich's standpoint it's an actual disincentive. I mean, taking him at face value of the impact this has on the actual land developer.

Case by case, because as a deviation, that's what it is. It only applies to this project, and when the next one comes in, if it asks for a deviation, same thing. It's only for that project. It's not a systematic change such as an amendment to a Land Development Code to eliminate that requirement for the proportionate usage of the TDR credits. But short and simple, I think that's -- it's a removal of a disincentive.

It is important to the county that the TDR program be successful. And as you know from the original -- the staff report that you have, comprehensive planning staff is saying we don't support the deviation. We want to ensure the continued use of the TDR credits, and that this seems to be a systematic issue. It would certainly seem that the next developer could make the very same argument that this applicant is making.

The only potential exception I can think of is where the developer also owns sending lands, where they control the TDR credits. Then they don't experience that up-front cost because they're not selling to themselves. They control the TDR credits.

But in a case like this where the applicant has to acquire those TDR credits from a third party then, of course, they do incur those additional expenses. So it's the removal of what I think is reasonably labeled as a disincentive to the TDR program.

To finish that thought a while ago, it's so important to the county that the TDR program be successful because that is the compensation mechanism to those landowners of thousands of acres of lands that were designated as sending lands. Unquestionably, those landowners had rights taken away from them.

Now, certainly for some sending landowners, they might never have used those rights. They might have a piece of property that is so far removed or of such environmental condition, wetlands, for example, that it would never be developed or never be developed with more than one house per five acres. So their loss of development rights, they might care less about.

But for others, I think there's plenty out there that would say, yes, you've taken away my rights. You've impacted my value negatively. The TDR program needs to be successful so as to compensate those landowners.

If they don't, I have to presume that the day comes about when one of those landowners is going to say, it's been so many years, I've not been compensated for my loss of value. Somebody owes me, and that somebody is the county because the county is the one that took away my rights.

COMMISSIONER ROMAN: Okay. Thank you.

COMMISSIONER DOYLE: David, if I'm following you correctly, out of these 750, 169 will come quickly, which will give the developer a good base to actually have funding to purchase some more.

And I'm all about environmental and conservation and the TDR program as well. It just seems that this won't affect the purchasing of TDRs directly after 169, which seems to come quickly in this project.

MR. WEEKS: I can't comment to the speed, but clearly after the 169 are developed, then 100 percent of additional density has to come from TDR credits.

And to repeat my earlier comment, the only way that this will have a negative impact to the TDR program is if the developer builds out at less than the maximum density.

COMMISSIONER CHRZANOWSKI: So if he builds out at 300 units, really the only downside, I mean, less density, less impact to the environment, but you have a little problem with the difference in TDR usage.

MR. WEEKS: Correct. And with that example of 300 on the table, it shows to be 131 fewer TDR credits.

COMMISSIONER CHRZANOWSKI: Okay. But still, you're only building 300 units instead of 750. I don't see a downside to that.

CHAIRMAN STRAIN: No, I don't either.

MR. WEEKS: On site, I presume --

COMMISSIONER COYLE: On site, yes; on site.

MR. WEEKS: On site the presumption is, well, if you develop fewer units, you must be leaving more acreage alone, open space or outright preserve area. Whether it's designated or not, if you're not developing it, it functions as a preserve. But the TDR program is also very important. So it's an on-site versus an offset.

COMMISSIONER CHRZANOWSKI: Yeah. But in a couple of weeks we're going to be looking at the Floodplain Management Planning Committees' recommendations, and a lot of those parcels out there can't be developed.

You know, I kind of hate to say it but, you know, you have a parcel that's below the floodplain, there's no way you're going to compensate anywhere for that -- anything you build on that parcel. Those parcels are kind of -- they can't be built on anyway.

And I think a lot of what you did was done in a vacuum not considering that. And I think a lot of this is going to have to be tied together as you go forward.

And I'm -- you know, I'm getting a little -- I don't want to say I'm getting tired of hearing about TDRs, but we keep asking when is this going to change. When is it going to change?

MR. WEEKS: I'm not sure. When is what going to change?

COMMISSIONER CHRZANOWSKI: Well, we keep hearing there's problems with the TDR program. You guys are relooking at it, right? Is this in a glacial time frame, or is this in a -- you know, like, a developer's time frame?

MR. WEEKS: First of all, there's a difference in perspective about how the TDR program is functioning. Staff does not share the perspective that the program is a failure. Not moving as quickly as we'd hoped, but we have a different perspective.

Secondly, staff is not reviewing anything yet as far as the TDR program goes because we've not been given any direction. I think Mike's going to tell you about some direction we're going to be seeking next month.

MR. BOSI: Mike Bosi, director of planning.

Real quickly. One, just a comment. Yes, the 10th of February we're going to be asking the Board of County Commission to allocate funding and to initiate the schedule of the needed master plan update, the Golden Gate Area Master Plan, the Rural Fringe Mixed Use District, the Rural Land Stewardship area, and the Immokalee Area Master Plan, four subdistricts or master plans all comprising areas east of 951 have not been updated fully within over a 10-year period. Some -- the Immokalee Area Master Plan back to 1997. So we are asking the board to provide direction and initiate those functions.

And in defense of the deviation, in defense of the program, I think the program and why it was set up with that proportionate utilization is they wanted to do everything so that they could ensure the success of the program.

And it was done somewhat in a vacuum in the sense that I don't think a lot of the developer perspective was provided to it -- to the thinking and stating to the regulations that were being crafted.

Well, what does this really do to the up-front cost and does this really -- is it really more of a

disincentive than an incentive that's going to successfully implement the program? And as we've learned through some conversations with the development community, that it is acting as a disincentive.

So what was supposed to be something that was going to ensure the success and the consumption of TDRs is actually acting as a prohibitive nature and measure against it. This will be one of the functions and one of the areas that we will look at during the restudy.

One of the other aspects -- and as we talk about if it's a full 750 that, ultimately, comes out of this development, there's no harm that's -- that would be created. There's no TDRs left on the table.

One thing, if there are TDRs that are left on the table, and from a staff perspective, we're not sure if that's not -- that's not -- that's not too negative of an aspect. Because one of the things that you've seen, all that activity that we've spoken about for these TDR programs, this is one of the only projects that are within the receiving areas. And within the rural fringe mixed use district, there are four receiving areas that are to receive the development from the protected environmentally sensitive sending lands.

This is one of the only -- Twin Eagles was another project that's within the receiving area. But very few of the TDRs that have been utilized have been within the receiving area, the intended purpose of it. The majority of the TDR activity has come within the rural residential fringe subdistrict, that one-mile strip east of 951 so that -- which was another area where we anticipated the demand was going to be the greatest at the beginning where the program got it right, and this is where the first of the TDRs were going to be used.

But the primary landing spot for these TDRs are the receiving areas, and we haven't even scratched the development issues yet, and those are some of the things that we're going to talk about. Why is that? Why is it the receiving areas have been relatively untouched from the utilization of the product, of the commodity, the TDRs that's supposed to be entitling development within those? Those will be some of the systematic discussions we have over those public planning processes.

So, in full, that's why we flip-flop, so to speak. We were -- we were defending the TDR program, defending the purpose of making sure the TDRs will be consumed in the quickest manner possible to protect those individuals who have TDRs. But through discussion and through the understanding of some of the market mechanics that we do not possess the expertise in, we -- it was pointed out in a perspective that came to the light that we realized that, you know what, supporting this deviation is actually -- will help benefit the program and remove some of the hinderances that are inherent within the regulatory environment.

That's really -- that's how we arrived upon this changing position. We apologize for not arriving before we provided you that written report.

CHAIRMAN STRAIN: Thank you, Mike.

Anybody have any other questions of anybody?

Kay, did you -- you're done with yours, right?

MS. DESELEM: Yes, sir.

CHAIRMAN STRAIN: Okay. Is there any public speakers, Ray?

MR. BELLOWS: No speakers.

CHAIRMAN STRAIN: Any member of the public wish to speak on this item?

COMMISSIONER EBERT: Can I just, quick, ask Mike a question?

CHAIRMAN STRAIN: Go ahead.

COMMISSIONER EBERT: Mike -- and I don't know. How -- this really benefits the sending lands, the environmentally sending -- how much more sending lands do we have? Do we have a ton of sending land yet?

MR. BOSI: Well, I mean, the amount of sending land is not being increased. The matter of sending land is static. I think the question, more importantly, is are there still a number of acres of sending lands that have not severed their TDRs, and the answer is yes. There are still a number of individual property owners who have chosen not to participate.

Now, what I would suspect is as we move forward and as the development area within the urbanized area becomes more and more scarce, those large tract of lands that the larger developments are looking for will tend to start migrating toward the rural fringe mixed use district and the receiving area.

And as pressure becomes (sic) in the identification that more TDRs are needed and there will be buyers for it, I think that will be the motivation needed for a lot of these individuals to participate in the



program.

COMMISSIONER EBERT: Okay. Thank you.

CHAIRMAN STRAIN: Okay. Anybody else?

(No response.)

CHAIRMAN STRAIN: Okay. We'll close the public hearing.

I don't have any notes on this one. So is there anybody that wants to make a recommendation one way or the other?

COMMISSIONER CHRZANOWSKI: I move we approve PUDZ-PL20140001511 (sic), sorry, Golf Club of the Everglades, as submitted.

CHAIRMAN STRAIN: By the way, that's PUDA.

Second?

COMMISSIONER HOMIAK: Second.

CHAIRMAN STRAIN: Second by Karen.

Discussion?

(No response.)

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

COMMISSIONER CHRZANOWSKI: Aye.

COMMISSIONER EBERT: Aye.

CHAIRMAN STRAIN: Aye.

COMMISSIONER HOMIAK: Aye.

COMMISSIONER DOYLE: Aye.

COMMISSIONER ROMAN: Aye.

CHAIRMAN STRAIN: Anybody opposed?

(No response.)

CHAIRMAN STRAIN: Motion carries 6-0.

Thank you.

MR. YOVANOVICH: Thank you.

Obviously, if there's no changes, there's no consent, right?

CHAIRMAN STRAIN: Yeah, there wouldn't be a consent. Anybody think it needs a consent, bring it up.

Okay. The next item up is the automobile service station re-discussion of the Land Development Code Section 5.05.05. It's probably going to take about an hour to go through it. They have a PowerPoint presentation, and I see we have one member of the public here.

So with that in mind -- and Stan's going to be leaving us at noon. Do we want to start now and then take a break for lunch, or do you just want to take a short break now and then forego lunch and just get into the issue and be done with it? We're either looking at two hours or one hour and 15 minutes.

COMMISSIONER HOMIAK: Why don't we forget lunch and be done with it.

CHAIRMAN STRAIN: Okay. I'm willing -- I think that's probably a good idea, too. So if that's okay with everybody else --

COMMISSIONER EBERT: We're going to take a short break now?

CHAIRMAN STRAIN: Okay. We'll just take a short -- we'll take a break now for 15, 16 minutes, and then we'll resume and get into the automobile service station issue and finish it. Thank you.

(Commissioner Chrzanowski left for the remainder of the meeting.)

(A brief recess was had.)

MS. CILEK: Testing.

CHAIRMAN STRAIN: There you go. Okay. If everybody -- we can resume the meeting. We have one item left.

Okay. And first of all, let the record show that Stan had to leave, so he's no longer here for this presentation.

\*\*\*This item is Item 9E. It was continued from the December 18th CCPC meeting. It's concerning an LDC amendment to specifically address the relationship of residential property to automobile service

stations.

And it's an LDC item, so we don't typically do swearing in and all that, or do we? Heidi, do we need this under oath or disclosures?

MS. ASHTON-CICKO: For the LDC amendment, no.

CHAIRMAN STRAIN: I didn't think so. Okay, good.

Caroline, it's all yours.

MS. CILEK: Okay, great. Caroline Cilek, for the record. Good afternoon, everyone.

I just want to make note so I don't forget, we do have one public speaker, okay.

CHAIRMAN STRAIN: Right. He's the only one left.

MS. CILEK: It's not this individual, just so you know.

CHAIRMAN STRAIN: No, no. Jeremy works for the county now.

COMMISSIONER EBERT: Oh, he does?

CHAIRMAN STRAIN: Yeah. He went from the Conservancy -- he realized the county was more of a conservancy nature than the Conservancy was, so he switched saddles and came over here.

MS. CILEK: Okay, great. We'll begin, yes.

We are here today to re-review the LDC amendment that you-all previously saw last fall, 5.05.05, automobile service stations. Yes.

I will refer to automobile service stations as gasoline stations as well today, so I'm going to use those terms interchangeably.

We went to the board on October 28th, and when we presented the amendment, the commissioners had some feedback. Their first was, at the end, to motion to remand the issue back to you-all and to take their concerns under advisement.

Their concerns included defining the separation of residential property to gas stations or automobile service stations, including existing setbacks, walls, and buffers.

Additional items they discussed were property right concerns, identifying maximum distance possible from residential zoning, and they had a consensus on at least a 300-foot separation.

So staff went back and did further research on this amendment following their direction to bring it back to you today.

I'm going to walk through an amendment overview, kind of guide you through what we put together. At the end, I have some additional considerations for you to think about.

So first is we're going to go through the existing standards in the LDC, historical patterns of gas stations -- we did a lot of research there -- examples of gas station provisions around the state and the country, consideration of vapor recovery technology regarding the benzines and gasoline, talking about compatibility and sensitive land uses, including residential zoning. And, like I said earlier, we're going to have a couple of ideas for you-all to consider to add to this amendment.

Looking at existing Collier County standards, gas stations are allowed in C2 through C5 zoning districts. For landscape buffers, there is a 20-foot-wide landscape buffer with a wall, fence, hedge, berm, or combination required when adjacent to multi development and single-family development. Other landscape buffers include items such as the right-of-way, which is 20 foot.

Setbacks are actually identified in 5.05.05. And the rear and side yards are 40 feet, and the front yard is 50 feet. You can see from this bird's eye view from the property appraiser's site the setbacks are illustrated both in landscaping and in distance to the structures themselves.

Separation from residential zones includes a 6-foot-high wall required when adjacent to residential, and that is also in 5.05.05.

Other provisions include that lighting must be directed away from adjoining properties, the architecture must comply with site designs section -- the architectural and site design section of 5.05.08 in the LDC, and there are other allowable uses as well.

There's vehicle storage limited to 60 days, automobile detailing allowed as an accessory use only, and car washes are also allowed as an accessory use only.

Prohibited items are major mechanical work and body shops, outside displays, tires and merchandise and vehicle sales. These are all, again, in 5.05.05.

Okay. I wanted to first go over how we're describing gas stations for this amendment. And I think visualizing it will be really helpful.

So this is a smaller gas station, and I'm going to sequence in. This is the fuel dispenser, and these red areas are identifying two fuel pumps. The industry often returns -- refers to these areas as fueling position. We consider them fueling pumps for laymen's ease of readability. So when I'm walking through gas station lingo, this is what I'm referring to.

Okay. Next we're going to look at historical patterns of gas stations in Collier County, and this includes all of unincorporated Collier and all of the municipalities. And we do this so that we could capture early gas stations which were often in the Naples area.

So Appendix B in your packet identifies 100 activity retail gas stations. And this graph that I'm going to show next shows you from 1944 that fuel pumps have steadily increased. So the red dotted line is the trend line. And there are 100 blue dots on this graph, and each dot identifies the number of fuel pumps and then what year they were installed. So you can see that the trend has been that gas stations -- the number of gas station fuel pumps has been increasing over time.

I actually have some good little statistics on this. Prior to 1970, the average was seven fuel pumps. In the last 15 -- or excuse me. In the last 10 years, from 2005 to 2015, the average has been 17 fueling pumps across the municipalities and the county itself.

CHAIRMAN STRAIN: That spike you have in 2000 or 2001, you've got one station at 24 pumps. Is that -- where in the county is that; do you know?

MS. CILEK: I don't know off the top of my head. I could certainly have -- look it up.

CHAIRMAN STRAIN: I just didn't know we had one that big other than the new one that may have gone in, but wow. That's -- the new one's in the city, so, okay. Thank you.

MS. CILEK: All righty. In the last 25 years, only two out of the 38 -- out of 38 gas stations have developed fewer than eight pumps. That really shows you the trend is increasing.

Okay. The next is a map of Collier County and incorporated areas. And we put this in there for informational purposes and to give you an idea of what size gas stations are located where in the county. This map is very small on the overhead, but in your packet there's a nice 11 by 17.

And we color coded them. So it ranges from two to eight is green, yellow is 10 to 16, and red is 18 to 24. And on this map is residential zoning. So on your 11 by 17, you can actually kind of look at that.

Actually, I take that back. On this map it's just activity centers in city limits. On some maps in the future is the residential zoning. We did a lot of maps.

Okay. On December 4th in the afternoon, staff -- Jeremy and I visited approximately 15 gas stations, so we are calling this our staff windshield tour. And we went around the county and took pictures. This one is actually right outside of the growth management division. It's the new Racetrac in the City of Naples. You can see at the far end there there's actually an 18-wheeler semi truck.

So these slides, the next two identify the range of sizes of gas stations in the county. So you saw this earlier, one of two fuel pumps -- excuse me. Two fuel dispensers and four fuel pumps. We have the Racetrac on Airport and Horseshoe with 20. Oh, look at that, Racetrac, Pine Ridge and Immokalee (sic), 24 fuel pumps. There you go.

CHAIRMAN STRAIN: Pine Ridge and Immokalee Road. They're not -- they don't -- they're parallel.

MS. CILEK: Pine Ridge and Immokalee. Oh, maybe we have a typo on that one. That's a typo. You're right. Those are not -- that's not going to work.

CHAIRMAN STRAIN: It's a typo.

MR. FRANTZ: Whippoorwill.

CHAIRMAN STRAIN: I think the one at Pine Ridge and I-75, or Whippoorwill, whatever you want to call it, yeah.

MS. CILEK: I didn't catch that, sorry. The gas station does exist, though. I did take the picture.

CHAIRMAN STRAIN: I thought that might be the one I couldn't remember the pumps at it, though.

MS. CILEK: The next one's at Creekside.

Okay. We wanted to include some pictures of buffer examples. So it ranges. A lot of gas stations

over time lose some of their buffering to right-of-way takings and stuff like that.

Next topic I wanted to chat about was compatibility. So I have two slides. One is pictures of the other uses that are at gas stations, and those include vacuums and car washes which can attract more vehicles and produce noise, as well as food sales. So we're all familiar with the convenience store, but we have one gas station that sells fast food. I think that's a McDonald's.

And then also larger vehicles can arrive at larger gas stations. This one was taken at the Racetrac near our offices on Airport. And it wasn't refueling. It was actually coming in for -- it wasn't providing fuel to the underground storage tank. It was actually getting more fuel.

The next slide shows number of trips that occur with gas stations at three different ranges. So the first one shows that eight pumps, you have 651 new trips on the road; 16 pumps jump up to 1,300 new trips; and at 24 pumps, you jump up to 19 -- over 1,900 trips. We wanted to show that in addition for compatibility concerns with residential.

As always, we take a look at what's going on in the nation with these types of issues and in the state. So we did a little research, and this is what we were able to pull together. Looking at 24 communities, with 14 in Florida, we found that eight communities, two in Florida, incorporated minimum separations of 100 feet or greater. These communities also required that the separation applied to other types of uses.

We commonly think of these that I've listed here as sensitive land uses, and that includes church -- churches or religious buildings, auditoriums, public playgrounds, play fields, schools, hospitals, libraries, charitable institutions, daycare centers, and other type of civic buildings. I think you could also probably add nursing homes or ALFs to that list as well.

Seven of the 24 communities, five in Florida, limit the number of fueling stations allowed at gas stations. Only two communities in Florida do not require a conditional use process in at least one zoning district. We included that because we don't have any limitation -- we don't have any zoning districts that require a conditional use in any of the commercial zoning, but some do.

And all Florida communities prohibit gas stations in at least one commercial zoning district. We do as well. We do not allow gas stations in C1, which is the lowest intensity zoning district for commercial that we have.

Next up is vapor recovery technology, and this is a very important part of this amendment. We are able to go back and do more thorough research on this topic. So looking at the first, enhanced vapor recovery stops gasoline vapors and toxins from being released during refueling, and this has been an issue for quite some time, both at the federal and at various state levels.

Stage 1 is capturing vapor during the storage tank refueling. So the underground storage tank, when the trucker comes in and puts in his hose down to refuel the underground storage tank, this is Stage 1. He's capturing the vapors that would be released at that time, and this is still required everywhere.

Stage 2 is during individual vehicle refueling. And Stage 2 is only used in certain parts of the east coast of Florida where, generally speaking, there was a pollution problem, as well as in the State of California, which is also known to have pollution problems.

And Stage 2 could be described as having a vacuum at the end of the fuel pump nozzle. They're kind of bigger-looking devices, and they actually capture the fuel on the nozzle end.

What we have now, and which is kind of a game changer for looking at this topic and with relation to health concerns and public health/safety/welfare issues, is ORVR, and that is onboard refueling vapor recovery. And this is very similar to Stage 2, but what the difference is is that ORVR takes place in the individual car.

So inside the car, there is actually a mechanism that pulls in the vapors so that they're not released in the air while you are putting your nozzle into the car itself.

The US EPA required ORVR on most vehicles beginning in 1994. So since that time, as vehicles have been manufactured, they've been required to put in ORVR.

Seventy-one percent of vehicles have had ORVR installed since 2012, and more will as new cars are purchased. And it's important to note that this doesn't apply to smaller engine or non-automobile engines, such as boats, motorcycles, lawn equipment or, like, the red containers that you fill up at the gas station for your lawnmower.

The bolded provisions at the bottom is very important. Vapor recovery provides 86 to 95 percent reduction in emissions.

CHAIRMAN STRAIN: But just so I understand, or maybe all of us, the top three buttons, in Collier County right now, we do ORVR to the extent the cars are supposed to have that. Stage 1, it's already being done. Stage 2 is the question, is that right, or are we doing Stage 2?

MS. CILEK: Stage 2 has been phased out from almost all counties, I believe, and all -- I don't know about California, I didn't check. But the need has been phased out for Stage 2 because it has been covered by ORVR.

CHAIRMAN STRAIN: Okay.

MS. CILEK: It's not necessary with the nozzle if the car itself is taking on that role.

CHAIRMAN STRAIN: Thank you.

MS. CILEK: With the caveat that some machines and engines don't have ORVR.

Okay. In 2005 the California EPA published a report titled "Air Quality and Land Use Handbook." It's cited multiple times in the amendment itself. This report included a health risk chart, which is identified on the PowerPoint, which describes the risk of getting cancer for individuals living at different distances from gas stations based on the concentration of cancer-causing agents in the air.

The study recommended that sensitive land uses, which is identified on the PowerPoint and generally includes schools and schoolyards, parks and playgrounds, daycare centers, nursing homes, hospitals and, importantly, residential communities, are located 300 feet away from gas station dispensing facilities. In particular, as the graph identifies for those that dispense a 3.6 million-gallon-a-year throughput.

These groups are identified as sensitive because they include areas where the young, elderly, and those with compromised immune systems might congregate, and those groups are particularly susceptible to the health effects of exposure to gasoline.

The handbook relays that there is a substantial decrease in cancer risk with distance and the use of vapor recovery technology. But the fact is, they still make the recommendation of 300 feet for sensitive land uses and, importantly, the residential zoning or communities which we are talking about today.

I think it's also important to note that this study was published in 2005, and ORVR was starting to get -- started in 2004 but obviously was well underway by 2005, and they're still making this recommendation.

The other important part to connect is the 3.6 million gallons of throughput, which we looked up. We struggled to find this information, but we finally did, and that is that the US EPA estimates that gas stations with as few as eight pumps have the ability to dispense over 4 million gallons of throughput gasoline a year.

In addition, we have a study from the US EPA which recommends that school sites perform site specific evaluations of any potential location and that they locate a thousand feet from a gasoline dispensing area or of a large gas station. This is specific to schools. We wanted to include it because it's another reference that notes that places such as residential areas or sensitive land uses are being looked at as needing to be at a distance from gasoline facilities.

Okay. At this point I'd like to go through proposed standards that were identified in the previous draft and what we have identified in this new draft before you today.

In the previous draft, we looked at the definition of automobile service stations. We looked at a new definition for fuel pumps. We identified that if there is a gas station with more than eight fuel pumps within 300 feet of residential property, they would be required to go through a conditional use or through a PUD, PUD amendment.

Next was that additional criteria for review of automobile service stations with more than eight pumps. So basically, in addition to any findings of fact in CU or the criteria for the PUD, there is additional standards that are identified in 5.05.05 for review.

In the new draft, automobile service stations has been renamed to facilities with fuel pumps, and in this we're trying to capture all of those uses that are selling gasoline and other automobile fuels.

More than eight fuel pumps within 300 feet of residential property would require a public hearing, so that's the same as before.

Table of standards to introduce improved formatting. The new amendment has a nice table. I think

it's a lot easier to read. I'd like your feedback on that.

Three-hundred-foot measurement from the fuel pump or underground storage tank vent riser. And what I need to add here is vent riser opening. Missing one word. So that's new. Previously it was just the 300 measurement was from the property line to the fuel pump, and we need to include the underground storage tank vent riser opening.

Next is that there's a public hearing, and this is new, so -- public hearing required to locate new residential development within 300 feet of existing gas stations with more than eight fuel pumps. Following the direction of the County Attorney's Office, based on case law, this is an important aspect to this new amendment. And what it provides is that if residential -- new residential is going to locate within 300 feet of an existing gas station with eight fuel pumps, they would have to go through the same process. It's the inverse. But if the notion is to take care of people's health, then this would provide for that.

Last new condition under public hearing, evaluation to examine if the proposed use is within an activity center. So we've added this as an item to the criteria that will be reviewed, and this will provide that some activity centers are developed in greater intensity of use for commercial purposes, and that might be a really great place for a large gas station to go. But the opposite to that may be true as well, which is that activity center is developed with mixed use, and there's a lot of people living there and residing there. In that case maybe it wouldn't be such a good idea. Of course, all of the criteria would be evaluated, not just that one.

One thing I would add to this that's not on the list is that the proposed amendment also opens it up to not just a conditional use or a PUD amendment but to any type of public hearing process, such as a rezone. So all of those would be included. And that's identified on the amendment. So to any of those public hearing processes, the criteria that have been identified in 5.05.05 would be added to that review.

We wanted to show what an eight-fuel-pump gasoline station looks like, so this is it. So it's got four fuel dispensers and eight fuel pumps.

This is what an underground storage tank vent riser opening looks like, so this is at the top of the canopy, high up in the sky. And we also wanted to walk through what 300 feet means to everyone. So to some people it's a portion of the football field. To others it's how many kayaks are in 300 feet. So here we go; 16.67 kayaks that are the average size.

COMMISSIONER EBERT: That was very good.

MS. CILEK: It's good to get a laugh in there sometimes. Serious subject. Oh, yeah, and those are not to actual size, obviously.

Okay. And then we all just walked 300 feet if we parked out in that lot. So from the first row of parking to just before the door to get to this building is 300 feet.

Proposed standards. We wanted to map out existing gas stations by size and incorporate sensitive land uses and obviously residential zoning. So the methodology page in the packet describes how we went about doing this. And we worked with our GIS team, and they were great, to put together a bunch of maps. We've just included samples for you, but we could obviously do the whole county as well.

So there are two buffers rings around each of the gas stations. The first one is the 300 feet. The second one is the 1,000 feet. We did that both to kind of make sure people could see the actual gas station on the page with the thousand, I think that helps find them, and then also because of the EPA's recommendation for school siting.

Okay. Next slide identifies some examples of what would require a public hearing for proposed applications, and then also what would require an administrative approval. So I can walk through each one of these.

The first one under the public hearing required is new facilities. I'm going to actually just add a tidbit. The proposed new definition is facilities with full pumps. When you try to explain that it is a new facility with fuel pumps with over eight fuel pumps, it gets really wordy. So just bear with me. I apologize.

So new facilities with fuel pumps with more than eight fuel pumps within 300 feet of existing residential property. This application would need to go through a public hearing process.

Second, additional fuel pumps resulting in more than eight fuel pumps added to an existing facility with fuel pumps within 300 feet of residential property. So they had -- they had eight and they want to add

four more fuel pumps and they're close -- they're within 300 feet. They'd have to go through the process.

Three, property rezoned to residential within 300 feet of existing facility with fuel pumps with more than eight fuel pumps. So the residential zoning district has been opened up, and they're changing the type of residential; that would need to go through a public hearing. That's the inverse. That's one of the things that's been added to this amendment.

Four, residential property rezoned to residential, increased size, intensity, density within 300 feet of existing facilities, public hearing process is required.

Five, new facilities with fuel pumps with more than eight fuel pumps within PUDs. So even though the zoning district is a planned unit development zoning district, this would apply. The caveat there is if the PUD was established, let's say, in 1999 and it relays that the standards of the LDC in 1999 apply, then that is what will stay. These standards would not apply to that PUD. They would fall under the 1999 standards.

Looking at the administrative approval, four of them, modernization of existing fuel pumps, and just the fuel pumps. If you're moving them, that wouldn't count or if you're moving the location of the underground storage tank vent riser opening, that wouldn't count. Just modernization of them within 300 feet of residential is administrative.

Property rezone to residential further than 300 feet of existing facility with fuel pumps. So it doesn't trigger the 300 feet requirement.

CHAIRMAN STRAIN: But that wouldn't be administrative. You can't rezone residential property administratively.

MS. CILEK: You're right. So that would be a public hearing, but the gas station changes, yeah, wouldn't be.

CHAIRMAN STRAIN: Wouldn't be.

MS. CILEK: New facilities with fuel pumps with eight or fewer fuel pumps within 300 feet. So that would be an SDP.

Property rezone to residential within 300 feet of a facility with fuel pumps with eight or fewer. So here it's not the 300 feet trigger. It's the eight pumps or fewer trigger. So because the study relays that the concern is that a large gas station which is eight or more fuel pumps, they're under that eight threshold, so it's okay.

We proposed some additional standards for consideration of the Planning Commission, as the board directed that we take under advisement all of their topics of conversation and bring them back to you.

We also -- through our research we identified some additional areas that could be considered by you-all. The first is that the 300-foot distance from the property line of the residential property be not to the property line or -- not to the fuel pumps but rather to the property line of the gas station, okay. That wouldn't, in effect, add the setback to this distance. So for the front you would kind of up the distance between residential property to the fuel pumps at either 350 feet or 340 feet. There's actually a typo in the amendment itself, so it would be 350 or 340 depending on whether it was a front or the rear or side location of the fuel pumps.

The California EPA handbook also relayed that they recommend that the setback for all gas stations is 50 feet, and that would be for the front, the side, and the rear and regardless of the number of fuel pumps. So even those with two, four, six, or eight, those would also abide by a 50-foot setback.

The last one is a change for gas stations for a conditional use in the C2 zoning district. This is to relay kind of what was found in other communities across the state and nation, which that -- the lowest intensity zoning district where they allowed gas stations, that zoning district would be a conditional use to obtain the approval to have a gas station. Of course, there are other recommendations as well, so we're open to any of those that you-all propose.

And I believe that's the conclusion of my PowerPoint.

CHAIRMAN STRAIN: I think -- first of all, I think that's a good presentation, and the research you and Jeremy did is excellent, so thank you for that additional information. You did a great job.

MS. CILEK: Thank you. Team work.

CHAIRMAN STRAIN: Let's start. Diane?

COMMISSIONER EBERT: I did watch when the BCC was going through this, and I can see the

confusion.

When you say you call them dispensers now, before we used to just plain call them fuel pumps. And you're right, things have changed over the time, but you used to have one pump handle for every fuel pump. So it is the way that you're labeling them now.

I went to my Sam's Club on Immokalee. They have, as you would call it now, six dispensers and 12 fuel pumps. But I think it's the wording. And when I listen, it was very confusing because it was confusing the commissioners on this. Whether we say -- rather than saying fuel pumps, if we say fuel pump handles. I know it's an extra word, but I was trying to think, how can it be a little more clear on that. And I was really trying to --

COMMISSIONER ROMAN: But some pumps --

CHAIRMAN STRAIN: You know, when the pump has three or four handles for every single pump

--

COMMISSIONER ROMAN: Yeah, I was going to say that.

CHAIRMAN STRAIN: -- so you'd be multiplying the 12 out front by four. You'd say that has 48 pumps then.

COMMISSIONER ROMAN: Yeah. Some of them have five handles.

CHAIRMAN STRAIN: Like you go pull up to the one out front of -- Racetrac down on Horseshoe Drive --

COMMISSIONER EBERT: Yes, which is clogging up traffic.

CHAIRMAN STRAIN: -- there's three to four handles right there on each station. So by your count, then, they'd have to go four times, times each station. That's why I think we don't use that.

COMMISSIONER ROMAN: Yeah. I think why "dispenser" is appropriate is because now it's more of an all-inclusive package that's computerized, and there's different forms of that model. But how many people can dispense at one time is the pump portion of that.

So a dispenser may have multiple handles, multiple offerings in terms of the product, but one vehicle can take one of those handles and put it in a car. Two -- well, on each side. One on each side, Mark.

CHAIRMAN STRAIN: Yeah. But then that's why you may want to refine the "dispenser" to "position." And I think -- Caroline and I had talked about that. And at one point there was going to be a third definition added to define fueling positions, because positions are like fuel pumps in regards to the way we're looking at them, but not all service stations read fuel pumps as fueling positions.

So to further clarify, there was discussion about adding -- to make sure everybody knew a fueling portion was related to the fuel pump in this manner. And I don't know how much further thought you gave on that, Caroline, but that might help.

MS. CILEK: We can absolutely address the fuel dispenser. And I put this slide on the viewer, because I think it's the best that relays the relationship between these --

COMMISSIONER ROMAN: I do, too.

MS. CILEK: -- two and perhaps even three terms.

So in yellow is the fueling dispenser, more or less, because that's where, you know, the pumps are locked in there. And then the two -- we call them fuel pumps in the amendment, but the industry and a lot of the research and kind of regulations talk about them as fueling positions.

COMMISSIONER ROMAN: And that's what I heard the chair say.

CHAIRMAN STRAIN: Right.

MS. CILEK: Yes, he did.

COMMISSIONER ROMAN: And so then that further defines that peach-colored area there as how many customers could be serviced by that dispenser.

CHAIRMAN STRAIN: Which drives the rational nexus for the intensity of the vapors and everything else.

COMMISSIONER ROMAN: Absolutely.

CHAIRMAN STRAIN: And, you know, Caroline, where you have your definition for fuel pumps, after the word "fuel pump," maybe you could parenthetical, a/k/a, fueling positions so that everybody knows they're relatively the same.



MS. CILEK: We could do that.

CHAIRMAN STRAIN: That would simplify it also. If someone's looking for either definition, there it is. Gas station's coming into town, whether it's Racetrac or Wawa or whoever, they would know what we're talking about very specifically then.

COMMISSIONER EBERT: So, Mark, on this she only shows one, but it looks like there's another one at the other end.

CHAIRMAN STRAIN: But she didn't get into that, but you're right. There would be four --

COMMISSIONER EBERT: That's four.

CHAIRMAN STRAIN: -- fuel pumps here. There would be four fueling positions, four fuel pumps, and two dispensers, but the nozzles are there for leaded, unleaded, and premium, so you have three nozzles on each side. So if we went by the other standard, we'd have six fueling positions.

COMMISSIONER EBERT: Oh, so -- yeah, okay. But you only put one in your car.

CHAIRMAN STRAIN: Right. That's why the "fueling position" is so -- more accurate.

COMMISSIONER EBERT: Okay. That's fine. It was just -- when I was listening to it, it was confusing because I know there's more than one pump handle now on these dispensers.

CHAIRMAN STRAIN: Actually, in reality, I wouldn't be surprised if the whole facility was run on one pump near the tank and all these dispensers were simply opened, and when you click on a dispenser, that pump kicked the pressure through the dispenser.

COMMISSIONER ROMAN: That's the automation for the actual --

CHAIRMAN STRAIN: Every -- to have 24 pumps physically would be prohibitive, costly, plus just the wiring alone would be --

COMMISSIONER EBERT: But it sounds -- it sounds greater than what it really is when you --

COMMISSIONER DOYLE: Usually the only difference now is what grade you want coming out of the certain handle and/or if you want to use diesel.

CHAIRMAN STRAIN: Right.

COMMISSIONER EBERT: That's correct.

COMMISSIONER ROMAN: But I think definitions help, you know, shape the discussion. And I think that you've already got an excellent graphical here with that peach-colored area or red or whatever you used here, and I think that that clarifies that word "position" --

MS. CILEK: Right.

COMMISSIONER ROMAN: -- to know that it's one customer per one side of that dispenser.

MS. CILEK: We can definitely amend that definition to include, like, an i.e. or an a/k/a. Not a problem.

CHAIRMAN STRAIN: Okay. Any other questions at this point?

(No response.)

CHAIRMAN STRAIN: Caroline, my biggest concern -- and I've got some specific language questions. But my biggest concern is the introduction that if you have a gas station already existing and someone wants to build a house within 300 feet, they have to go through a public process. Is that what you're saying?

MS. CILEK: Well, it depends on the gas station, right? So if it's a gas station --

CHAIRMAN STRAIN: Okay. Say you have a Racetrac on the corner of Fredrickson (sic) and 41, a place I couldn't imagine one being. Would you put this on the overhead. I need to know if that's going to be the outcome of that particular location.

MS. CILEK: Is it the one in red?

CHAIRMAN STRAIN: Yeah. Flip it one more -- there you go. Now zoom out a little bit. And I went and looked at this because this is where it all started in regards to the --

COMMISSIONER ROMAN: There's a button there for zoom out.

CHAIRMAN STRAIN: There we go. Keep going. Perfect.

I don't know what Racetrac for sure is going to do, but one of the many plans that I saw showed a Racetrac outside the 500-foot buffer in this location. If that were to happen and this language for separation were to be required and the reciprocal problem put on residential -- I looked and there looked like four empty

lots in the area within 300 feet. They're all zoned either RSF3 or RMF6, so -- and these measurements are right off the county's site, and they're 300 or less, actually.

So these yellow squares, if they wanted to come in and build a residential house, we're saying they'd have to go through some process besides just a building process?

MS. CILEK: I'm going to let Heidi speak to this first.

CHAIRMAN STRAIN: Okay.

MS. ASHTON-CICKO: Based on the definition you have, it's triggered to rezone. So if it was RSF3 and you wanted to go to RMF6, then that would meet the definition of new residential. So if you did not address that during your rezone -- because you could address it during your rezone -- and get approval for less than 300 feet if you did certain things to mitigate, I believe, such -- you know, that would be a consideration for the Planning Commission and board at the time those rezones are heard.

CHAIRMAN STRAIN: So a gas station separation kicks in for the gas station owner regardless if it's a rezone or not, but the reciprocal protection for the house owner only kicks in if it's a rezone even though they're still under the same zoning where they've always been, just the same as the gas station may have been in the adjoining parcel? I'm looking at --

MS. ASHTON-CICKO: I mean, that's partially correct. It doesn't affect existing residential just like it doesn't affect an existing gas station. But the residential's a little bit different in that it's existing zoning versus new.

CHAIRMAN STRAIN: Okay. Well, this is existing zoning in both cases. So let's pretend that there wasn't an application for that existing zoning. So now an application comes in for the gas station. Under the new rule they'd be hit with a 300-foot separation. But if they got put there, let's say they were existing on that location but the residents weren't, they go to build -- they don't come under any concern?

I mean, if the basis for the reciprocity is that the protection of the public should be equal on both sides, whether you have a gas station near residential or whether you're trying to put residential near a gas station, then why are we not concerned with these empty lots?

MS. ASHTON-CICKO: Well, it's for eight pumps or more.

CHAIRMAN STRAIN: Okay. Why wouldn't we be concerned, based on this diagram, for those empty lots?

MS. ASHTON-CICKO: I don't think that we're not concerned, but you can't render a lot unbuildable.

CHAIRMAN STRAIN: Well, isn't that what we're doing when we potentially say that the C4 uses that were allowed there are no longer allowed without a conditional use because the potential is to turn down the conditional use. I mean, I do not like the idea of bringing in the residential --

MS. ASHTON-CICKO: Well, a conditional use --

CHAIRMAN STRAIN: -- as a restrictive element to this. And I can't understand the reasoning for it. And I'm asking you that from that perspective, not trying to legitimize anything else. I'm just trying to understand, if it is fair for one, then why isn't it fair for all? And if it's not fair for all, then why are we bringing the residential into this?

MS. ASHTON-CICKO: Well, I think what you just said, what's fair for one is fair for all, and that's what we attempted to do; however, we didn't intend to create a lot that already exists unbuildable.

CHAIRMAN STRAIN: But if that's fair for the residential, then how is it fair, then, for the existing commercial zoning to be further restricted by a conditional use? Because that means they potentially are not buildable because they could get turned down. And they already have -- they already have a claim to that principal right on that property without the conditional use process, which brings in the big question of whether they get turned down or not. So I'm wondering how that's fair then.

MS. ASHTON-CICKO: Well, you're presenting a lot of hypotheticals. I mean, if I have an actual situation, then we can evaluate it. But the intent is not to make something unbuildable.

MR. BOSI: Chair, could I add --

CHAIRMAN STRAIN: Go ahead. I'm just curious.

MR. BOSI: And I don't think it's going to provide a 100 percent satisfaction to your inquiry. But when you have a residentially zoned property, say, as Single-family 3 or the Multifamily 6, those products are

for a residential product. It's for that commodity.

Within the C4, you've got a range of different end uses within that C4 that's within that commercial activity. Singling out the one -- the gas station because of the health concerns having to go through a conditional use process is based upon the environmental concerns and the health research that we've done.

With that residential property, I think from Heidi's perspective, is we don't want to prohibit and make that lot unbuildable for the only use that's allowed for within that range of residential.

On the commercial, you've got a wide range of uses that fall within those commercials. And that individual property owner, that residential property owner, is making a conscious decision to build their house within that proximity so they are aware of the location of that gas station.

From the commercial standpoint, they have that wide range of commercial uses that could be developed there. We're saying only for the gas station if you're within 300 feet of the residential property that we're requiring a conditional use.

I think there is somewhat of a slight distinction between the two, because in a residentially zoned property, the only use that -- the only type of use that is allowed is that residential. It's not a wide range of uses within that residential like it is for the commercial properties and, therefore, it's not an absolute prohibition. We're saying that the gas station, because of the health effects, has to go through an additional process just for compatibility reasons.

CHAIRMAN STRAIN: So the health effects are only there on the gas station side of the equation. So you can have a house next to a gas station, but as long as you don't own a gas station, it's not unhealthy?

MR. BOSI: If you build the house next to an existing gas station, you are choosing to do that. If that gas station is built within 300 feet of you, you're not choosing. The gas station's making that determination.

CHAIRMAN STRAIN: So if you build a house next to an area zoned for a gas station and they put the gas station in, you've triggered a problem for them but not for yourself?

MR. BOSI: Yes.

CHAIRMAN STRAIN: And that's compatible. I mean, that's not compatible. That's consistent. I'm

--

COMMISSIONER ROMAN: Well, but, you know, Mark, I understand what you're saying, but in listening, that's sort of what brought us to this point. I mean, you had a piece of property, as I understand, zoned commercial for the uses that it could have by right, and the protections weren't there. So I thought this was to address the protections, some additional protections that the commissioners wanted, but the zoning, obviously, that's what got us here.

CHAIRMAN STRAIN: No, and I agree with you. The problem is the bringing in of the restrictions of the residential. That encompasses a far, far greater issue than just saying gas stations have to have -- be 300-foot separated or they've got to go through a CU. That part I was comfortable with. This writeup now has me real concerned because we're going to create this instant requirement throughout the county, and we think it's gas stations and it's not. It's going to be more residential impacted most likely by it than the gas stations. That's what I'm concerned about.

COMMISSIONER ROMAN: Well, I see that, but the question I would have in this case -- I don't know if this is an actual gas station right now or you just put one on a piece of property in this diagram.

CHAIRMAN STRAIN: I just put it on a piece of property.

COMMISSIONER ROMAN: Okay. But in this case if this gas station was coming to build and develop in that parcel, to me their requirement would be to look at their adjacent properties and meet the thresholds of the protections.

CHAIRMAN STRAIN: Yeah. And I have no problem with that. Again, it's not the gas station part of this thing that bothered me when I read it.

COMMISSIONER ROMAN: Okay.

CHAIRMAN STRAIN: It's the fact that we -- if you own a residential -- if you own a piece of property that you want to build a house on and you come in for a PUD -- like let's talk about -- let's say Divosta. They have a core community center in which they have a gas station and they're surrounded by residential. That core community center now -- the residential around that core community center would have to address -- well, they would do it through a PUD process there. But if they're in typical zoning, they

would have to address the concerns of the vapor just like the gas station would. They'd have to have some process for them to -- for the county and them to agree on the compatibility of the vapor that close to them when they're adjacent to a gas station even though the gas station went in first. Is that --

MS. ASHTON-CICKO: Is it more than eight pumps?

COMMISSIONER HOMIAK: Not if they have less than eight pumps. They can have four pumps, six pumps.

CHAIRMAN STRAIN: Well, I don't know how many.

COMMISSIONER ROMAN: Yeah, the number of pumps. Yeah, that's the --

Now, I understand your concern about creating more problems that we haven't, you know, really thought out in terms of the second and third order effects for the residential, but at the same time, if the intent of this discussion is to build in some protections from single-family adjacent to gas stations that have more than eight pumps, then wouldn't we want all the people protected from those gas stations and not just some? I mean --

CHAIRMAN STRAIN: Well, and I -- again, you're missing -- I think you -- I think you're missing my point. Let me read this to you.

Under C1 of the new language, for the purposes of this section, residential properties shall be any lot which is developed or zoned for residential use.

Okay. Those lots are not yet developed, but they will be when they get a building permit. So how do they not have to do something that requires them an additional use besides getting a building permit? And how many triggers like that are we going to have throughout the county? That's what the section says.

COMMISSIONER ROMAN: You mean the public hearing portion of that?

CHAIRMAN STRAIN: Yes.

COMMISSIONER ROMAN: The requirement for the public hearing. Well, maybe that's what to address.

CHAIRMAN STRAIN: Standards for the facilities with fuel pumps in proximity to residential property. And then it goes on about the effective date of this section shall be -- and then it says, for the purposes of this section, residential property shall be any lot which is developed or zoned for residential use.

And Heidi took the word "developed" out, so now she says -- and took the word "zoned" out, and now she's saying for only rezones. That's a little different.

MS. ASHTON-CICKO: That's because the definition says "new residential development."

MS. CILEK: Mark, in C2 --

CHAIRMAN STRAIN: It says residential property, okay.

MS. CILEK: In C2 there's also language, and it relays that in addition to these standards, new residential property shall not be permitted within 300 feet of existing facilities with fuel pumps with more than eight -- with more than eight fuel pumps except as provided below. So that new has to go under the three, and that's when it has been rezoned.

CHAIRMAN STRAIN: So now, by new residential property you mean building on a lot where a house didn't exist before is not new residential property?

MS. CILEK: Not per that description.

CHAIRMAN STRAIN: We've got some --

COMMISSIONER ROMAN: See, I can understand new residential development. That says to me that it's going to be a development of some type that comes in there, an existing station, but new residential property I might understand to be any residential property, even a house or something like that.

MS. CILEK: Well, I will speak to our conversation with the County Attorney's Office, which there is case law that describes that -- what we proposed previously, and if you took out this part about residential, it wouldn't be as legally sufficient, more or less.

MS. ASHTON-CICKO: Yeah. I mean, we have a case that says if it goes one way, that's deemed unconstitutional, so it has to go one -- both ways to be enforceable, so --

CHAIRMAN STRAIN: Wasn't that case in 1969 or something like that?

MS. ASHTON-CICKO: Yes. And we did check to see if there's any case law that has overturned that or changed that ruling, and there has not been. So that is still the status of the law.

CHAIRMAN STRAIN: Or it's just not been challenged. And a '69 ruling doesn't necessarily mean it's going to be the same today. And if it's not been tested, I'm not sure we need to follow it until it is.

MS. CILEK: And we'll also relay, there is another community on the east coast that has a similar provision.

CHAIRMAN STRAIN: Okay.

MS. CILEK: And this one staff is following the direction of the County Attorney's Office, so --

MR. BOSI: And I would say -- and I think what the intent was, is any change in use from a parcel of land to residential that's within there, it's going to require a public hearing, and the location of that gas station's going to be part of that discussion. The concern that staff has in regards to these individual lots is if that gas station was developed, was the additional burden that we potentially would put on there if we required these residentially zoned properties that haven't been developed yet, having them to go through an additional step to build a house when they made that conscious decision and recognition of where that gas station lied.

But I think the gas station moving into the neighborhood is something that's not a decision that those residents are making. And we're simply asking that a public-hearing process be developed to ensure that that compatibility and those safety measures are addressed.

CHAIRMAN STRAIN: And, again, I don't have any problem with the gas station side of it. I do imposing a restriction on residential.

COMMISSIONER ROMAN: Well, I'm trying to understand this enough to feel comfortable with it. When I look at this diagram that you put up on the screen, I'm looking at four residential lots there that should be considered in the approval process of the gas station facility would have greater than eight pumps.

So when that petition would come in for the gas station or permit for the gas station, I could see where the staff would look at that request and look around at the surrounding neighborhoods and make sure that that gas station project wasn't touching anything residential within 300 feet before they approve of it.

CHAIRMAN STRAIN: Right.

COMMISSIONER ROMAN: So that would put -- that would put the extra layer of review so that those four yellow lots that you have there, the unbuilt residential wouldn't have an issue because they wouldn't be within 300 feet.

CHAIRMAN STRAIN: Well, they are within 300 feet.

COMMISSIONER ROMAN: But I'm saying they are if that was built that way. If the gas station as depicted was built that way. But hopefully when that project request came in for review, staff would make sure that they looked at the surrounding area and make sure it wasn't touching that gas station within 300 feet.

CHAIRMAN STRAIN: Well --

COMMISSIONER HOMIAK: Then they could have eight.

COMMISSIONER ROMAN: Then they could have eight pumps.

CHAIRMAN STRAIN: If this gas station -- if this gas station wasn't grandfathered in because of a prior submittal at that location, I don't -- with this ordinance, with this language, I don't think they could be there at all without a conditional use.

COMMISSIONER ROMAN: Okay.

CHAIRMAN STRAIN: But what I'm trying to show you is not -- the reverse of what you're talking about. My whole argument is the reverse of what you're saying. I don't -- again, I agree with you, the gas station warrants review, but then when you look at the squares, if the gas station's there, my impression was that those four parcels, before they could put a house up, because of the way I thought the language read, they would have to come in for some kind of process because they were next to a gas station.

COMMISSIONER HOMIAK: They're not new. It's not new residential. It's residential already.

CHAIRMAN STRAIN: They're not there. They're new in the sense they're not there. So what are they, old? I mean, they're not there.

MS. CILEK: The zoning is not new.

COMMISSIONER HOMIAK: It's already there. It's not changing the zoning.

CHAIRMAN STRAIN: Okay. I didn't --

COMMISSIONER ROMAN: You raise a good point. I'm just -- it could make it more cumbersome

a process than we need, but I think at the same time, in staff's review, the way that gas station project comes into staff, it has to be taken into consideration. But if you say that that gas station would be under the old code and that's why you're raising it, I'm just trying to wrap my hands around it.

If it's already grandfathered in under the old code; is that what you're saying, Mark?

CHAIRMAN STRAIN: The gas station -- no. I'm just saying that that location already had an SDP application in for a gas station. Not that location, but the general area, for that area before we put the moratorium on and started working on this language. So they still have a right to put a gas station somewhere there.

COMMISSIONER ROMAN: Right. But couldn't it be sited in that location somewhere where it remains 300 feet from any residential?

CHAIRMAN STRAIN: I don't believe so, but that part of the argument's irrelevant. I wasn't trying to pick on this site. I just was using this as an example to bring out a point.

COMMISSIONER ROMAN: Okay.

MS. ASHTON-CICKO: The intent of the new residential property definition was that if it's currently zoned residential and they build, they're fine. If they rezone it to another residential use or if you have ag land that is rezoned to residential, that that would be triggered as the new residential property, and perhaps the definition is not clear enough.

MR. BOSI: And it seems like, from that perspective, this -- there's not a lot of need for this discussion because the compatibility issue's going to be -- it's going to be require -- it's going to require a public hearing in the first place. Any new residentially -- any new residentially zoned property, if it's within 300 feet of a gas station, that's going to be part of the discussion and part of the measures that you'll evaluate for compatibility.

I think, at least from my understanding from what Mark -- what the chair was expressing was concerned that those lots would be deemed unbuildable if that gas station came in first.

CHAIRMAN STRAIN: Without an additional process?

MR. BOSI: Yes.

CHAIRMAN STRAIN: And the other point was, do any of these lots that get created, regardless of the process, do they become nonconforming? I mean, are we creating nonconforming lots throughout the whole county? In fact, are we retroactively doing it by the way we pass this, and so now those people who existingly live in a non -- in a lot that might have been created nonconforming by these radiuses we draw around the stations, what does that mean for their title work? What does that mean for their mortgages? What does that mean when they want to expand a room, when they want to do anything? Because we can't increase the intensity of a nonconformity.

MS. CILEK: The nonconforming discussion is a real one, and we should go there. But I will say that we are following the direction of the board on this one and that -- you know, in directing us to create an additional regulation regarding the location of new residential and gas stations, that's part of it.

COMMISSIONER EBERT: Can we -- Mike or Caroline, can we just make all new service stations -- they're not the old gas stations like they used to be -- all of them just have a conditional use which means they have to come in. That way whether it's administratively, you can see the layout as to what is there already. If they just all come in under a conditional use --

MR. BOSI: That would actually exacerbate the problem more.

COMMISSIONER EBERT: Really?

MR. BOSI: Yes, because you would be -- you're creating more instances of more locations that may be in proximity to a gas station. Because if you say any gas station, it's not only the ones with eight or more. It's any gas station and, therefore, any residential property related to any residential -- or in close proximity to any gas station would now potentially be deemed as -- or labeled as nonconforming.

So if you just blanketed it -- if you blanketed it and just said any gas station, one, I think that there would be at least the health concerns related to the eight pumps in the related settings that we were able to find, provides the justification for why we're asking for a gas station with certain conditions having to go through a different process than a gas station with under the eight pumps.

So I think making them all conditional uses is -- actually creates more issues from a regulatory

standpoint than what we're proposing today.

COMMISSIONER DOYLE: Yeah, I'm not seeing -- here it says, the proposed amendment, "automobile service stations establishes." At automobile service stations, I would think it would say that "new automobile service stations." Is that what we're looking for, right?

COMMISSIONER EBERT: Yes. Yeah. Is that what we're looking for, Heidi, is "new"?

MS. CILEK: If you look under the table, C2 table, location of facilities with fuel pumps, you have new -- we have new gas stations. And in reality that should say new facilities with fuel pumps, okay, and then it provides the location requirements, maximum fuel pumps.

And then under that you also have to address fuel facilities with fuel pumps that want to add or relocate them, because that will happen as well.

CHAIRMAN STRAIN: I'm not going to beat this to death. I don't believe that it's being read correctly, and I am still concerned about the -- and as long as that requirement for residential is there, I have a problem with it. And it's not through any fault. You did great research, and that's the only part of this I'm having a problem with.

MS. CILEK: Understood.

CHAIRMAN STRAIN: So, anyway.

Let's move on. And is there any specific questions from the language that we have in front of us or the studies that any of you guys have got? Ladies, too? Brian and I --

MS. CILEK: I'll make another note while you guys are looking.

CHAIRMAN STRAIN: Sure.

MS. CILEK: Under the -- it's going to be new facilities with fuel pumps, and under that is the additions or relocations of fuel pumps. What we need to add here is or tank -- underground storage tank vent riser opening as well. It needs to be one or the --

COMMISSIONER ROMAN: Where are you at?

MS. CILEK: It needs to be whichever is more restrictive.

COMMISSIONER ROMAN: Where are you at exactly?

MS. CILEK: I'm on the table, C2. And on the far left I have two categories, new gas stations which will be amended, and then right below that is additions or relocation of fuel pumps, and it needs to say -- because you could relocate your underground storage tank vent riser opening, and if that is triggered, then you need to monitor whether it is coming within 300 feet of residential.

And those openings are made on an engineering determination on the site. So most likely there's going to be some flexibility, but we do want to include that as well, because emissions are at least through those.

CHAIRMAN STRAIN: Caroline, in your language, there's only one grammatical thing that I question other than what I've already stated. After the table you have No. 3, and it would be 3B. Just the last four words need to be bolded. That's a definition, right?

MS. CILEK: Yes, yes, absolutely. We'll definitely check that. I also believe that we left -- or we did not cross out and then underline the new facilities with fuel pumps on Page 15 under the graphic. It says, Illustration 1, auto service station, right-of-way landscape requirements, and that graphic name needs to be renamed.

CHAIRMAN STRAIN: Yeah. Very good.

MS. CILEK: I think there might be one more. I just don't know where it is. But with your okay, we'll make those changes so it's all consistent.

CHAIRMAN STRAIN: Okay. Does anybody else have comments, questions?

We have one public speaker. We might want to hear what he's got to say. And rather than read the speaker slip, it's Vern Hammet.

And, Vern, do you want to come up and tell us what your thoughts are?

MR. HAMMET: Good afternoon. As you stated, my name is Vern Hammet, and I actually happen to live on Frederick Street. Just a Collier resident.

I was actually present at the Collier County meeting, commissioner meeting with -- whenever the Land Development Code amendment was presented to them on October 28th, and then I reviewed all of that

dialogue via archive.

And the way I see it, the primary reason that this code amendment was returned to staff for revision is not addressed in this new language that you're seeing today. Unfortunately, I don't have the time to go through every single comment that the commissioners made, but the consensus from our commissioners was that no pumps should be within 300 feet of a residential property line.

And the way I understand this language that's presented to you today, it still allows for eight pumps or less inside 300 feet while complying with normal setbacks, of course.

I encourage all of you that are going to be involved in the decision making on this to review the commissioner dialogue before forming an opinion on this amendment modification. I'm certain when you do you'll agree with me that this language is not consistent with what our elected county commissioners are asking for.

The reality is, is there is language on the books in the State of Florida over in Boca Raton that places this type of requirement. So, in other words, pumps be at least 300 feet from residential property lines, and it's in this report.

So, therefore, I don't believe what they were asking for is overreaching. I mean, it's on the books in the State of Florida.

Thanks, I appreciate it.

CHAIRMAN STRAIN: Thank you, Vern.

And, Caroline, would you mind responding to his concerns?

MS. CILEK: I believe we have another public speaker, so I just want to gauge --

CHAIRMAN STRAIN: Wait. I think it's -- I don't know how many else -- who else would like to speak? It's one -- one speaker who we hear way too much anyway, so.

MS. CILEK: Yes. Thank you, Vern, for your comments.

We certainly took the board's direction and, through our amendment process, it includes research. And we evaluated all of our research materials and dug deeper than we had before.

And what we came out with was ORVR, which is -- for us it was a game changer, and it kind of established that the health concerns of gas stations is diminishing over time with the establishment of ORVR.

That said, there are additional standards that we put forward to you-all to consider that could make what we propose even more restrictive. In addition, we could look at modifying the 300. But from staff, we definitely took into (sic) the board's considerations and concerns, but we wanted to present materials that were based on -- based on research.

CHAIRMAN STRAIN: In your research and from the comments on the board, you -- I guess your position is that, yes, you considered all stations within 300 feet, but from a rational nexus that you could support, your recommendations are what they are?

MS. CILEK: Right.

CHAIRMAN STRAIN: Okay.

MS. CILEK: We also took into account what the county attorney said at that time, and he relayed that what we were trying to do was a balance, and so we also took that into consideration.

CHAIRMAN STRAIN: Okay. Thank you.

MS. CILEK: Yes.

CHAIRMAN STRAIN: And, Richard, did you want to address? You're more than welcome to.

MR. YOVANOVICH: Thank you.

CHAIRMAN STRAIN: You can use either mike. You haven't got to use that one.

MR. YOVANOVICH: For the record, Rich Yovanovich. And I want to put on the record I am not here representing Racetrac, okay. We know I'm associated with Racetrac, but my comments are not on behalf of Racetrac.

I have a lot of concerns about the language that's written, and let me start with, I know that Mr. Arnold and I have done a fair amount of rezones in this county that have involved both residential and commercial portions of PUDs. And I could tell you that many of those projects included service stations as permitted uses within the C portion of the PUD, and the C portion of the PUD, I will bet you, will be within 300 feet of residential property.



Now, PUDs are negotiated zoning. They're contracts. They're a legal form of contract zoning.

What you're doing today, if this applies to already approved PUDs, is you're unilaterally changing that contract, and you don't have the right to do that.

We went through the process with the rules that were on the books at the time, and the rules on the books at the time did not require any limitation on the size of those gas stations.

So my question is, what happens to my clients that have mixed use PUDs that have gas stations with no limitations as a matter of right within 300 feet of a residential portion of the PUD? Did they lose that right? Do I have to come back through the conditional use process, which I've already done because I rezoned the property in the first place. So I think that's not addressed in this document, and it needs to be addressed in this document.

I think you need to grandfather in all existing zoning, especially for PUDs, because that was a contract. And you know and I know the county can't come in and unilaterally amend a PUD. Only the property owner can come in and ask for the change. You're changing that document. So, one, I think that's not addressing this.

I think you're creating a tremendous amount of nonconformities out there for gas stations. If they are now located within 300 feet and they're greater than whatever the number is -- if you go all the way down to what Vern is suggesting where every gas station is going to require a conditional use, every gas station that's within 300 feet right now is a nonconformity. Does it get to redevelop?

I can't expand, but can I redo the gas station because -- and I can't see it in the documents. I know you did it in your presentation, but I don't see all the exceptions in the document that would basically say, you know what, new regulations have come out. You've got to change your tanks for whatever reason. There's new technology for the pumps. You just decided there's a better configuration for your site. Can I do that? No.

I have -- everybody forgets the equation of people who own property. They buy that property subject to the regulations that exist on the date that they buy it. They should be allowed to rely on what those regulations are, and they -- and that's what -- and a magic thing happened in 1996 was the Bert Harris Act. It puts limitations on the government as to what it can do to change zoning regulations on the land, because part of the equation that was being forgotten is the existing landowner and what rights they had when they brought that property.

If I bought a piece of property today zoned C4 or anything above C2 -- C3, C4, whatever, even C2, if I bought that piece of property two years ago and under that zoning I could build gas stations any size -- I had that right. I bought that property knowing that. I had a valuable right when I bought that piece of property. You're now saying, your rights don't matter, we're going to change what you bought and what you expected to be able to do on that property. I don't think that's factored into the equation as we're going through here.

I understand health, safety, and welfare. I get it. But the technology out there today will get -- is great technology and will only get better. Gas stations, by definition -- if you look at the information that was provided to you over the several -- many years, the average is 17 pumps. That's for a reason. The reason that the small mom-and-pop gas stations, the two, three pumps, four fueling stations, whatever you want to call it, has gone away is because of the regulations that occur and the technology that you have, the impact fees you've got to pay, everything else.

You're taking -- you're making some very dramatic changes and not recognizing the reality of how gas stations develop and the technology and how safe they truly are, and you're forgetting about people's rights, the property owners' rights.

And I'm truly concerned about the PUDs, because I don't know what to go back and tell my clients now. I don't know what to tell them. Do they still have the right to do a gas station now that you're going to come up with this 300-foot limitation? I've done a few recently that have got gas stations in them that will be within 300 feet, and they were probably going to be more than eight pumps. Did they lose that right? I just need to know. I don't think that's been answered. It needs to be considered.

You do grandfather in -- on Page 17 you go all the way back to July 5, 1998. I think that date needs to be updated. I don't know where that one came from.

But I don't -- I think you need to seriously look at what exceptions and what grandfathering you're

going to give, and I think you really need to focus on those exceptions for redevelopment and not take away rights that already exist. Because as I understand the nonconforming rules in Collier County, if you stop using something, I think it's six months, you lost the right to do it.

So if a gas station closes for six months and it's greater than eight pumps and it's within 300 feet of a residential community, is it gone? I don't know. I think we need to address all of that.

CHAIRMAN STRAIN: I have one question about something you said, and I need to ask your thoughts on it. I think you said that if you have a PUD and you have that zoning, it's like a -- you have a contract for that zoning. It's treated like that. Do you see regular zoning designations on properties any different?

MR. YOVANOVICH: Well, I can only tell you what the case law says for PUDs, and the case law says for PUDs that it's a contract between the government and the property owner. It's a negotiation, and that's how a PUD works. And the case law is very clear that the government can't come in and unilaterally change PUD zoning.

Straight zoning I don't know the answer to. I have not researched the straight zoning. I do know that the Bert Harris Act was intended to address that and protect that zoning and say, you know, if you inadvertently burden a piece of property because you change the regulations, you can do it, government, but you've got to pay. You've got to pay for that inordinate burden. It's not solely the property owner who shoulders the burden of that change in regulation.

I think that -- I know of several pieces of property in this community that, from a dollars and cents standpoint, the highest and best price will be a gas station, and there will be an inordinate burden, dollars-and-cents-wise, for that change in the regulation if the conditional use is denied.

CHAIRMAN STRAIN: Okay. Thank you.

I think this whole issue has morphed into something a lot bigger than what it started out to be. It was bad enough what it started out to be, and that is the concern for public safety and health regarding gas stations.

Staff went to great efforts to provide a rational nexus, which I think is a good one. And I think that justifies a change in the law that we're proposing, but I'm still uncomfortable with the creation of the nonconforming uses, not so much on the gas station side but by the references to the residential. And I'm not -- until we know that better, I'm not that comfortable, and that's the honest point that I'm at.

I -- I thought I'd get different answers today, but I can see that my way of relaying it may not be as clear as it needs to be, so I'm kind of stuck on that.

MS. CILEK: One thing that, I mean, we could try to do -- I'm not certain -- will be to look at straight zoning and PUD zoning and see, with the property appraisal parcel data, looking at residential lots, look at those situations where your concern may arise. I think, for a lot of them, in this instance, there's already residential around that property that would trigger a public hearing process for that gas station.

I don't know how many areas have only undeveloped residential lots within 300 feet. That would -- where would (sic) -- I believe your concerns lie. I think most of them would have some developed residential property and some non-developed, so --

COMMISSIONER ROMAN: I think that I'd feel more comfortable with that if maybe we continued this and let Caroline do a little more research on where those parcels -- or, you know, where those fault lines are.

MS. CILEK: I will do my best. I'm sorry. I'm sick, so I'm losing my voice. I will do my best to do that. I don't know exactly, but I will definitely try.

CHAIRMAN STRAIN: The issue in expediency with this whole request was over a time frame that this semi temporary moratorium is on, and that was a legal issue. So I don't know if we have the time, and that's where I -- Heidi, if we need more information concerning the clarity or impacts to residential as a reciprocal to the gas station in the creation to the extent or the avoidance of a creation of nonconformities, the time frame to get that may take another, what, two weeks or a -- how much time do we have? Do we have enough time to do that, or are you pressed to have -- or is your department pressed to have this answer forwarded today so the board can weigh in on it?

MS. ASHTON-CICKO: What's the time that you --

MS. CILEK: Well, to be honest, we need to put on the agenda for the board the request to waive the 5 o'clock hearing. That will go on the board's agenda for the 10th. So the earliest I could go to the board would be the following, which I think is the 23rd, but I don't quite remember. So we would definitely, I believe, have the 5th if we want to bring it back at this time.

CHAIRMAN STRAIN: Well, I think that would be a good idea.

COMMISSIONER ROMAN: That's what I would suggest.

MS. CILEK: And that way it's just one meeting, not a month. I will let you know ahead of time if it's becoming a larger issue that I -- you know, and need more time, but I will do my best to accomplish the task by the 5th.

COMMISSIONER ROMAN: I think that I'd be more comfortable with that, continuing it to the 5th. And I think that we don't necessarily want, you know, 100 percent inventory of every parcel and every combination but to see what the scope might be --

MS. CILEK: Okay.

COMMISSIONER ROMAN: -- with some of those touch points there. And also on some of the language in this proposal, I know that I'm confused when I read it, not about positions and dispensers and that, but in new residential property -- and this might be for Heidi -- new residential property versus new developments. I don't know if we're trying to make a difference or if we're not in those adjoining parcels, but we might want to take a look at that as well.

MS. ASHTON-CICKO: Yeah. The intent when Caroline and I met and drafted the language was if you're already zoned residential, you don't have -- you're not subject to it, but if it's rezoned. So if you have -- but it would trigger things like if you had Smith PUD and you went in and you wanted to add multifamily use or something like that, that would trigger it. That would be new residential.

But if you're -- I don't know if Estates -- now I don't recall if that's deemed residential or not. But if it was Estates lots or currently zoned residential, a current residential PUD but hasn't, you know, platted yet, no, that's not new residential development. It's triggered at rezone.

COMMISSIONER ROMAN: Well, maybe that could be clarified. Because I know in the paragraph that I'm looking at, C2, I'm not sure if I would gather that from reading it as it's written.

MS. CILEK: We can definitely work on that language.

COMMISSIONER ROMAN: Okay.

CHAIRMAN STRAIN: And I think that's a good point. If you take out the reference to residential development and residential property and just say rezoning -- rezoning to residential throughout, then there's no mistaking it. But that still doesn't solve some of the concerns, and Heidi expressed one. If we're going to consider an amendment to a PUD as a rezone, then that becomes a bigger problem because now the whole PUD -- how much of the PUD is then susceptible to this issue?

And then, likewise, I'm real concerned about opening PUDs up after we do have an agreement for zoning on a PUD subject to the standards at the time. I do believe we can change the standards based on health, public, and welfare, but I want to make sure that the distance we're trying to change them in is not greater than what maybe we should be considering.

MS. ASHTON-CICKO: But the idea was that if you went through a rezone, you would have a public hearing and an opportunity to look at that criteria and determine if any mitigation could be done. That was the idea --

MS. CILEK: Which was why --

MS. ASHTON-CICKO: -- behind it. And the problem that you have here is we have two definitions. One is residential property because that deals with the -- a measurement of the distance, you know, the residential property line to the fuel pumps, that's one, and then the second was new residential property, which was intended to be triggered, you know, when --

MS. CILEK: For rezone.

MS. ASHTON-CICKO: Yeah.

CHAIRMAN STRAIN: And I -- again, new residential property to me means you're building a house, but I now know -- I understand better what you're trying to say, which means we have the ability to clean it up a little bit, or at least make it clearer.

MS. CILEK: Absolutely.

CHAIRMAN STRAIN: Anyway, we'll see where it goes.

Anybody else? Do you guys have any other comments that we want to bring out now?

Go ahead, Brian.

COMMISSIONER DOYLE: Just -- you had touched on it, Chairman Strain, but reiterating what our public speaker was saying about the legality of us changing the PUDs as far as what's already -- you know, having to rezone, and --

CHAIRMAN STRAIN: Rich --

COMMISSIONER DOYLE: -- that should be a major concern as well.

CHAIRMAN STRAIN: -- we've got a meeting going on here, so let her pay attention. She needs to pay attention to the speaker's question.

I'm sorry, Brian.

COMMISSIONER DOYLE: Just -- what our speaker had said, public speaker talking about having to rezone PUDs, that seems to be a concern for us, and legal obligations as well.

MS. CILEK: Well, for example, if you have a PUD, and you're proposing to put in a gas station with 24 fuel pumps and the location is within 300 feet of residential, then this provision would be triggered.

If you are rezoning a PUD, and you're including C3 zoning, and you think that you might want to put a gas station in, it would probably be advantageous to note that so that these criteria could be reviewed during the rezone petition.

CHAIRMAN STRAIN: And, you know, the key to that may be how some of the sampling PUDs are written, because a lot of them do have in the preamble a limitation as to the time frame in which they should be reviewed pursuant to the LDC.

Others say pursuant to the LDC at the time of building permit, and others go to further separately listing all of their uses. And for those that list gas stations as a specific use, that might be a different level to consider than those that just say C3, C4. I mean, those are all options I think that could be explored a little more.

MS. CILEK: Sure.

CHAIRMAN STRAIN: And I think it would be more beneficial if we sent that kind of analysis and more detail -- I mean, you did tremendous detail now, but now we've focused on the zoning aspects of the detail, and the nonconformities, that may help with the board's level of review, too, because if they do something sweeping that changes the zoning or changes the -- creates a lot of nonconformities throughout the county, we've got bigger problems and --

COMMISSIONER ROMAN: Before looking at the effects.

CHAIRMAN STRAIN: Right. So maybe that's a good outcome --

COMMISSIONER ROMAN: Unintended consequences.

CHAIRMAN STRAIN: -- of this meeting is to get just some additional data that we could help with. I know that means more work for you guys, but you did a great job so far. So thank you.

COMMISSIONER ROMAN: Do we need a motion to continue this or --

COMMISSIONER EBERT: Mark, I was going to have a quick question here. Is that not too many pumps for this small area? I can see this on a freeway or in an activity center.

CHAIRMAN STRAIN: That's a marketing issue. That's not a zoning issue. I mean, if they -- if the traffic impacts allow it and they pay the impact fees, I mean, I'm not sure -- we don't even know if that can fit there. I'm just saying, I think your question's more of a marketing issue, depending on how many pumps do you want to have. I mean, that's up -- you know, I don't know of any control on that.

MS. CILEK: I do have one last request. Is there anything else that you guys would like us to include in the next draft under the considerations for you, such as the 50-foot setback for all gas stations or addressing -- I don't think it's on here, but another item would be that in the future, to address other sensitive land uses, the research does support looking at those, and maybe those could be dealt with through site design criteria in the latter part of the amendment. I just wanted to make sure before I came back.

CHAIRMAN STRAIN: And, you know, to be safe, since this whole thing has morphed to the size that it is today, I think we ought to give the board what they're looking for and what they asked for, which

was a relationship to the residential. And maybe we look as a request to further consider this as those other sensitive uses need to come in.

MS. CILEK: Okay.

CHAIRMAN STRAIN: I'm not sure it's something we want to throw in this mix, because that just opens up a Pandora's box of issues that we have to start all over again for nonconformities and how they were there and zoning.

MS. CILEK: That's fine. I just wanted to make sure.

CHAIRMAN STRAIN: That's -- at least that's my thought, and if anybody --

COMMISSIONER ROMAN: That will make it more complex and harder to unravel.

CHAIRMAN STRAIN: I just -- we need to get this piece done so we can move on to the next one.

MS. CILEK: It's already complex.

COMMISSIONER ROMAN: I mean even more.

CHAIRMAN STRAIN: Anybody else have anything else?

COMMISSIONER ROMAN: Do you need a motion?

CHAIRMAN STRAIN: Heidi, yeah, do we need a motion to continue this to February 5th?

MS. ASHTON-CICKO: Yes.

CHAIRMAN STRAIN: Okay. Is there a motion?

COMMISSIONER ROMAN: I'll move that we continue this discussion on the Land Development Code amendment specifically to address automobile service stations in proximity to residential property to our February 5th meeting.

COMMISSIONER EBERT: I'll second.

CHAIRMAN STRAIN: Second by Diane.

Discussion?

(No response.)

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

COMMISSIONER CHRZANOWSKI: (Absent.)

COMMISSIONER EBERT: Aye.

CHAIRMAN STRAIN: Aye.

COMMISSIONER HOMIAK: Aye.

COMMISSIONER DOYLE: Aye.

COMMISSIONER ROMAN: Aye.

CHAIRMAN STRAIN: Anybody opposed?

(No response.)

CHAIRMAN STRAIN: Motion carries, what are we down to, 5-0. Thank you.

MS. CILEK: Thank you.

CHAIRMAN STRAIN: And with that, is there a motion to adjourn?

COMMISSIONER EBERT: I make a motion to adjourn.

CHAIRMAN STRAIN: Is there a second?

COMMISSIONER HOMIAK: Second.

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

COMMISSIONER CHRZANOWSKI: (Absent.)

COMMISSIONER EBERT: Aye.

CHAIRMAN STRAIN: Aye.

COMMISSIONER HOMIAK: Aye.

COMMISSIONER DOYLE: Aye.

COMMISSIONER ROMAN: Aye.

CHAIRMAN STRAIN: Anybody opposed?

(No response.)

CHAIRMAN STRAIN: Okay. We're adjourned. Thank you all.

January 15, 2015

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There being no further business for the good of the County, the meeting was adjourned by order of the Chair at 1:28 p.m.

COLLIER COUNTY PLANNING COMMISSION

  
\_\_\_\_\_  
MARK STRAIN, CHAIRMAN

ATTEST  
DWIGHT E. BROCK, CLERK

These minutes approved by the Board on 2-19-15, as presented  or as corrected \_\_\_\_\_.

TRANSCRIPT PREPARED ON BEHALF OF  
GREGORY COURT REPORTING SERVICE, INC.,  
BY TERRI LEWIS, COURT REPORTER AND NOTARY PUBLIC.