

TRANSCRIPT OF THE MEETING OF THE
COLLIER COUNTY PLANNING COMMISSION
Naples, Florida, November 17, 2016

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, 3299 East Tamiami Trail, Naples, Florida, with the following members present:

CHAIRMAN: Mark Strain
Stan Chrzanowski
Karen Homiak
Joe Schmitt
Patrick Dearborn
ABSENT: Diane Ebert

ALSO PRESENT:

Raymond V. Bellows, Zoning Manager
Eric Johnson, Planner
Heidi Ashton-Cicko, Managing Assistant County Attorney
Tom Eastman, School District Representative

PROCEEDINGS

CHAIRMAN STRAIN: Good morning, everyone. If everybody will please quiet down. Welcome to the Thursday, November 17th 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: Thank you. We'll start with roll call.

Mr. Eastman?

MR. EASTMAN: Here.

CHAIRMAN STRAIN: Mr. Chrzanowski?

COMMISSIONER CHRZANOWSKI: Here.

CHAIRMAN STRAIN: Ms. Ebert called in. She will not make it today.

The chairman's here.

Ms. Homiak?

COMMISSIONER HOMIAK: Here.

CHAIRMAN STRAIN: Mr. Schmitt?

COMMISSIONER SCHMITT: Here.

CHAIRMAN STRAIN: Mr. Dearborn?

COMMISSIONER DEARBORN: Here.

CHAIRMAN STRAIN: Thank you.

Addenda to the agenda. Before we go into that, I wish to introduce everybody to our new Planning Commission member, Mr. Patrick Dearborn, who represents District 2, North Naples, and welcome aboard, sir.

COMMISSIONER DEARBORN: Thank you very much.

CHAIRMAN STRAIN: We'll try to make it very entertaining.

COMMISSIONER SCHMITT: Did a lot of your friends come this morning?

CHAIRMAN STRAIN: Yeah. Just because Patrick's here, yeah.

Addenda to the agenda; we have a request for continuance of the Regency Autohaus PUDA. It was sent out a couple days ago. The applicant is requesting to be continued to the December 1st meeting. It will be, then, the first item up at that meeting. Is there a motion to approve their --

COMMISSIONER HOMIAK: Motion to continue.

CHAIRMAN STRAIN: Motion made to continue to December 1st. Is there a second? Somebody? Stan?

COMMISSIONER SCHMITT: I second.

CHAIRMAN STRAIN: Joe seconds.

All in favor, signify by saying aye.

COMMISSIONER CHRZANOWSKI: Aye.

CHAIRMAN STRAIN: Aye.

COMMISSIONER HOMIAK: Aye.

COMMISSIONER SCHMITT: Aye.

COMMISSIONER DEARBORN: Aye.

CHAIRMAN STRAIN: Anybody opposed?

(No response.)

CHAIRMAN STRAIN: Motion carries 5-0.

So if you're here for the Regency Autohaus -- has anybody come in for that particular item? It's the third item up today.

(No response.)

CHAIRMAN STRAIN: Okay. For those watching, that will be moved to the December 1st meeting.

Planning Commission absences; our next meeting is December 1st. Does anybody here today know if they will not be here on December 1st?

(No response.)

CHAIRMAN STRAIN: Okay. Ray, do we have anything scheduled for the second meeting in December?

MR. BELLOWS: The second meeting in December, I believe we do.

CHAIRMAN STRAIN: Okay. I just wanted to make sure. Sometimes in the holiday months we don't get everything scheduled.

Bob, you can take a seat a minute if you want. We're going to be a while before we get to you.

MR. MULHERE: All right. I'll just stand.

CHAIRMAN STRAIN: Okay. Approval of the minutes. We all were sent electronically the October 20th minutes.

COMMISSIONER HOMIAK: I didn't get any.

COMMISSIONER SCHMITT: I didn't get them.

CHAIRMAN STRAIN: Okay. Then we will postpone the approval of the minutes until the next meeting. So we'll move the October 20th minutes for approval to the next meeting.

BCC report and recaps, Ray?

MR. BELLOWS: Yes. On November 15th the Board of County Commissioners heard the PUD amendment for Granada Shoppes. That was approved on their summary agenda. They also heard the PUD amendment and rezone for the Marco Island Airport and Marco Shores project, and that was approved -- also approved on the summary agenda subject to the CCPC recommendations.

CHAIRMAN STRAIN: Great. Thank you.

MR. BELLOWS: And if you'd like, I can tell you what items are on the second meeting in December.

CHAIRMAN STRAIN: Absolutely. That will be great. Thank you.

MR. BELLOWS: We have the Hamilton Harbor -- or Hamilton Place rezone, we have LDC amendments, and we have a Tradewinds Avenue. Looks like that's a --

CHAIRMAN STRAIN: That's a variance.

MR. BELLOWS: -- variance.

CHAIRMAN STRAIN: Rear setback variance. Okay. Good. That's good to know, because on the 1st if we have to have a consent or continuance, we've still got another opportunity during the month to get that accomplished.

MR. BELLOWS: Correct.

CHAIRMAN STRAIN: Thank you.

Chairman's report; I don't have anything new to report today.

We'll move right into our regular meeting. The first item up is consent, and we don't have any items up of consent. So we'll move to 9A.

***9A is PUDZ-PL20150001416. It's the Naples Heritage Golf and Country Club PUD located on the south of Davis Boulevard and the west of Collier Boulevard.

All those wishing to testify on behalf of this item, please rise to be sworn in by the court reporter. If you're going to speak on this item, you have to be sworn in.

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

CHAIRMAN STRAIN: Okay. This particular project was remanded back to us by the Board of County Commissioners because of some objections that came up after this board had heard it.

Before we go into the actual business of the item, we'll have to do disclosures, but I wanted to make the Board aware that if it looked familiar, it's because we did hear on it, we did vote on it previously. Some things came to light after the meeting, and the Board thought it best to send it back to us before it goes back on to them.

So with that, we'll do disclosures. Mr. Eastman?

MR. EASTMAN: No contacts other than receiving emails which are part of the public record.

COMMISSIONER CHRZANOWSKI: Same here.

CHAIRMAN STRAIN: And I have had communications with numerous residents of Colonial Court either by email, by phone, or even before the meeting today; equally so with the applicant's representative, Mr. Mulhere. I don't know if I've talked to anybody else in your group, Bob, but that's the best I can

remember right now.

I've also gone through the files extensively, a lot of which we'll be discussing today.

Karen?

COMMISSIONER HOMIAK: I spoke to Mr. Mulhere.

CHAIRMAN STRAIN: Joe?

COMMISSIONER SCHMITT: I also spoke to Mr. Mulhere.

CHAIRMAN STRAIN: Okay. And, Patrick, we have to disclose any ex parte communications we had, so you'll get used to this as we get going. And if you have talked to anybody about this project, you have to acknowledge it now at this time.

COMMISSIONER DEARBORN: I have not.

CHAIRMAN STRAIN: Thank you.

COMMISSIONER CHRZANOWSKI: Mark, I'd like to correct something.

CHAIRMAN STRAIN: Yes.

COMMISSIONER CHRZANOWSKI: I did get one email from a resident inside the project.

CHAIRMAN STRAIN: Okay. And just for the watching community, Nora Frances, I hope you're watching. We're going to try to keep your husband in line today. Nobody knows who that is, but Nora deserves to have a "hello" said to her.

So with that, we will move directly into the item.

Bob, it's yours for presentation at this point.

MR. MULHERE: Thank you. Good morning. Here -- Bob Mulhere with Hole Montes here on behalf of the applicant this morning.

With me this morning, Patrick Doorbad, who is the general manager and COO of Naples Heritage; also Dick Rogan, who is the former president of the homeowners association and was chairing the Long-Range Planning Committee. He'll speak to the history of the acquisition of this property and the assessment of potential uses.

Also, I have Rich Yovanovich with me. He'll speak as necessary; and Craig Smith, who is the ecologist that worked on this project.

CHAIRMAN STRAIN: Rich Yovanovich is going to speak as necessary? That's a neat way of -- can you do that for every project you bring forward?

COMMISSIONER SCHMITT: I had to pause on that one, too.

CHAIRMAN STRAIN: Wow.

MR. MULHERE: Craig Smith, who will -- who I will ask to come up and speak. Both Dick and Craig will speak; Dick, as I said, on the history of the acquisition, and Craig on the alternative site analysis that was done; and also Gina Green who is the PE. I'm sure that Gina will have to respond to some questions. I don't intend to have Gina make a presentation.

As Mr. Strain indicated, this was heard by the Planning Commission in May and recommended for approval, but at that time we didn't have anyone who had objected in writing nor at the meeting. Subsequent to the Planning Commission, residents of Colonial Court expressed -- several residents of Colonial Court expressed some concerns, and we began a process of dialogue both via email, telephone call, and there were also several in-person meetings even as recently as just a couple of days ago.

So the concerns that were raised -- and I'll stick to those as part of my presentation -- generally centered on a number of things: The history of the acquisition and whether or not it was ever intended for this type of improvement of the five acres -- and let me show you where that is.

So on the visualizer you have a map of Naples Heritage, which is right here, and down in this corner, there's a five-acre parcel right here that is immediately adjacent to Naples Heritage PUD that we are proposing to add to the PUD and, in part, to improve it with a tennis center and, in part, to place some of that property in the southern portion of it in conservation.

The concerns -- in addition to that history and whether or not other alternatives existed besides this alternative, the other concerns related to whether or not the courts would be open for night play, whether or not there would be lights on the courts, noise generation, setbacks, landscape buffers, the size of the -- what would be the tennis center building which originally had been proposed to have a snack bar was a larger

building.

And so as those issues came up and were raised and as part of that dialogue, we began to try to address those issues so that we could be the best neighbors that we could possibly be in terms of the adjacency to the Colonial Court residents.

And I want to put an exhibit on the visualizer now. This is the site plan that you have that you have in your packet. You can see there's six tennis courts here. And you can see Colonial Court comes down here. There's access to the site, a parking area, and then these are the lots on Colonial Court.

This particular lot owned by Mr. Huber is the closest to the tennis court facility. It actually abuts the property because the cul-de-sac ends here, and he has access to his property right off of the cul-de-sac.

So this was the -- and this site plan reflects the site plan that has had numerous revisions made to it during that post CCPC process but still generally was the same in that it had, you know, the six tennis court configuration.

So a couple of things I want to point out is that we propose to have a pretty significant setback. It was 78-and-a-half-feet to the closest point of the tennis court -- of the structure here; I'm sorry, the building here; about 90 -- about an additional 20 feet to the edge of the first tennis court, so about 98 feet. Proposed to put a 25-foot enhanced landscape buffer, which is also part of your package. Right here and right here.

We moved it over here because this -- this little strip here is a 25-foot conservation easement that we are vacating, and this portion of that 25-foot conservation area was already cleared. We don't really know when it got cleared, but best we can figure is when the house got built on this lot.

CHAIRMAN STRAIN: Well, let me make a correction. I did check that out after you and I spoke.

MR. MULHERE: Partially cleared.

CHAIRMAN STRAIN: It looks like it was cleared when the developer went in and cleared for the right-of-way of the Colonial Court.

MR. MULHERE: Okay. Thank you.

CHAIRMAN STRAIN: If you compare the aerials from that time to now, that was cleared prior to the house being built from what I can see.

MR. MULHERE: Okay. So that's -- and so although it's in a conservation area, it's been cleared. And since we were vacating it, one of -- in discussions -- and I didn't have these discussions firsthand so -- others did. But in discussions, I think, with Mr. Huber, it was indicated that that could be retained in its clear area and that we would move the landscape buffer over here since we were vacating that part of the conservation easement anyway.

We've made a number of changes to the ordinance, which I want to go over first, to address those concerns. And these changes that are reflected in this document are in your packet. The concern over lighting, after discussing that with my clients, we agreed that there would be no night play, and we put some language in the PUD that says lighting shall be limited to that necessary for public safety and security, shall be a full cutoff shield to prevent glare and spillage, and utilize motion sensors for activation, and that they would be limited to a maximum height of 10 feet.

We've said that the building -- we eliminated the snack bar. It's only going to be for restrooms and a small storage area, and we limited the height of that, because that was also a concern. There was some discussion of a two-story building, but either way we've limited it to a 12-story (sic) building zoned and 15-foot actual.

We limited the operation of the tennis facility from 7 a.m. to dusk, and we've prohibited any form of amplified sound.

Now, after we made these commitments, some additional concerns were raised, and one of those -- one of the suggestions was that we consider revising the site plan. And I'm looking for the alternative site plan right now. Right here. That we consider revising the site plan to achieve a greater buffer than the 75 feet or 90 feet -- 75 feet to the building; 90 to the tennis courts. I think it was Mr. Huber that suggested that -- so that -- his suggestion was to reduce the number of courts to four.

And my clients still want to retain six tennis courts, but we did take a look at the site plan and revise it. You do not have this in your packet. This just happened fairly recently.

So we've taken a look at and moved -- where we had four tennis courts before, we've taken those two

and moved them to the north, revised the site plan slightly. The result of that is that we now do achieve the 150 -- it's actually quite a bit more. It's 140.1 feet to the edge of the building and then another 20 feet to the tennis courts. So the desired setback of plus or minus 150 feet, we actually exceed that now with that design.

And then the remaining -- I should point out that this area in here that will be used for holding water, once we take out the exotics, we will retain the native vegetation that's in that site, so it would create an additional buffer besides the 25-foot buffer that we're proposing right here and right here. And the same holds true for this area up here.

And down here, this would be dedicated as part of the conservation easement.

The meeting that we had -- I've been busy. I think it was the day before yesterday. Tuesday, thank you.

One other issue came up that I know some of the residents have concerns about, and that was relative to parking, and particularly as it might be during tournaments that are held occasionally, I think three or four times a year, and the possibility that folks would not have sufficient parking on the site and then would park on the street in front of these houses.

And our commitment was that we would manage that. There are relatively few tournaments that are held. There's no reason in those circumstances why folks coming into Naples Heritage to participate in these tournaments could not park at the clubhouse center and then be shuttled down here, assuming there would be a parking problem. We feel, certainly, that there's adequate parking. It exceeds the county's requirement for these types of facilities.

So we feel like there's more than adequate parking, but if there is some demand in these relatively few occasions, again, that will be during the day -- because we don't have night play -- we'll manage that by shuttling folks from the clubhouse center.

I did want to talk a little bit about the county's history as it relates to allowing these types of recreational facilities in proximity to residential development.

The county code sets forth a number of required development standards for these types of things, most particularly setbacks from adjacent residential development. Most of the time in residential districts these types of facilities are permitted as accessory uses to the residential development. Sometimes they require a conditional use.

We're going through a public hearing that would be the same as the hearing process that we would go through if it were in that case.

I think it was 15 years ago, it may have been longer, the county actually went in and changed the code to enhance the buffer requirements because there were some issues that occurred over the years about inadequate buffering adjacent to residential between these recreational facilities and residential development.

We far exceed that buffer. That 25-foot enhanced buffer is considerably more than is otherwise required. I think it's 15 feet, typically.

I do want to spend a few minute going over -- or, actually, I'm going to bring Mr. Rogan up and ask him to go over the process of when the community acquired this, what the thoughts were, and how they went through a process of looking at this site, not from the ecological perspective, not from the permitting perspective -- because Craig will talk about that right after Mr. Rogan speaks, but really more from -- because there were questions about what the intent of buying this piece of property were.

And I know that originally the intent was -- at least in part was to buy this piece of property to eliminate any likelihood of someone from the outside buying it and then trying to create some sort of a vehicular connection to Naples Heritage. I think -- I don't believe that would have ever happened anyway, but I do want to ask Mr. Rogan to come up because almost immediately, as soon as it was purchased, there was discussions about what other uses, since we've invested in this property, can we use this property for.

And, by the way, this is being driven, this process is being driven by a couple of things. Number one, there is a deficiency of parking in and around the clubhouse during the season. People are parking in the right-of-ways, and there's just not enough parking. So the Long-Range Planning Committee plan began to look at what they could do to alleviate that and, at the same time, the residents are also looking for some improved fitness facilities and other facilities.

So it was looked at comprehensively to try to address the long-range plans of this community both

for parking and for other reasons.

With that, I'd like you to come up, Dick, and speak to those issues.

CHAIRMAN STRAIN: You'll have to pull the mike closer to you.

MR. ROGAN: What I'd like to do this morning is read the letter that I sent to all of you.

CHAIRMAN STRAIN: Could you start by stating your name and spelling your last name for the court reporter.

MR. ROGAN: Sure. My name is Richard, middle initial is M, and the last name is Rogan, R-o-g-a-n.

CHAIRMAN STRAIN: Thank you.

MR. ROGAN: Okay. As I say, I'd like to read the letter that I sent all of you on the 26th of October, except you, sir; I don't think you've seen it.

COMMISSIONER DEARBORN: I have not.

MR. ROGAN: It's important, I think, because it does set the context for today's discussion and, plus, there's a number of people here who hadn't had the benefit of my thoughts on the letters. So I'll start -- I'll read it, and then certainly answer any questions that you have.

The above-referenced item was to be on the Board of Commissioners agenda for October 11th, 2016, but was sent back to the Planning Commission to further review its unanimous favorable recommendation.

Presumably this action was in response to letters written by three residents of Naples Heritage Golf and Country Club objecting to the relocation of the community's main tennis courts.

While they raise a number of valid concerns, which have been addressed, it is also apparent that a great deal of perspective has been lost since the original plan was presented to the Planning Commission on May 5th of 2016.

Of particular concern are the interests of 464 Naples Heritage owners, homeowners, who have voted to approve a club expansion project, of which this tennis court relocation is a part.

I'm former president of Naples Heritage Board -- Naples Heritage Board of Trustees and in 2015 served as the chair of the Long-Range Planning Committee which was responsible for developing the campus expansion plan.

I'm also past president of Cypress Point Homeowners Association; that's the single-family neighborhood within Naples Heritage consisting of 101 single-family homes, six of which are located on Colonial Court and face the site slated to house the new tennis courts.

I've got a note here that I ask myself why I put it in, but since it's here, I'll read it. I live within five homes of the construction site, so I'm not exactly on the other side of the community second guessing.

In 2004 the Naples Heritage Board of Trustees was approached by a developer who was planning to build some 140 multifamily units on several pieces of property adjacent to Colonial Court.

The proposal contemplated providing access to these units through Naples Heritage main entrance on Davis Boulevard down Naples Heritage Drive through Colonial Court.

You know, I think, Bob, we might want to show that.

CHAIRMAN STRAIN: Sir, you'll have to use that walk-around mike if you're going to address us, please. Thank you.

COMMISSIONER SCHMITT: Bob, can you back that out a bit on the screen as well. Thank you.

MR. MULHERE: Yeah. Thank you.

MR. ROGAN: There we go.

So the entrance to the community is here, and the proposal by these outside developers is that their residents would come in this way, down Naples Heritage, and to Colonial Court.

CHAIRMAN STRAIN: You'll have to move the map up. We still can't see it.

MR. ROGAN: All right.

CHAIRMAN STRAIN: There you go.

MR. ROGAN: All right. Let me try it again. Here's the entrance to the community. The residents of that new development would come in this way all the way down here and then down to Colonial Court. So that was the expectation associated with the developer's proposal.

It was the judgment of the board that the proposal offered no significant advantages to current

residents and, indeed, would place added strain on the community resources already in place.

Subsequent to turning down the proposal, the owner of one adjacent five-acre parcel offered to sell it to Naples Heritage. In light of -- in light of everything that had taken place, it made sense to go ahead and make the purchase, which was approved in September of 2004.

The closing, by the way for -- just for timeline purpose, the closing on the property was November 15th, 2004.

I'm going to make one comment that's not in the letter, and then I'll go back to the letter.

In January of 2005, all right, so less than 90 days after the closing, the Long-Range Planning Committee at that time began to discuss alternative uses. I have a copy of their minutes. And the first alternative use they listed was tennis courts. So the notion that we would have bought this property to do nothing with it just doesn't ring true.

As is documented in the minutes of the board of trustees as early as January 2005, discussions concerning potential uses of the newly-acquired property were begun. In the intervening years, a number of conversations were held about possible uses of this site as well as other sites within Naples Heritage.

A frequently discussed prospect was the movement of the club's main tennis courts to a site near the driving range which was dedicated preserve. On several occasions inquiries made of the Corps of Engineers resulted in strong admonitions about attempting to convert property already designated as preserve; this, regardless of any offers to swap other land.

Then in July 2014 the Corps of Engineers demonstrated its resolve by refusing to issue a permit to Quail West Country Club to convert dedicated preserve for use as tennis courts, a situation identical to ours.

We concluded that going forward with an identical proposal would not likely succeed. Taking the Corps to court was not only futile, but also expensive.

The suggestion's been made that there has not been a good-faith effort to find alternative sites for the tennis courts. The fact is, no fewer than 16 alternative sites were evaluated and documented in an alternatives analysis submitted as part of our application to the Corps of Engineers.

The analysis, which goes on for 24 pages, reduces the practical sites to three. They are the five-acre site adjacent to Colonial Court, the site near the driving range, which I mentioned above, and a site west of the existing clubhouse parking lot, a portion of which would be used for additional parking spaces.

When these three sites are subjected to further analysis, the five-acre site comes out as being the least environmentally damaging. With respect to wildlife, all three sites contain no listed species. As to loss of wetlands, development on the five-acre site is rated as the least damaging by a factor of over three times when compared to the driving range site and by a factor of 1.25 when compared to the site west of the existing parking lot.

I'm not exactly sure what would -- let me try it again. I'm not exactly sure how one would go about defining good-faith effort, but I'm sure that however you define it, we did it.

When Naples Heritage was planned in 1996, the Collier County Land Development Code dictated that only 185 parking spaces were required at the clubhouse. Since then, the demographics of the residents have changed increasing the activity and usage of club facilities.

Predictably, problems caused by the lack of parking are magnified during season and when Naples Heritage hosts events open to members and their guests as well as when inner club events take place. The lack of space often leads to overflow parking along nearby roadways and other areas. This creates an unsafe condition for the residents and complicates access for emergency vehicles. As far back as 2012, both the club's insurance carrier and the East Naples Fire District have served notice that parking available to support the main clubhouse is inadequate.

The plan under consideration adds 66 parking spaces and increases it 35 percent. To suggest that this is not a problem is to demonstrate total disinterest in the welfare of the community.

In addition to responding to a growing problem with parking, the planned expansion addresses the increased interest in health and wellness by including a new fitness center and an enlarged main pool. Finally, some modifications to the clubhouse are being made to accommodate additional activities.

In March 2015, the Naples Heritage Long-Range Planning Committee was charged with the responsibility of developing a plan that would positively impact as many residents of the 799 homes as

possible and to do so in a cost-effective manner.

Between April and October, a plan was crafted following a broad-based examination of what other comparable clubs and newer communities were offering the residents. Between early October and mid November, 22 neighborhood meetings were conducted to present the initial concept and to gain input that was used to make modifications.

Between January and early February of 2016, three town hall meetings were held to present a mostly finished plan and to gather additional feedback. Approximately a thousand people attended the small group and town hall meetings. It is inconceivable to suggest that there was insufficient notice to the community.

As a sidenote, one of the 22 meetings was actually a presentation made to the Naples Heritage Tennis Association Annual Dinner.

If, as mentioned in one of the complaining correspondence, and I quote, many of the tennis players were opposed to locating the tennis facility as proposed, it wasn't at all evident at that meeting. In fact, there was some concern about having spent a considerable sum to upgrade the existing tennis courts to address safety concerns just two years before, two years at that time.

Otherwise, the overwhelming sentiment was favorable. They would finally have a facility worthy of hosting inner club competitions. But since there is no objective data supporting either position, I suppose we're left to dueling anecdotes.

On March 25th, 2016, the results of the community-wide vote was published; 464 households voted yes. Naples Heritage documents require that a project like this must be approved by 50 percent yes votes, and non-votes are counted as no votes.

Against that stringent standard, the project was approved by 58 percent of the 799 homeowners. Many other clubs require only that a majority of those voting is necessary for approval. Against that standard, the project was approved by 64.7 of the voters.

Within Naples Heritage there are nine voting districts based on type of home; single-family, terraces, verandas, and villas. When the 464 votes are broken down by voting district, every single district, including the one composed of single-family homes, voted in favor of the project. The point here is that the board of trustees has the responsibility to serve the membership at large, invariably leaving some people disappointed. Nonetheless, the residents in 464 homes have a legitimate expectation that this project will go forward as has been presented to them. After all, their approval also includes a commitment to fund the project.

One or more of the complaints made some reference to the impact on the resale value of homes on Colonial Court. Keeping pace with the marketplace begins with the community.

Prospective buyers are not even going to look at individual homes if the community does not offer the features and amenities that they expect. There are 799 homes in Naples Heritage, all of which would suffer if we cannot keep pace with other communities.

As you're aware from the written exchanges with the residents of Colonial Court, their concerns have been more than adequately addressed. Giving appropriate consideration to the wishes of the community at large is well overdue. I urge you to conclude your review and to move on.

Thank you.

CHAIRMAN STRAIN: Thank you, sir. Bob, that --
(Applause.)

CHAIRMAN STRAIN: Ladies and gentlemen, please, I've got to ask you to refrain from clapping and responding to speakers. This is not the proper forum for that.

Thank you.

MR. MULHERE: And I know there were questions -- I'm sorry, Mr. Chairman. Bob Mulhere again.

I know there were questions relative to the site selection that may be more science-based or more permit-driven, and I'd like for Craig to come up and talk a little bit about that process.

CHAIRMAN STRAIN: And I'd like the rest of your presentation to stick to the typical factual presentations relevant to the Land Development Code. I understand the gentleman who just spoke is a member of the community. A lot of the issues he said are outside of our purview, so...

MR. MULHERE: Agreed, but I wanted you to have the history of the acquisition and, really, I felt

that he was the best --

CHAIRMAN STRAIN: Which we'll have questions about. Thank you.

COMMISSIONER CHRZANOWSKI: Mark?

CHAIRMAN STRAIN: Yes, sir.

COMMISSIONER CHRZANOWSKI: Should we wait till he's done, or can I ask a question now?

CHAIRMAN STRAIN: I don't have a problem with it. Do you, Bob?

MR. MULHERE: No.

CHAIRMAN STRAIN: Okay.

COMMISSIONER CHRZANOWSKI: There's a gate at the entrance, right?

MR. MULHERE: Yes.

COMMISSIONER CHRZANOWSKI: And you can't get in with it --

MR. MULHERE: Correct.

COMMISSIONER CHRZANOWSKI: It's a private road, right?

MR. MULHERE: Yes.

COMMISSIONER CHRZANOWSKI: What made anybody think --

MR. MULHERE: CDD? Well, it's gated, but --

CHAIRMAN STRAIN: You can't -- please, not from the audience. If you've got to speak, you've got to use the microphone.

MR. MULHERE: It's a community development district. There's some legal discussion as to whether those are actually private or public roads.

COMMISSIONER CHRZANOWSKI: Yeah, I'm familiar with that.

MR. MULHERE: However, having said that, it is gated. I mean, if your question is whether or not somebody from the outside could otherwise come through without the approval of the community, I think the answer to that is no.

COMMISSIONER CHRZANOWSKI: So what made anybody think that they needed to buy that parcel to get access to their parcel?

MR. MULHERE: Well, they had -- they had someone already suggesting it. That made them begin to look at these issues, and then once the offer came up, they said, let's buy this land to make sure that something doesn't happen adjacent to us.

COMMISSIONER CHRZANOWSKI: When they looked at the issue, they should have determined that this will never happen, right?

MR. MULHERE: Well --

MS. GREEN: Gina Green, for the record.

The roads in there are handled by the CDD, but they are held privately within the community. It's a gated community, and any outside person that would want to develop and come through would have to go to that CDD board and ask for access across, and that could be approved or not.

COMMISSIONER CHRZANOWSKI: Okay. Thank you.

CHAIRMAN STRAIN: But as a matter of clarification, CDDs -- and I happen to have participated in the creation of two of them in the county, the road system, was it paid for by the CDD, the asphalt and the subbase and the limerock? If it was, then the CDD has to open -- it's open to the public. All they have to do is come through the gate and say they want to drive on a CDD road, and if the gate stops them, they're violating the law.

So, now, from that perspective, then, the community is to -- those roads are open to the public in some manner. Certainly, there are issues involving accessways for mutual -- if a developer were to use that for his facility, he'd have to provide some means to maintain them and like that.

MR. MULHERE: Shared costs.

CHAIRMAN STRAIN: But I understand better. I didn't know that was a CDD. So if that is a CDD and those roads were paid for by the CDD, there is a public involvement in that.

But, Bob, since we're on the subject, back at the last meeting you said this five-acre parcel which is immediately adjacent to the PUD, 5.2-acre parcel that we are incorporating into the PUD, was purchased for the purpose of relocating their tennis facilities, make it a tennis center, and then that area where the tennis

courts are currently located will be additional parking and other amenity improvements and enhancements.

So the testimony, though, we heard today seems to indicate it was not purchased for that purpose. It was purchased to prevent people from connecting to their road system. So is your previous testimony in error, then?

MR. MULHERE: I don't know if it's in error, because --

CHAIRMAN STRAIN: Well --

MR. MULHERE: Well, I mean -- maybe I shouldn't have said that exclusively, because they certainly did purchase that property to, A, prevent people that they perceived might otherwise be able to come into their community and, B, to ensure that there wouldn't be residential development immediately adjacent to the property, but they immediately, very quickly, began to look at other uses.

So to my knowledge, that was the basis, but I agree with you that it was broader than that.

CHAIRMAN STRAIN: I don't care about what happened after the fact. The community, to purchase something, probably had to go out to all the community members because it would have been something they probably had done with HOA money or something --

MR. MULHERE: Agreed.

CHAIRMAN STRAIN: -- or even CDD money, however they purchased it. But if it was purchased for the intention of strictly prohibiting access and not allowing any other development on it, that's one thing, and that seems to be what the gentleman previously initially said was the purpose for the purchase.

You had said it was purchased for the purpose of relocating the tennis facilities, which it doesn't sound like that happened till months after the purchase was completed. And it looks like we found a necessary reason for Mr. Yovanovich to come up. I was trying real hard to make sure I found something you could comment on, Rich.

MR. YOVANOVICH: For the record, Rich Yovanovich. I was hoping you wouldn't.

I have -- and I was not around in 2004, and Patrick was not around either, but we have minutes from 2004. They're very summary minutes. But those minutes clearly indicate that they would be improving that property at the time they acquired it. It doesn't say specifically what those improvements were. But at the public meeting when the HOA decided to purchase the property, it talked about future improvements to that property.

So it wasn't purely an access issue. They intended always to improve that property. But, again, these are -- these are summary minutes. We don't have verbatim minutes from that time, but there was always the intent to improve the property.

CHAIRMAN STRAIN: Could you put the portion of the summary minutes on the overhead so we can read the language.

MR. YOVANOVICH: Right here, where it says we're going to improve the property. Mr. Strain, right here.

CHAIRMAN STRAIN: Yes, I'm reading it now. The purchase of this property is considerably cheaper than the mitigated land we tried to buy early. What was -- what has that got to do -- were you looking at this property as mitigation?

MR. YOVANOVICH: Again, I wasn't around. Your question was, were they talking about solely as an access play, and it was not. There's indication in those minutes that they planned on improving the property. It wasn't going to be sitting as, you know, native vegetation -- retention area of native vegetation.

CHAIRMAN STRAIN: And the CDD is actually the entity that paid for the property.

MR. YOVANOVICH: I looked at the records. It's owned by the HOA.

CHAIRMAN STRAIN: So it's owned by the HOA for the purchase by the CDD?

MR. YOVANOVICH: I don't know any of the details of the acquisition. I can only -- I can pull the deed up if you'd like. I have it on my iPad, but it is owned by the HOA.

CHAIRMAN STRAIN: I saw that. I've got the deed as well. It was a 2004 purchase.

MR. YOVANOVICH: Correct.

MR. MULHERE: So, again, with respect to the --

CHAIRMAN STRAIN: Could you slide that up a little bit so we can read what's on the second part of that.

MR. YOVANOVICH: Does that work?

CHAIRMAN STRAIN: Yes, that's fine. You loaned the money to the CDD to purchase it. The CDD purchases it. You put the deed in your name, and then you pay back the CDD for the money?

MR. YOVANOVICH: Again, Mr. Strain, I don't know how --

CHAIRMAN STRAIN: I mean, those are taxpayers' funds. I just was curious how you handled them.

MR. YOVANOVICH: I don't know. I wasn't the CDD's lawyer. I'm just -- specifically the question was, did we buy this purely just to avoid access for the developer. I just wanted to show you that there were always plans to improve the property.

COMMISSIONER CHRZANOWSKI: Mark?

CHAIRMAN STRAIN: Yes, go ahead.

COMMISSIONER CHRZANOWSKI: What I read into that first comment, they think that if they leave the property untouched, somebody could build a road through it, but if we improve the property, nobody will ever build a road through it. That's what I read into that comment.

MR. YOVANOVICH: Keeping in mind that there was another piece of property that they -- I believe they were not acquiring adjacent to it.

COMMISSIONER CHRZANOWSKI: Thank you.

MR. MULHERE: And I did want to say that. So as a result of the concerns, comments that came about after the Planning Commission, certainly I've learned more than I knew with respect to the history of the acquisition of this process. So you know, my statement is probably too narrow at that time. I understand that.

CHAIRMAN STRAIN: No, I understand what you're saying. No problem. And anything else, Stan?

(No response.)

CHAIRMAN STRAIN: Why don't we continue with your presentation, then we'll have questions afterwards.

MR. SMITH: Good morning. For the record, my name is Craig Smith. And for the court reporter, that's S-m-i-t-h. No E's, no Y's. My family wasn't that rich.

I became first involved with this project back in November of 2004 when they purchased it just to take a look at the property to be able to be seen from an environmental standpoint what could be done with it, what the wetland/upland issues were with that project.

We actually had a -- some concerns have been expressed that we never seriously evaluated moving the tennis courts over towards the driving range. We actually had a pre-application meeting with the Army Corps of Engineers on November 21st, 2012.

And that map shows the map that we gave to the Corps and spoke from showing where the existing courts were and where we were thinking of moving them, which is immediately adjacent to the driving range.

The upshot from that meeting was the Corps said, if you want to do that, you'll need to demonstrate to us that there is no upland alternative available to you since that site is entirely wetland and, since it is an existing mitigation area, we may well not approve a permit for that location.

Subsequent to that, we prepared the ERP application which gets transmitted to the Corps. The Corps requires, as you are well aware, a detailed alternative sites analysis when you are impacting wetlands.

And this is just the cover page of the methodology that the Corps requires current projects to use as far as evaluating a site if you were impacting wetlands and your project is not water dependent. It's basically a three-step process. The first process is you screen in to the area of your geographic concerns. Obviously increasing parking out in Golden Gate Estates somewhere would not work for this project, so you narrow it down. Once you do that, you look for potentially practicable sites.

And for this particular project, not only did we look for practicable sites on the property, we looked at all the adjacent ownerships because, obviously, if we're going to do parking for the clubhouse, it needs to be close to the existing property.

That map shows the 16 different sites we looked at. Most of them were determined not to be practicable because, for instance, the offsite locations we would have to buy a neighbor's golf course or

neighbor's wetland preserve, which I think we can all agree upon that, that would not be practicable.

We looked at all the other non-developed or nonresidential components in Naples Heritage, determined that those sites also would not be practicable. For instance, one possible location is where the maintenance facility is up along Collier Boulevard. In order to use that, you'd have to relocate the maintenance facility someplace else or do away with it, plus you had access issues of trying to get back into it.

That analysis led us to three sites that are practicable; in other words, there's a potential that you could actually do them given logistics, costs, and existing technology.

The methodology then requires you to evaluate each one of those three sites in terms of wetland impacts and impacts to listed species. None of the three sites would have any significant listed species impact, so that wasn't an issue.

In order to look at wetland impacts, you prepare a conceptual site plan for each site, determine not only the acreage of wetland impacts by each site plan, but also the functional value of those wetlands, and that's required to be done using the UMAM process.

We ran through those numbers, and once you run through those numbers, the site that has the lowest credit requirement is considered by the Corps to be the least damaging practicable alternative site. Based on the numbers, the 5.2-acre site was that site.

Just recently I prepared, in the last couple of days, sort of a preliminary cost analysis to also shed some light on those three different sites. And if you look on the top one, that is the proposed site plan, and all three sites were evaluated exactly the same, the same UMAM analysis, the whole nine yards. And basically what you come up with is you have a UMAM requirement of .98 for the proposed site plan. The UMAM is higher for both of the other two sites. In addition, we have the issue of the other two sites being located within dedicated mitigation areas. Both the Army Corps of Engineers and the Water Management District are not receptive to proposals that will impact existing mitigation areas, especially when those mitigation areas are functionally working; have been up and running for many years.

The district also will require not only mitigation for -- if we were to choose one of those two sites, if it was permissible, not only would we have to mitigate from the direct impacts to the wetlands that are there, we would also have to mitigate for the wetland impacts which those mitigation areas were designed to replace many years ago.

So when you look at the -- just from a cost perspective, assuming you could get a permit for any of the three sites, the cost goes up substantially from 81,000 to 157,000 to 378,000 when you finally get to the driving range alternative.

I've had conversations with the project reviewer at the local Corps office, and he has reviewed my 20-some-page analysis that was submitted to him. He agrees with those findings.

So that's how we got to the site we are at, and that's the process that we went through.

CHAIRMAN STRAIN: Okay. Joe's got some questions.

MR. SMITH: Okay.

CHAIRMAN STRAIN: To start with.

COMMISSIONER SCHMITT: Mr. Smith, do you have the public notice that was sent regarding this permit? Because here's where I'm confused. And I was not here the day that this previously came before the Planning Commission. I was not a Planning Commission member. And where I'm confused is this permit for purposes of expanding the parking lot. As you so note on Page 2 of your alternative analysis where you say "project need" --

MR. SMITH: Yes.

COMMISSIONER SCHMITT: -- you get into clear detail about expanding the parking lot.

MR. SMITH: Yes, sir.

COMMISSIONER SCHMITT: So when I look at the alternative analysis, I'm looking at the alternative analysis not for the mere fact of building tennis courts. It's for expanding the parking lot.

Now, on Page 1, you state, you're going to have associated parking, landscaping, and increased parking and build a tennis facility. So which is it? Are you -- are you -- was the study predicated on expanding the parking lot to meet the parking lot needs --

MR. SMITH: Yes.

COMMISSIONER SCHMITT: -- or was it predicated on we want a new tennis center, we need to expand the clubhouse and so, therefore, we want to expand the parking because --

MR. SMITH: They originally came to me and said, we need more parking and --

COMMISSIONER SCHMITT: Okay. Let's --

MR. SMITH: -- that's what we wanted to do at the clubhouse.

COMMISSIONER SCHMITT: Let's focus on that. So your analysis is based -- you just did the cost analysis.

MR. SMITH: Yes. That's strictly environmental cost. Has no construction cost in it whatsoever. Strictly environmental purposes.

COMMISSIONER SCHMITT: Was that environmental cost including relocating tennis courts or just the expansion of the parking lot?

MR. SMITH: No. This is strictly to get the cost. If each one of those options were permitted by the state and federal agencies, that is the mitigation environmental cost. It has nothing to do with physical construction activities.

COMMISSIONER SCHMITT: I'm going to rephrase my question: Alternative 10.

MR. SMITH: Yes.

COMMISSIONER SCHMITT: Shows the expansion of the parking lot to the west.

MR. SMITH: Yes.

COMMISSIONER SCHMITT: Let's just focus on the parking lot, not the tennis courts. Tennis courts stay where they are. You just provide additional parking, which is what that alternative suggests; is that correct?

MR. SMITH: Yes. Ten?

COMMISSIONER SCHMITT: Yes.

MR. SMITH: Yes. Ten was just to -- was -- as far as my analysis, was what wetland impacts would be required to expand that parking lot.

COMMISSIONER SCHMITT: Just the parking lot?

MR. SMITH: Yes.

COMMISSIONER SCHMITT: Not move the tennis courts?

MR. SMITH: No, because the tennis courts are an upland --

COMMISSIONER SCHMITT: Okay. So then you get into the other alternative, and you're talking about tennis courts and parking lot. So it's apples and orange on your alternative analysis.

MR. SMITH: No. The tennis courts were relocated to another location in order to provide additional parking spaces at the clubhouse. That's how the two of them tie together.

COMMISSIONER SCHMITT: Alternative 10.

MR. SMITH: Is strictly parking.

COMMISSIONER SCHMITT: Strictly parking.

MR. SMITH: Right.

COMMISSIONER SCHMITT: Not moving the tennis courts.

MR. SMITH: Correct, at least as far as my analysis is --

COMMISSIONER SCHMITT: Yes. So we go to the alternative, which was your least damaging alternative, and I clearly understand 13 where you said you couldn't move it across the street, but then you get down to your LEDPA, and now you're -- we've got Site 6, Site 10, and Site 13. 13 is your preferred alternative -- or correction. Site 6 is your preferred alternative.

MR. SMITH: Yes, sir.

COMMISSIONER SCHMITT: Which includes both construction of tennis courts and parking?

MR. SMITH: Yes.

COMMISSIONER SCHMITT: And expansion of the parking lot into the existing tennis court area now, correct?

MR. SMITH: Yes.

COMMISSIONER SCHMITT: All right. How does that equate to your Proposal 10 which is

simply nothing more than just expanding the parking lot?

And just so you understand my background -- and I'm sure Bob probably told you. I'm a retired Army Corps of Engineers. I know the Corps very well. I know the 404 process, so...

MR. MULHERE: I think I --

COMMISSIONER SCHMITT: I question the alternative analysis, and that's why I'd like to see what the public notice was.

MR. MULHERE: I think I can answer that question, though. In that alternative, all that would be -- we'd still -- his analysis deals strictly with impacts to -- what's the cost and the impact to the wetland areas in all the alternatives, all right. So if we did that in order to accommodate additional parking, we would simply be impacting that area for parking.

COMMISSIONER SCHMITT: I understand, Bob, but --

MR. MULHERE: That would be it.

COMMISSIONER SCHMITT: -- the two alternatives are not equal.

MR. YOVANOVICH: Can I have a minute with the consultant for the response?

CHAIRMAN STRAIN: Looks like we had two reasons for Mr. Yovanovich to speak today.

MR. MULHERE: So while they're chatting --

COMMISSIONER SCHMITT: And I'll go back again to the analysis of the cost analysis, because they're not equal in the cost analysis either.

MR. SMITH: One point of clarification. The public notice, I do not have that in front of me. I worked with the project manager, and the project purpose that is contained in that alternatives analysis is the one contained in the public notice.

COMMISSIONER SCHMITT: I would expect that was.

MR. SMITH: Yes.

COMMISSIONER SCHMITT: I just would have liked to have seen what the public notice was, but I would have to assume what is on Page 1 was what was the public notice.

MR. SMITH: Verbatim.

COMMISSIONER SCHMITT: But the project need specifically talks about the expansion of the parking lot to accommodate parking needs, and then by happenstance, gee, we're going to now build some tennis courts. So I don't --

MR. MULHERE: In that scenario -- Joe, in that scenario, you wouldn't need to add the new tennis courts. You would relocate parking, and they would, what -- in that scenario where -- the only thing we're impacting there was for parking in that one scenario. But still, that alternative still evaluated only wetland impacts. In all three scenarios it was what's the impact of the proposed improvement on the wetland areas.

COMMISSIONER SCHMITT: But you do an alternative analysis. On your Page 18, you come up with the three what you believe are your best alternatives: Site 6, Site 10, and Site 13. I clearly understand that. But Site 6 includes parking and tennis courts. Site 10 only includes the parking expanded to the west.

And did the site -- if -- let me ask this question -- let me ask this question: If you were simply just to accommodate the need for expanded parking, did the Corps tell you you could not -- it was -- the site visit said expanding to the west was not an acceptable alternative?

MR. SMITH: They told me that we needed to document there was no upland available to do it and that current policy, coming all the way down from Jacksonville, very, very, very strongly discouraged any wetland impacts to any existing mitigation areas, which is what --

CHAIRMAN STRAIN: How much -- what are your wetland impacts to the 5.2-acre tract that you're proposing now?

COMMISSIONER SCHMITT: That was my next question. Thank you.

MR. SMITH: The direct impacts are two acres.

CHAIRMAN STRAIN: Two acres? And what is your wetland impacts as shown in your report for the parking on No. 10?

MR. SMITH: 1.25 acres of direct impact.

CHAIRMAN STRAIN: Right. So which is less wetland impact?

MR. SMITH: The purpose -- what you do is you don't look at acreage. You look at functional value

as required by the Corps' 2014 guidelines, and that says you look at the functional value, which is the acreage times the UMAM score.

The wetlands on the 5.2-acre site that are impacted are in very poor condition. They are invaded by exotics. They've been hydrologically altered.

The wetlands on either of the other alternatives have been cleaned up and maintained for 20 years. So their functional score is much, much higher. That's why you get -- the least environmental impact is actually from one that impacts slightly more acreage of wetland as opposed to more function of wetland.

CHAIRMAN STRAIN: Okay. But the quantity of wetlands is greater in the site you're proposing that are going to be impacted, regardless of their value --

MR. SMITH: Yes.

CHAIRMAN STRAIN: -- than the quantity of impacts in the parking on the west side of No. 10?

MR. SMITH: Yes.

CHAIRMAN STRAIN: Okay. That's what I was getting at.

MR. SMITH: Yes, that's correct.

CHAIRMAN STRAIN: And I'm sorry, Joe. I was trying to get to --

COMMISSIONER SCHMITT: So let me go back, then, to clearly understand, this is not about -- it is about expanding the parking lot, but it is also about allowing for additional parking because we want to make -- expand facilities in the existing clubhouse and move the tennis courts?

MR. SMITH: Yes. It is to expand the ability --

COMMISSIONER SCHMITT: Okay. Because you don't say that on Page 2 for project purpose in your alternative analysis. I just want to understand this.

MR. MULHERE: So to be clear, by relocating the tennis center, that frees up opportunity for parking --

COMMISSIONER SCHMITT: I understand, Bob.

MR. MULHERE: -- and not impacting, because those are already impacted lands.

COMMISSIONER SCHMITT: I'm just saying clarity in the alternative analysis is needed. I mean, this is sort of a bait and switch. But if this is what you're submitting as an official document to the Corps -- has this been accepted by the Corps?

MR. SMITH: As far as I know, they have reviewed it and they have agreed to it.

COMMISSIONER SCHMITT: Is the public comment period closed?

MR. SMITH: Public comment period?

COMMISSIONER SCHMITT: Yeah.

MR. SMITH: Oh, yes, a long time ago.

COMMISSIONER SCHMITT: Okay. And -- but there was no Section 7 consultation required for either site?

MR. SMITH: We have gone through the coordination --

COMMISSIONER SCHMITT: They didn't elevate to the U.S. Fish and Wildlife for --

MR. SMITH: They asked for comments.

COMMISSIONER SCHMITT: They did?

MR. SMITH: The Fish and Wildlife Service responded back, said they had no concerns.

COMMISSIONER SCHMITT: Okay. All right. I'm just saying -- I mean, section -- your Site 10 evaluation is not equal to the other two evaluations because site -- your one alternative only includes expansion of the parking lot. The tennis courts remain the same. I understand it from an alternative analysis, and it is factual in that purpose in regards to environmental impacts, but it isn't for project purpose. Your project purpose is to also construct tennis courts.

MR. SMITH: That is a necessary byproduct of expanding.

COMMISSIONER SCHMITT: Wait a minute. Is it a byproduct of or is it the motivating factor?

MR. MULHERE: No. Actually, it came about -- the motivating factor was parking, and then one option for parking was to relocate the tennis center in order to free up area parking and other physical improvements. So this was the process that evolved.

COMMISSIONER SCHMITT: But Alternative 10 doesn't relocate the tennis courts.

MR. MULHERE: Because it doesn't need to if we just -- if we get the parking, then we can use the existing tennis courts. So in that scenario you wouldn't have to relocate.

COMMISSIONER SCHMITT: I'm going to go back to the cost analysis. Did the cost analysis between the three -- was strictly 10 -- was strictly the environmental --

MR. MULHERE: All three were strictly the environmental impact costs; only environmental impact costs.

COMMISSIONER SCHMITT: Because the Corps, you can also include total cost of the project.

MR. MULHERE: Yeah, you mentioned that; you know, the economics do come into play. And we did look at the economics. That was partly why we looked at that site, but also it factors as the least environmentally impacting site.

COMMISSIONER SCHMITT: All right.

CHAIRMAN STRAIN: Okay. Bob, where are you standing with the balance of your presentation? You've been going on about an hour now, so...

MR. MULHERE: I mean, I think we're done. I know there's questions, and I know there's public comment.

CHAIRMAN STRAIN: Well, we've got questions first, then we're going to have to have staff report, and then public comment. And I just want to move forward, but I wanted to make sure you had ample time to put everything on record you wanted to.

MR. MULHERE: I think so, Mr. Chairman.

CHAIRMAN STRAIN: Okay. Now let's move to Planning Commission comments on the presentation from the applicant. Stan?

COMMISSIONER CHRZANOWSKI: I noticed hardly anybody stood up when they asked who wants to be sworn in to talk, and I thank you for that. I'm curious, is it possible to poll the people in here and see how many showed up in favor and how many against?

CHAIRMAN STRAIN: That shouldn't have any bearing on our vote.

COMMISSIONER CHRZANOWSKI: No, it shouldn't. I'm just curious.

CHAIRMAN STRAIN: I have no objection to it if you want to do it by raise of hands.

COMMISSIONER CHRZANOWSKI: Yeah, just by raise of hands.

(Show of hands.)

COMMISSIONER CHRZANOWSKI: How many of you are opposed to this?

(Show of hands.)

COMMISSIONER CHRZANOWSKI: And how many are in favor?

Okay. Just curious.

CHAIRMAN STRAIN: I just want to remind the Planning Commissioners, this is not a popularity contest.

COMMISSIONER CHRZANOWSKI: They're not going to talk, so I don't know why they're here. I just was curious about that.

CHAIRMAN STRAIN: Okay. Do you have any other questions, Stan?

COMMISSIONER CHRZANOWSKI: No, I don't.

CHAIRMAN STRAIN: Tom, did you have some?

MR. EASTMAN: It seems that the majority of the residents want the new project. Those -- I'm assuming those against it are living nearby and feel they'll be adversely impacted. And it's -- it comes down to doing proper mitigations for those folks.

MR. YOVANOVICH: Is that a statement?

COMMISSIONER SCHMITT: Yeah, but that's not within the purview of the Land Development Code.

MR. YOVANOVICH: That was a statement, right? Not a question.

MR. EASTMAN: So my question would be, is it possible, Rich, that those that are impacted would not have to pay for the improvements?

CHAIRMAN STRAIN: Ladies and gentlemen, please.

MR. YOVANOVICH: Usually, Mr. Eastman, as you know, we talk about compatibility, correct?

And when we talk about compatibility, we talk about is there a way to buffer, shield, and make uses compatible. I would venture to guess that in a lot of nice communities there are residences around the clubhouses that exist in those community, tennis courts that exist in those communities.

What we're talking about, if you look at the distance between the nearby residents and where the courts and the build -- the restroom facilities actually exist, there is, I think, approximately 150 feet, and you also have a buffer and retained native vegetation. You have only hours of operation during the day, none at night. So I would say that from a compatibility standpoint, as testified to by Mr. Mulhere, there is no negative impact with this from a compatibility standpoint.

And we've addressed parking. We've addressed all of the concerns -- and there have been modifications based upon -- originally there were lights that were associated with this, and it's changed. We've accommodated that. So we are compatible, and that's the criteria you look at.

I'm glad Mr. Strain has said that it's not a popularity contest, because I've been saying that for years. But, you know, what happens is mostly those who come in -- most people who show up for a project are usually those who oppose, and they seem to have the loudest voice when there are presentations.

And it was important to us that the Planning Commission ultimately knows that the loudest voice in this community is in favor and that, although it's not a criteria, we just want to make sure that the negative voices don't -- are not given any more credibility versus our position as well.

COMMISSIONER CHRZANOWSKI: Rich?

CHAIRMAN STRAIN: Go ahead, Stan.

COMMISSIONER CHRZANOWSKI: Why was this sent back to us?

CHAIRMAN STRAIN: Because some opposition evolved --

COMMISSIONER CHRZANOWSKI: The loudest voice?

CHAIRMAN STRAIN: -- after it left us and went before the Board of County Commissioners.

MR. MULHERE: Well, in fairness, also, though, I think one of the -- what was said at the board meeting was that there -- also there had been changes to the site plan. I mean, yeah, we made the changes in direct response to the comments from residents of Colonial Court, but -- so the -- I think it was Commissioner Henning made the motion, and it was approved to remand it back to the Planning Commission. I think he said, you've made some changes to the site plan. That was what he said.

COMMISSIONER CHRZANOWSKI: I'll thank him when I see him.

CHAIRMAN STRAIN: Okay.

COMMISSIONER SCHMITT: Give him my thanks, too.

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

(No response.)

CHAIRMAN STRAIN: Well, then let's move to your plan you've got here on the overhead.

MR. MULHERE: Yes, sir.

CHAIRMAN STRAIN: You had said previously that the natural areas that's to the north and to the east were going to retain their native vegetation and they were going to be used for water management; is that correct?

MR. MULHERE: Correct.

CHAIRMAN STRAIN: If this is a -- more of an uplands or less wetland area than the other examples for the alternative analysis, how do you expect the native vegetation to survive in an area that is obviously being modified on its surface for water management reception? You've got species that -- they're uplands, for example, slash pine. As soon as you drive heavy equipment across their roots, they're going to die.

And if this is going to be what's considered part of the mitigation to provide Mr. Huber and the others on Colonial Avenue (sic) with some form of more of a barrier or a buffer, how are you going to guarantee that that's going to happen based on what I just asked?

MS. GREEN: Gina Green again.

The water management system for this is sheet flow into those natural areas, and we have now also looked at incorporating the lake to the north that was not in the original water management of Naples Heritage. It was a lake that was actually dug after the initial construction in an upland area to provide more

fill for the site. So we have incorporated that lake and added a control structure over on the west side of that.

The areas that are in the natural area, the majority of those areas are actually wetland. The one directly north of the parking lot and the tennis center adjacent to the north property line is actually wetland, and a portion of the site adjacent to Mr. Huber's house there on the east side, that is actually a wetland and upland combination. The actual ground elevations are very -- they're within tenths of each other.

It's considered upland but ground elevations. So these areas will receive the water management, will flow to the lake, and discharge to the west to the natural wetlands that are to the west of the lake.

CHAIRMAN STRAIN: So you're not going to use catch basins and outfalls?

MS. GREEN: There'll be an outfall -- there'll be a head wall weir structure in the lake that we're adding into that lake because it's uncontrolled presently. If you pull this --

CHAIRMAN STRAIN: So that means you're going to put a catch basin or an outfall into the natural area that will overflow into the lake?

MS. GREEN: Correct. There will be actually a catch basin system underneath the parking lot since it bisects it. It will allow the water to sheet -- flow underneath that parking area into that lake and outfall. So it's all connected to a water management system. It will bleed down. I've already had meetings with South Florida regarding this design.

CHAIRMAN STRAIN: You mentioned that this -- these are going to be receiving water, the two natural areas, by sheet flow.

MS. GREEN: Yes.

CHAIRMAN STRAIN: Do you see the double ring around those natural areas? That indicates usually a change in an elevation. So there's not a berm. It's not representing a berm --

MS. GREEN: No. Those are just --

CHAIRMAN STRAIN: -- it's representing a drop?

MS. GREEN: -- the contours as far as top of bank for the development of the tennis courts themselves getting back down to natural ground. And then we have a berm around the entire perimeter to contain the water management boundary as we always do.

CHAIRMAN STRAIN: If the vegetation dies out, what do you propose to do?

MS. GREEN: If the vegetation dies out, I'm sure the club will be replanting. We have -- you have to remember, within this you've got the 25-foot --

CHAIRMAN STRAIN: I'm -- your telling me you're sure the club will be replanting doesn't work, but I'm assuming Mr. Mulhere knows where I'm going.

MR. MULHERE: Yeah. I mean -- excuse me. I think that the intention is to retain the vegetation once the exotics have been removed. If that vegetation dies out, we can replant and we can live with a condition that requires us to do that.

MS. GREEN: But just remember, in our mitigation with the Corps and everybody else, all those natural areas are considered impacts, so we're mitigating for that and all, but we're leaving them natural to maintain the natural effect of --

CHAIRMAN STRAIN: You're missing the point.

MR. MULHERE: He's talking about protection to the adjacent neighbors, yes?

CHAIRMAN STRAIN: That's correct. Thank you, Bob.

The language that you've utilized in the text of the PUD amendment indicates that the facility that's going to be the building that's going to be on the tennis courts would only be used for restrooms?

MR. MULHERE: Restrooms, and there's actually a small tennis storage facility for, you know, balls and tennis rackets and those types of things. There's a little covered area that faces the -- so they can get out of the rain. It's on the side that faces the tennis courts. So there's a little cantilever there; people will be able to, if it rains or inclement weather -- or get out of the sun.

CHAIRMAN STRAIN: Let me read this to you. Reaction area labeled RA on the master plan limited to tennis courts --

MR. MULHERE: Yes.

CHAIRMAN STRAIN: -- restrooms, landscaping, and stormwater facilities for use by all residents and guests.

MR. MULHERE: Yes, I wrote that.

CHAIRMAN STRAIN: Now, if you're going to put something more than that in there, how do you think you're going to get through our SDP department?

MR. MULHERE: Well, let me ask you a question. Are you suggesting that I needed to say restrooms and a small storage area?

CHAIRMAN STRAIN: I think you need to say anything beyond what's written in that paragraph that you intend to do, Bob, because that's written very strictly. There's no "and other accessory uses" or something like that, which I can understand why. But if you're going to mean other things, let's just put it in there so we're covered by it.

MR. MULHERE: Okay. I have no -- I just -- we wanted to minimize -- we wanted to appease the concerns that there wouldn't be a snack bar. I can --

CHAIRMAN STRAIN: I just don't want to -- I don't want to mislead people, and if you don't put everything there, then try to put it in later on, someone might construe that as something that was outside the approval process.

MR. MULHERE: Okay. We can add some language to that. I don't know if you want me to do that right now; I can.

CHAIRMAN STRAIN: No, there's more.

MR. MULHERE: Okay.

CHAIRMAN STRAIN: So let's just get on with the rest of it of that nature.

On the plan that's on the overhead right now, on the north side you have a 5-foot sidewalk leading to Colonial Court. Is there a sidewalk on Colonial Court?

MS. GREEN: No, there is not.

CHAIRMAN STRAIN: On the south side of that entrance road, you have an unlabeled two lines going to Colonial Court that tie into the landscape buffer. What is that --

MS. GREEN: That's actually the water management berm lines to get grade back to the elevation of what the existing cul-de-sac is. Because the area adjacent to Mr. Huber's home is down at natural grade, we have to build a berm up around and contour that back into the entry road, which is up on the level of what Colonial Court sits at.

CHAIRMAN STRAIN: I understand. Where it says 25-foot landscape buffer area --

MR. MULHERE: Yes.

CHAIRMAN STRAIN: -- in that pattern, I mean, it doesn't have a dimensional arrow on it, but it just is written there between a couple of lines, and those lines change shape as you follow them around the south and then back up to the west and up the north, yet on your master plan you have a 10-foot buffer called out. Are you putting a 25-foot buffer on the west or a 10-foot buffer?

MR. MULHERE: Yes -- no, 25.

CHAIRMAN STRAIN: Then you need to change your master plan. If you go look at the master plan --

MR. MULHERE: Oh, I'm sorry. On the west? I'm sorry. Hold on. Let me -- the 25-foot landscape buffer was adjacent to Colonial Court.

CHAIRMAN STRAIN: Okay. All I'm saying is if --

MR. MULHERE: Oh, yes, on the west --

CHAIRMAN STRAIN: Your line work on this is real confusing.

MR. MULHERE: Adjacent to the outside perimeter, the existing other agricultural lot that we don't own, that's a 10-foot buffer.

CHAIRMAN STRAIN: Okay. When -- this is going to have to come back for consent anyway, so would you clean the line work up on this plan?

MR. MULHERE: On the master plan or the --

CHAIRMAN STRAIN: Well, the detail plan for the tennis courts, we shouldn't -- someone could easily make the assumption that you've got a 25-foot landscape buffer around this whole thing, and I know that wasn't your intention.

MR. MULHERE: Well, that's why we put the other exhibit in, the landscape exhibit, which says it's

adjacent -- 25-foot buffer adjacent to. I'll clear it up. How about that? Thank you.

CHAIRMAN STRAIN: That's all I'm asking.

Now let's get into your language that you're proposing. I think you're going to clean up that recreation area, your description. Then when you get into your 3.6.F, recreation area labeled RA on the master plan, you talk about various setbacks, but on the master plan you have setbacks that are greater than this. They're done to provide, as Mr. Yovanovich clearly indicated, more compatibility.

Somehow those setbacks need to be locked in. And they're not done so by that language that you've got on 3.6F. In fact, they're sufficiently less on that.

MR. MULHERE: Those were general, I mean --

CHAIRMAN STRAIN: I know, but this says, for the area labeled RA on the master plan. There's only one area RA.

MR. MULHERE: I think we can be very specific as to the setback for the tennis courts and the setback for the structure.

CHAIRMAN STRAIN: Okay. On the lighting discussion and the height discussion -- let's see. Where's -- yeah, the height's the next one.

MR. MULHERE: Next paragraph.

CHAIRMAN STRAIN: The lighting one, by the way, the lighting's only going to be utilized -- I'm just trying to figure out when. If you open at 7 a.m. and you close at dusk, why do you need the lighting? What's the lighting?

MR. MULHERE: Well, there could be the need to go in there and do repairs, there could be trash collection, those kinds of things, maintenance in the morning when it's dark, you know.

CHAIRMAN STRAIN: No, I didn't know. So you're planning on maintaining the tennis courts off hours?

MR. MULHERE: Anything could happen that would require some security lights. All we're talking about is security lights. It's just a question --

CHAIRMAN STRAIN: Okay. What about using bollards instead of aerial lighting that goes up high? Now, that's one of the conditions in Golden Gate Estates, and it's a rural area out there.

MR. MULHERE: Are you talking about four feet?

CHAIRMAN STRAIN: Yeah, about 4-foot high. That's one of the restrictions for --

MR. MULHERE: I don't think that would be a problem at all.

CHAIRMAN STRAIN: Okay. The next item concerning the maximum height shall be limited to one story, not to exceed 12-foot zoned height. Have you verified the crown of the road that you'd have to measure from for that 12-foot zoned height?

MR. MULHERE: I'm going to defer to Gina.

CHAIRMAN STRAIN: The only reason I'm asking, we have another project that was approved in relationship, and it turns out the crown of the road is really messing things up because it was an older road system.

MR. MULHERE: So the question relates to the height of the building, the 12-foot, is that -- that's measured from --

CHAIRMAN STRAIN: It would be from the nearest, I would assume, the crown of the road. That's how the other ones are that we're familiar with. Where do you think you're measuring this from in this case?

COMMISSIONER SCHMITT: It would be from BFE.

MS. GREEN: No, from finished grade.

CHAIRMAN STRAIN: No, no. Right. I'm sorry. I meant actually height, actually height. Does 3-foot give you enough in actual height? Because if your finished grade of your -- and you're right, it's actual we're talking about, not zoned. Does finished grade give you enough in your measurement of actual when your actual's got to start from the crown of the road?

MS. GREEN: If the actual goes from the crown of the road, the crown of the road -- are we talking Colonial Court or --

CHAIRMAN STRAIN: That's the nearest road, I would assume.

MS. GREEN: Okay. The nearest road, that crown of that road is actually -- sits even a little bit

higher.

CHAIRMAN STRAIN: Okay. Under hours of operation, 7 a.m. to dusk, what's dusk? I mean, I know -- we all talk about it, but what --

MR. MULHERE: Sunset.

CHAIRMAN STRAIN: Sunset. Then why don't we just say something more measurable.

MS. GREEN: Actually, dusk has been used across the state for swimming pools, everything. Dawn to dusk is a very common operating time for swimming pools that aren't allowed night swimming. They have operation times of dawn to dusk, and it's predominantly.

CHAIRMAN STRAIN: Okay. What time is dusk today?

MR. MULHERE: It changes.

MS. GREEN: Dusk today is probably -- because -- about, like, 5:30 because the sun sets around 5:45.

COMMISSIONER CHRZANOWSKI: Is that Eastern standard or daylight savings?

CHAIRMAN STRAIN: That isn't the same then.

THE COURT REPORTER: Can I get one at a time? I'm having trouble.

CHAIRMAN STRAIN: Ladies and gentlemen, please refrain from comments.

MR. MULHERE: Let me just say a couple things. What we had in there originally was dawn to dusk. We moved it to seven a.m. We clarified that time. I see your point.

MR. YOVANOVICH: We'll take sunset, okay.

CHAIRMAN STRAIN: That's fine. That's all I'm asking. Something that's definable.

COMMISSIONER HOMIAK: How about dark?

COMMISSIONER SCHMITT: Dark is different.

MR. MULHERE: I mean, it changes.

CHAIRMAN STRAIN: Okay. The last time we talked on this project I asked some very specific questions at the last Planning Commission meeting, and a gentleman that answered them was Mr. Dorbad. I asked, first of all, anybody from the public like to speak on this item today, and there were no public speakers at that time.

And I said, hearing none, I have one question that I do need answered. I need to have someone put that they were sworn under oath that Mr. and Mrs. Huber had knowledge of this action going on today and then discussion was held. If someone could come up and provide that testimony, that would be excellent.

Mr. Mulhere: They were notified, obviously, through all the usual. I'll let Patrick talk about the specific context. Thank you.

Mr. Dorbad: Good morning, Mr. Chairman. I'm Patrick Dorbad. I'm the general manager. I spoke with all residents, including Joe, and Joe was not truly in favor of it when we started it, but we were sensitive to the landscaping area and were working with him regularly as soon as via email this week, just this week.

So we're very sensitive to him. He's a good man, and he's supporting the project that we want to do overall, and we're working with him.

And then he went further on to say, from Joe Huber, generally we had a meeting as soon as yesterday, and Bob reported that there were several residents in the meeting, and everybody was frowning on a wall in that area.

It seemed to paint the picture, based on the questions that were specifically asked -- and I don't know Mr. Huber. I never spoke to him prior to the last meeting. I'd simply looked his address up on the appraiser's report, because if I owned his house, I would be real concerned. And it surprised me he had never contacted this board. That's why I asked the question.

The picture that was painted it seemed to think that everything was being worked out. Mr. Huber was on board. You know, that's not what happened, and I don't appreciate the direction this discussion seemed to go when that may not have been exactly as we've learned now.

MR. MULHERE: Well, I think that it's all a matter of perspective in the response. I think Patrick's perspective at that time was we would be able to work out any issues. I'm not saying that was, in fact, the case.

As it turns out, you know, there are some residents on Colonial Court -- I don't know if all of them,

but there's certainly some of them that do not support this project even with the mitigation that we have proposed so, you know.

CHAIRMAN STRAIN: That's all the questions I've got at this time. I think Joe had actually looked at the same alternative I was concerned about, that it didn't seem logical the way you're proceeding when you had that alternative available to you. But, anyway, I think that's been fleshed out.

So anybody else have any questions of the applicant? Stan?

COMMISSIONER CHRZANOWSKI: No, but I would just like to apologize for interrupting before. I'll try to restrain myself.

CHAIRMAN STRAIN: That wouldn't be any fun, Stan. That just wouldn't be your nature, so we're used to it.

Ending there, is there a staff report?

MR. JOHNSON: Thank you, Mr. Chair.

For the record, Eric Johnson, principal planner, zoning.

Staff reviewed the petition, recommends approval, recommends approval of everything that was submitted in your packet.

The conceptual site plan that was shown today, as well as the one that was in your packet, as long as there's a 25-foot landscape buffer, that would be acceptable.

And also either yesterday or two days ago I forwarded an email to you from Mr. Brown, and I just wanted to clarify that Mr. Brown is -- that letter is not to be construed as a letter of objection.

Staff is recommending approval.

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

(No response.)

CHAIRMAN STRAIN: Okay. Before we go to public speakers, which will be next up, we're going to take our break for the court reporter for 15 minutes. We'll resume at 10:40, and we'll go to public speakers. Thank you.

(A brief recess was had.)

CHAIRMAN STRAIN: Ladies and gentlemen, if you could please take your seats. We'd like to resume the meeting, everyone.

Okay. Ladies and gentlemen, when we broke for the last 15 minutes, we left off moving into public speakers, and we'll start with registered public.

Eric, do you have any registered speakers?

MR. JOHNSON: Yes, I do, Mr. Chair.

Before we begin, I just wanted to clarify. Our recommendation is still a recommendation of approval. The conceptual site plan seems appropriate, seems acceptable; however, a more detailed review would be conducted at the time of SDP. So I just wanted to clarify.

Our first registered speaker is Joseph Huber, followed by Mr. Walt Kulbacki.

CHAIRMAN STRAIN: Okay. And, Mr. Huber, and all public speakers, as you come up to either mike, state your name, and if it's complicated -- we understand how to spell Smith. And maybe, Mr. Huber, we probably understand how to spell your name.

So if you could just -- I think, Mr. Huber, you and I previously communicated. You wanted 10 to 12 minutes, and that's fine. So it's all yours, sir.

MR. HUBER: Thank you very much.

Again, my name is Joe Huber. Last name is H-u-b-e-r, middle initial V, as in Vincent.

I want to thank you for giving us the time to talk here. I'm speaking on behalf of myself and -- who is the most impacted. If you look at the site plan, you'll see that I'm Lot No. 1. If you could put that up, which shows the location of the lots.

CHAIRMAN STRAIN: Put the new site plan up, if you could, Eric, and we'll just leave it on the overhead for the speakers.

MR. HUBER: And I'm also here on behalf of the rest of the residents of Colonial Court. There are six residents of Colonial Court. They're all here objecting to the location of the tennis courts.

I want to make something clear, because I think there's a lot of people here that are -- as was taken

earlier, a poll indicating that they're here in support of the project.

The people on Colonial Court are not opposed to the enhancement of the facilities at Naples Heritage Golf and Country Club. What we are opposed is the putting of the location of the tennis courts directly in either our side yards or across the street from our houses, and that's what our objections are.

As you have learned and was not part of the original Planning Commission meeting here, this is not all about adding parking. I think that's already been pointed out. This development was to increase -- it's called the campus expansion project. Part of it -- there was a brochure distributed -- yeah, that's it -- which includes taking the existing tennis courts out and putting a fitness facility administration building and expanding the clubhouse, the pool area, and so on. That was part of the campus expansion. In order for that to be accomplished, they had to relocate the tennis courts. And it's stated exactly in that brochure that that's the reason that the tennis courts have to be relocated.

We have -- the existing tennis courts are located near the clubhouse. It's approximately not quite two miles, but fairly close, from the existing tennis courts to the site -- proposed site that you're looking at here today. That means that people are going to have to transit to that area from the clubhouse to these new tennis courts, okay.

Why didn't we -- you know, one of the questions that I've been asked is why wasn't the objection -- why didn't you hear our detailed objections before? And the simplest way I can explain that to you is that there were discussions. We assumed, in good faith, that the information that was being provided to us was accurate and was transparent and inclusive of what was going to take place.

And we found -- I found out -- and I found out after the hearing when I was asked to submit a letter of no objection to the conservation easement that runs along my property all the way to Naples Heritage Drive. There's a conservation easement that, as part of this package, it was presented to the Board of County Commissioners that needs to be vacated, and I have filed -- and all of the residents of Colonial Court have filed objections to the vacation of that conservation easement.

That was put there to -- specifically to preserve that area as conservation and to provide a natural buffer between there and the property line, okay.

The misrepresentations, there are many; too numerous to mention, but a couple of them have already been pointed out. Again, what prompted our not responding was we were told that there was no way that the Army Corps of Engineers would ever consider any other site other than this proposed site. I have found out consequently that that's false.

I have talked to the Army Corps of Engineers. And I'm not an engineer, and I don't understand necessarily the process, but I can tell you that they have told me, quite frankly, that if you have the ability to trade acreage of comparable areas, that they will consider a transfer of those areas. It might be more expensive; there may be more mitigation. There may be cost involved, but they look at the total project, and they were very receptive when I finally contacted. And I also filed objections with them as well. I'm not sure exactly where that is other than they said it was referred to legal.

We were also told -- and that was one of the primary reasons. Also, you have already pointed out, at the original Planning Commission meeting -- which I did not attend, and I did not actually receive notice. I'm a part-time resident. I live in Pennsylvania, and if a notice was sent there, it may have gotten thrown out, but I did not know of it. We left after Easter, and I haven't been back -- today's my first day back here in Naples.

We were -- in that hearing it was indicated that the tennis courts were there to resolve a parking issue. I think that's already been pointed out, clearly, that's not the case. The purpose of the relocation of the tennis courts is so they can build the facilities and enhance the facilities at the clubhouse.

The other misrepresentation -- you heard testimony today, the 5.2-acre tract at the previous Planning Commission meeting, as already was pointed out, that it was purchased for this purpose of building this tennis center. That is incorrect. Certainly when they purchased it -- and you heard the testimony of that. And I have a copy of the newsletter which I have here which was subsequently -- this was purchased in -- I think the closing was in November of 2000 when the transfer of the deed occurred -- 2004.

The announcement was exactly what you heard today, because there was concern about development. Nothing mentioned in there about building a tennis center. It may have been discussed in some internal meeting but certainly wasn't available to -- wasn't discussed with anybody in the organization,

certainly nobody on Colonial Court.

Actually, I was quite pleased when they purchased that property because I realized that it would -- that that would protect us and provide us an additional area of natural vegetation there. But we understood always that it could possibly be developed but not by our own clubhouse.

The purpose of buying it was to actually protect that from happening and, yet, the Naples Heritage Golf and Country Club plans to develop it now and do exactly what another developer would have done. Totally inconsistent with the purpose.

We were told by -- that there would be no lighting on the tennis courts, and you heard how they revised the plan inconsistent. But if you look at the original ordinance that was presented to this committee in September, you'll see that that ordinance, as it was drafted, indicated that there would be multiple uses. It included pickleball, bocce ball, indoor and outdoor fitness facilities, pro shop, and similar uses; it included outdoor lighting as well as amplified sound. In fact, there was a discussion at the Planning Commission meeting that they would have night tennis there.

Now, the sad part is that we met with the manager of Naples Heritage and discussed the limitations of that. There were commitments I got in writing, they're in the file, from him indicating that wasn't going to happen yet it happened in the ordinance. It was proposed. And had I not -- had we not objected, that's exactly how it would have passed. It would have been terribly unfortunate, but that's exactly how it would have passed. All of these have raised concerns.

You heard about an alternative analysis. We first learned of this alternative analysis -- even though we were arguing that it made sense, there's got to be another location that could be used. We just learned about that several months ago that this study was actually done. In fact, many of the people who are residents of Naples Heritage aren't even aware that this study was done, that there is alternative locations that are available.

Okay. Now I'm not an engineer, and I read the report, but I think it's pretty clear that there were three sites identified. One of -- both of the other two sites other than the proposed site here make much more sense for everybody concerned in the community. They certainly make much more sense and certainly have no impact on the people on Colonial Court.

Okay. The whole character of our neighborhood -- and there are some pictures in -- I know that the commissioners have pictures in the file because I submitted them -- just to give you flavor, because I know when you look at it from an aerial point of view you don't get maybe necessarily the perspective, but this is a unique part of single-family residential area of Naples Heritage.

Cypress Point is a separate non-profit association of the single-family homeowners. And if you look at that, this is -- what's shown here is where the proposed entrance from Colonial Court is going to go into these tennis courts, a rough picture of that.

CHAIRMAN STRAIN: Before you remove that picture, where's the road on this picture?

MR. HUBER: It's to the left of that tree. We'll show you the road here in a second.

CHAIRMAN STRAIN: Okay. At the very end where the trees turn to the left, what is this the end of? Is it the end of your house property?

MR. HUBER: Yes. That's where my property ends and the preserve starts.

CHAIRMAN STRAIN: Okay. So the area between the tree and the fence, according to the aerials I looked at, was the area cleared where preserves should have been left.

MR. HUBER: Right.

CHAIRMAN STRAIN: And your testimony previously said that that 25 feet was preserve area that was to be left natural for the benefit of buffers and whatever, but that's not natural.

MR. HUBER: Yeah, it was that way, as you pointed out when you asked the question. That's the way it was when our house was built, and that's the way it's been.

CHAIRMAN STRAIN: Right. And I looked to make sure that if it was you that did it, that's different than if somebody else did it. And it looks like it was done at the time Colonial Court and all the area was cleared for their infrastructure.

But what I'm trying to suggest is that this isn't a preserve that's benefiting you from a view perspective or a buffer perspective. In fact, the only benefit of it at this time seems to be to expand your grass

area is what it's been used for.

MR. HUBER: Yes.

CHAIRMAN STRAIN: Okay. Thank you.

MR. HUBER: There's some other pictures. Again, they may not be coming through too much of the overhead of the street. You can try another one. This is the perspective of Colonial Court looking down the street. Okay. Everything to the right -- as you can see, the first part of the street is maintained as a conservation area. The first 40 or 50 feet or more is maintained as such.

My house is all the way at the end of the street. All of the other residents, their homes are to the left. So it gives you a little bit of perspective. But this is the only cul-de-sac in the single-family residence in Naples Heritage Golf and Country Club.

When my wife and I, when we purchased this lot -- and my wife was raised on a farm. She particularly liked this location simply because it was very private and because there was -- it was surrounded by woods and preserve. And we paid extra to buy that lot at the time.

So the whole character -- my point is that the whole character of the neighborhood's going to change because now that privacy isn't going to exist, okay. What we see now -- what we'll see across, despite whether or not we have a buffer, we're going to see people driving their cars in to go to a tennis facility, okay.

And the wildlife that we view, the birds that we view -- somebody said there was no woodpeckers. I hear a woodpecker every morning in the morning. No wildlife observed. We've had panthers come through in our backyard. We've had a bear in that area.

So the fact that there's -- I don't know -- again, I'm not an expert on environmental, but we have seen those things in that area.

Cypress Point is a unique community and, as I mentioned, the property was purchased, and we paid more. This is a picture from my driveway looking up. The entrance will be right as you see the cul-de-sac turnaround there, is where it will be.

The neighbors will not have the quiet and peaceful enjoyment of their property. We'll be living across -- instead of a wooded area, we'll be living across from tennis facilities, ball machines, people yelling, noise, and the attendant events that they have there. It was mentioned, they'll have three or four of them a year, okay.

The only people that drive on Naples -- Colonial Court now are the residents, people that need to do servicing, the postman, do servicing. Some people get lost and turn around there.

As was pointed out, there are no sidewalks. My grandchildren ride their bikes up this street. People walk there every day on that street. There are no sidewalks, yet we're going to have traffic coming in going into this tennis facility. I don't think people are going to change their habits of what they're doing.

Okay. The safety issues. I already pointed those out. I wanted to address the staff report because I think that -- I'm not sure when you talk about traffic, one of the conclusions of the staff report was that it would not enhance -- it wouldn't increase the traffic in Naples Heritage Golf and Country Club. Well, it may not increase the traffic totally in the club, but it's certainly going to increase the flow of traffic when it comes down this direction.

People who want to play tennis are going to come down there. They're going to turn onto -- from Naples Heritage Drive onto Colonial Court, and then they're going to enter the tennis facility.

Okay. I have concerns about the water issues. I know that during the rainy season there's standing water in the preserve. I'm not sure how those going to address (sic). Again, I'm not an engineer but, obviously, there has to be a plan to deal with those issues. Okay.

And, finally -- not finally, but if this was a homeowner trying to put a tennis court on his facility, it would violate the covenants that we all signed with Naples Heritage Golf and Country Club, and now the association wants to do exactly what a homeowner couldn't do. We feel that's a problem. Okay.

As we pointed out, I think our argument is -- and those are some of our major concerns. There's been no good-faith effort. You heard a lot of testimony here today about -- from Craig Smith regarding the studies they've done. And, again, I'm not an engineer, I don't know the numbers. But what I can tell you is in talking to the Army Corps of Engineers, that -- and to the county, that there's been no application for another site submitted.

Now, if -- you know, I learned a long time ago, if you don't get up and try to do the right thing, you may get rejected, but you should do that. Really, what I think this boils down to -- and we had a meeting with Naples Heritage Golf and Country Club earlier today -- or earlier this week, on Tuesday, and we were listening, that is the people in Colonial Court.

And what the ultimate conclusion here is, it was all about the money. It would be more costly to put it there. Now, I don't know what the total costs were going to be. There might be more mitigation in these other sites, but let's look at the overall cost of building the facility. It does not belong here. This is a single-family residential neighborhood, and it's going to be altered irrevocably by putting tennis facilities here.

Yes, when you buy property, does it make sense for somebody to have a tennis facility near a single-family residence, yeah. But when you go into a development and purchase a property, you know it's going to be there. The people that live on Naples Heritage Road bought because they wanted a view of the golf course because the golf course is in their backyard, but they knew that when they bought it. The people on Colonial Court bought it for what it is today. And it's not some other developer. It's your own association trying to put a facility that's going to impact our properties.

The value of our properties, in my view -- and I have somebody looking at it now, but that will definitely be impacted in a negative way. Somebody mentioned, well, because the facilities at the clubhouse are going to be improved -- that was one of the arguments I made -- it's going to impact us. But people wanting what my wife and I wanted, what the rest of the people of Colonial Court wanted when they bought that property, isn't going to be available anymore. So anybody wanting that is certainly not going to pay for that unless they want to be a tennis player.

CHAIRMAN STRAIN: And, Mr. Huber, we've gone about twice as long as you and I had originally agreed, so I'd like you to wrap it up, if you could.

MR. HUBER: Yeah. The only thing I would conclude is the criteria for amending the PUD requirements. And I know you're well aware of them, but I thought it would be important to cover those. It says, consider the suitability of the area for the type and pattern of development proposed in relation to the physical characteristics of the land and the surrounding area. Traffic access, drainage, sewer, water, and other utilities.

Will the proposed PUD rezone be appropriate considering the existing land use pattern? Okay. This is a residential area.

Will the proposed change adversely influence the living conditions in the neighborhood? It's going to certainly impact my living conditions.

Will the proposed change create or excessively increase traffic congestion or create types of traffic deemed incompatible? We have no traffic now other than the residents as I mentioned earlier.

Will the proposed change create drainage problems? I already talked about that.

Will the proposed change adversely affect property values in the adjacent area?

And is the change suggested out of scale with the needs of the neighborhood or the community? We're a residential neighborhood, not a recreational area.

Whether it's impossible to find another location. And that's the key here. There are other locations; they should pursue that. What we ask you to do is to -- just in wrapping it up, is to reject the application, send them back to the drawing board, let them look at the other sites and make a good-faith effort and make an application. There are other alternatives. It doesn't need to stop the existing development.

And defer -- if, in fact, you conclude that -- if you conclude that you're going to approve this application as they've suggested the changes, we suggest you minimize the impact. What about looking at alternatives other than entering off of Colonial Court? What options are there that exist there? What about building a wall for the noise issues in addition to the buffers?

Those are considerations I proposed. They've been rejected. Not that we want that. We would prefer them not to be there. But if it doesn't go our way, we want to minimize that impact. And I don't think those are unreasonable requests.

Again, thank you for your time and the consideration today.

CHAIRMAN STRAIN: Thank you. And before you leave, Mr. Huber, does anybody have any

questions? Joe?

COMMISSIONER SCHMITT: Yes, I have a question.

Mr. Huber, you showed a picture -- I'm up here -- of the tennis -- of the expansion of the fitness facilities and the pool.

MR. HUBER: Yeah. Flip it over.

COMMISSIONER SCHMITT: I am now confused again because you said that --

CHAIRMAN STRAIN: You'll have to use the mike, too, when you respond, Mr. Huber. Sorry.

COMMISSIONER SCHMITT: That -- the other -- Eric, the other picture, the one with the pool.

Your statement on the record was this is being proposed to be constructed in what now is the existing tennis courts?

MR. HUBER: No, no, no. The existing tennis courts is the other side here. I'm sorry. He put the wrong -- that's my fault. He had the wrong site. That's what's being proposed for the existing tennis area.

COMMISSIONER SCHMITT: Okay.

MR. HUBER: The administration building and fitness center.

COMMISSIONER SCHMITT: Then let's go back to the Site Plan 13, and the alternative analysis shows the expansion of a parking lot. Which is it?

MR. HUBER: Well, I think they're going to expand the parking lot as well. That's part of where the confusion here is.

COMMISSIONER SCHMITT: I don't see anything --

CHAIRMAN STRAIN: That may be a question we might want to bring the applicant back. Not right now, Bob. After we finish with public speakers. But, Joe, we'll have -- during rebuttal we'll bring the applicant back up, and you can focus on that.

COMMISSIONER SCHMITT: I just wanted to clarify that. That is what's being proposed to be constructed?

MR. HUBER: Yeah. The alternative analysis -- it's interesting in looking at it. If you notice, the date is dated April of 2016. This project was voted for approval in March of 2016.

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

(No response.)

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

In your discussions that you just presented to us, one of the statements you made was the previous discussions were relied on. What previous discussions specifically are you referring to in relationship to what you had relied on for not showing up at the last meeting or not going further with your objections prior to the last meeting?

MR. HUBER: That there was no alternative that existed to locate the tennis courts. We bought that --

CHAIRMAN STRAIN: But your objection wasn't based on the site plan that they were presenting. It was based on the fact that the whole idea of putting it there was where your concern was; that was your -- that you relied on them having what, sought out all the alternatives they could have possibly used and that there wasn't any?

MR. HUBER: That's why we did not oppose it, and when we did meet prior to -- had discussions with Patrick -- and not all of us were involved in some of those discussions. The one meeting that I had with Craig Smith was with Leon Case, who's one of my neighbors here. There was only the three of us, and Patrick, was at that meeting discussing what the plan was.

But all of this was based on the -- on not knowing that there was an alternative location. That's why there's a site analysis. So the alternative analysis was never -- we never knew about that. I don't know how many people did know about it -- but that there were other locations that could have been looked at, and that was our position from day one. Can't you find somewhere else? No, we can't. The Army Corps of Engineers says that it can't be done. Well, you know, when you rely on that information and you make decisions based on that information, obviously it's going to change how you respond.

CHAIRMAN STRAIN: I understand the point now. And then, another question -- and, Eric, would you go back to the newsletter that was there before you put all the pictures on.

MR. JOHNSON: Yeah.

CHAIRMAN STRAIN: Could you blow that up on the lower right-hand corner.

MR. JOHNSON: Yeah, this is the part.

CHAIRMAN STRAIN: Right. Notice down towards the bottom, right before the value of the \$205,000 it says, the board of trustees has no immediate plans for this land but wanted to protect the community now and provide for our own needs in the future. What did you think that statement meant?

MR. HUBER: That, obviously, you don't buy (sic) 200-some thousand dollars to buy without planning to use it for some purpose.

CHAIRMAN STRAIN: Okay.

MR. HUBER: Not to -- you know, you have to remember at the time, this expansion, campus expansion, was never contemplated.

CHAIRMAN STRAIN: What would you think would have been a use that would have possibly gone there, then, if it wasn't for a use associated with the overall community?

MR. HUBER: They could have used it to accomplish what we're suggesting they do, take this land as -- and trade it on behalf and keep it in the character that it currently exists.

CHAIRMAN STRAIN: Trade it to whom?

MR. HUBER: If they wanted to develop the land for what they're proposing to do now, put the tennis courts up near there; trade this 5.2 acres plus the 3 acres that they just got approved by the board that was the vacation of the right-of-way behind the property; use that as leverage to say, okay, we want to trade this area for another area in the development so that we can put a facility there.

No one ever contemplated that you would put tennis courts, certainly, in -- next to a residential area. They might have developed it for additional lots they could have sold, which would have made more sense, but not to put a tennis facility there.

CHAIRMAN STRAIN: Okay. And let's say that this doesn't get approved to be brought into your PUD. Well, let's say you guys didn't buy it. Forget about the connection to your community. I think that would have been real hard for anybody to overcome.

But, Ray, as zoning director, this land was zoned as or -- or is zoned as ag currently. If it brings (sic) into the PUD, it would be PUD zoning.

Polly Avenue is 500 feet from this land, or at least that's what it shows up on the map. From a perspective of changing it from ag to something else, what is the likelihood of that being consistent with our Growth Management Plan?

MR. BELLOWS: For the record, Ray Bellows.

The subject property would be eligible for any of the permitted ag uses, but it also could be rezoned consistent with the Comprehensive Plan, which would allow for residential in this location.

CHAIRMAN STRAIN: That's about four units per acre?

MR. BELLOWS: That's the base density.

CHAIRMAN STRAIN: Okay. And if they wanted to put affordable housing there, they could get units up to maybe 10 units per acre, something like that?

MR. BELLOWS: That is one possible option.

CHAIRMAN STRAIN: Okay. The reason I'm pointing this out is it was probably a good move for your community to buy this land to protect the Colonial Court residents from intensifies (sic) that could be far more severe than what's possibly considered here.

If this doesn't get brought into the PUD, your association, and by a majority that seems to be here today, they could vote, say, well, if we can't use it for what we wanted to, why don't we sell it. And then it could be sold and developed by somebody else for probably a more intense use than what's being proposed in the plan we saw today.

And it's just something I wanted to point out, because there is some positive in the acquisition of this beyond the access to the gate. It allows control over this in a manner that, with your input and your neighbors, you might get a better compatibility standard out of it than what was started out with, say, a month ago when this meeting was held last time.

I just wanted to point that out, because that's a real -- that's a real issue. And if you do an appraisal

on your property and you look at that property that was there, the other considerations that property could have gone to may have a better -- or it may have a greater impact negatively on your property than what's proposed. And I'm just suggesting that also be included in your analysis when you go forward and do that, so...

MR. HUBER: And, you know, certainly, that was always the possibility. Certainly, I was aware of that possibility being the most one impacted here.

But we certainly wouldn't have the traffic or access to this property from Colonial Court, and that would be preferable. And I'm certain that there would be some kind of buffering or screening requirements that the county's going to require in addition to what's already there.

So, again, there's a big difference between a recreational facility that's going to be open to the members of the club, visiting clubs, an activity that's going to occur on an ongoing basis.

I was at the club this morning, and people were playing tennis at 7 a.m. So that's fine, but there's a place for that, and it's not next to your -- not your next-door neighbor. And that's the problem; it's now our neighbor.

CHAIRMAN STRAIN: Okay. Thank you, sir. Appreciate it.

Ladies and gentlemen, we're going to move to our next speaker. Do we have any other registered speakers?

MR. JOHNSON: Yes, we do, Mr. Chair. Walt Kulbacki, followed by Leon Case.

MR. KULBACKI: I'm not going to say anything. I gave it to Joe.

CHAIRMAN STRAIN: Mr. Kulbacki waives his time.

Mr. Case?

MR. JOHNSON: Yes. Leon Case, C-a-s-e.

MR. CASE: Waive.

CHAIRMAN STRAIN: Mr. Case waived his time as well. And is there next --

MR. JOHNSON: Next is Thomas Leonard.

MR. LEONARD: I ceded mine to Joe Huber.

CHAIRMAN STRAIN: Mr. Leonard waives his time.

MR. JOHNSON: Mrs. Reverend Filomena Poole, P-o-o-l-e. Here she comes. And then her husband will speak after.

CHAIRMAN STRAIN: Good morning, Ms. Poole. Were you sworn in when we started this morning earlier?

MS. POOLE: No. I apologize for being late. We went to the wrong building.

CHAIRMAN STRAIN: Okay. And if your husband's going to speak, if both of you could rise to be sworn in by the court reporter.

MS. POOLE: Certainly.

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

MS. POOLE: So help me God, thank you.

CHAIRMAN STRAIN: Thank you.

MS. POOLE: Thank you for recognizing God.

My name is Mrs. Reverend Filomena Poole. My name is spelled with an F, F as in Frank, i-l-o-m-e-n-a; middle initial A; last name, Poole. P as in Peter, o-o-l-e.

CHAIRMAN STRAIN: Thank you.

MS. POOLE: My home is 3100 Polly Avenue. I'm your neighbor in the back in the woods. We live in the last close-in ambiance on the dirt roads.

And I'm all for progress, since it started with the wheel. I'm only here because you sent me a letter to let me know you're doing something different. And we now have on our corner lot what's called a ditch and, across the street from us is another ditch but looks more like a canal. We're just wondering how much further back it's going to go. Is there going to be a bridge? What else is happening? Because the cougar is now coming into my yard, the Florida cougar and the panther comes into my yard and has eaten several of my animals.

So we'd just like to know how much higher do we have to build our fence, and what happened to the

buffer wall that we never got, and what's happening next. I know where water goes, A to B. I know that.

CHAIRMAN STRAIN: Okay. Now, you're on Polly Avenue.

MS. POOLE: Polly Avenue. The corner of Polly and Polly.

CHAIRMAN STRAIN: You're on what and Polly?

MS. POOLE: Polly and Polly, the corner lot.

CHAIRMAN STRAIN: Polly and Polly, okay. So on this map, you're the square to the furthest south on that map that's on the overhead. Could you put your finger or your pencil where her house may be.

MS. POOLE: Polly and Polly.

CHAIRMAN STRAIN: Okay.

MR. MULHERE: That's Polly. That's Polly. Are you here or here?

CHAIRMAN STRAIN: Right there. Okay.

Now, first of all, the project that we're dealing with here today does not -- is not contiguous, does not abut your property.

MS. POOLE: But you sent me a letter.

CHAIRMAN STRAIN: Well, no, no.

MS. POOLE: And I wanted to find out how it affects us.

CHAIRMAN STRAIN: Right. I'm getting there.

MS. POOLE: Okay.

CHAIRMAN STRAIN: The property is -- the property that's being changed today is that triangle yellow box on the overhead.

MS. POOLE: Right.

CHAIRMAN STRAIN: And that property is within 500 feet of you, and that's why you received the notification.

MS. POOLE: Right.

CHAIRMAN STRAIN: The project that may be one that you are closer to or may have the issues that you're talking about -- see the words "Shadow Wood" on this? They're directly across the street from you.

MS. POOLE: Yes.

CHAIRMAN STRAIN: That is not this project. You were notified just because you fell within the area that's required to be notified. This may not have as much bearing on you as the one to the south. The one to the south is not the one we're discussing today.

MS. POOLE: I thought that might have been the case, and no one knew when I called, so they said -- I thought I'd just come to the meeting and find out.

I do have another question, if I ask it now.

CHAIRMAN STRAIN: Sure.

MS. POOLE: The question is, with the water everyone's talking about where it has to go and be retained and into the ground, so on and so forth, that's fine. But that block that you've got blocked off in yellow that butts up to the Shadow Wood, where is that water actually going to go? Is it going to go into that ditch-looking canal, or is it going to be flowing back into that wooded area that's right across from me?

CHAIRMAN STRAIN: The wooded area and the water that is in that wooded area won't change. What's going to change is, any water that they create by collecting it from the fill they put on the property will be diverted through piping to the lake to the north that is also within their property. So none of the water will go off of that area. It will all go to the north into the lake, and that's reviewed by South Florida Water Management District.

MS. POOLE: Thank you for your time.

CHAIRMAN STRAIN: You're welcome. Thank you. I don't know if your husband still wants to speak. He's more than welcome to. Sir.

REVEREND POOLE: Please put that same picture back up.

CHAIRMAN STRAIN: You'll just need to state your name for the record. We'll remember the spelling.

REVEREND POOLE: My name is Reverend James E. Poole, Junior.

CHAIRMAN STRAIN: Thank you.

REVEREND POOLE: Thank you. On this wooded area.

CHAIRMAN STRAIN: You've got to use the mike when you talk, but we understand -- the one next to the --

REVEREND POOLE: Do you have any plans on chopping all the trees out of there, leaving a buffer somewhere along Polly Avenue over to my neighbor's -- see the three squares above me?

CHAIRMAN STRAIN: Yeah.

REVEREND POOLE: Are we cutting into there anywhere?

CHAIRMAN STRAIN: No. That buffer -- that one last tract isn't part of today's discussion. Now, that -- someone may own that. Someone may want to develop that. They'll have to come in under a separate application either to this panel or just do it as a Site Development Plan in the future. But we don't have any information today on that parcel next to this one.

REVEREND POOLE: Okay. That was my question. Thank you very much.

CHAIRMAN STRAIN: Thank you, sir.

Eric, do we have any other speakers registered?

MR. JOHNSON: No, sir.

CHAIRMAN STRAIN: Are there any members of the public who have not spoken that would like to speak here today?

(No response.)

CHAIRMAN STRAIN: Okay. We'll move into the rebuttal and questions of the applicant.

Mr. Schmitt, you're up.

COMMISSIONER SCHMITT: Yes. Bob, just for clarity again, based on what Mr. Huber stated on the record, that building that he displayed on the overhead, is that currently being proposed to go into the parking lot or into the existing -- where the existing tennis courts are?

MR. MULHERE: Yeah, that was one of the options. One of the options that is being proposed, depending on where we would either move the tennis courts in order to free that up for that improvement or we would relocate for additional parking in some of the other alternatives, yes, that is being proposed.

We are also proposing to increase the parking by approximately 70 spaces; 66 spaces exactly.

COMMISSIONER SCHMITT: All right. Well, we'll go back to the alternative analysis. The alternative analysis doesn't show any building being proposed. It shows --

MR. MULHERE: Because that wasn't -- that wasn't part of what we were considering. What we were looking at was the impacts -- regardless of what our alternatives were for development, we have different alternatives for development.

COMMISSIONER SCHMITT: Yes.

MR. MULHERE: What we were looking at was different alternatives for impacts to wetlands. We could have Option A for building, we could have Option B for building, we could have Option C.

One of the things we looked at was going two stories in the clubhouse. It was cost prohibitive. We didn't tell the Corps that either.

What we told them was, here's the sites that we're looking at impacting for improvements that will allow us to do what we want to do. Here's the environment impacts associated with those.

COMMISSIONER SCHMITT: Okay. I'm not arguing that. My discussion only is this is a document that was submitted to the government that's an official document.

MR. MULHERE: Yes.

COMMISSIONER SCHMITT: It's subject to public release. In the Alternative Site Plan 13, it shows the expansion of the parking lot. It does not show anything other than expansion of the parking lot.

MR. MULHERE: And the reason for that --

COMMISSIONER SCHMITT: And I understand that it is -- it has to do with the environmental impact. You could put whatever you want there, but the document does not show that.

MR. MULHERE: I agree. I agree, Joe, but the point that I'm trying to make is, for that impact, that's all we were doing was expanding the parking into there. The Corps didn't need to know anything else. They needed to know what we were going to do on that impact. That's why.

COMMISSIONER SCHMITT: Okay.

CHAIRMAN STRAIN: Anybody else have -- did you want to say something, Richard?

MR. YOVANOVICH: I just want to make sure -- Bob said what I was going to say, but there was a proposal -- if I have the right site plan and we have the same --

COMMISSIONER SCHMITT: You do.

MR. YOVANOVICH: There was fitness facility that was also being identified that was going to being going on that site.

And, again, as I understand the permitting process, is you show the Corps what you plan on putting on the area you want to impact, and that's all we did.

COMMISSIONER SCHMITT: Right.

MR. YOVANOVICH: And I think it was totally accurate. There was no bait and switch. It was a true representation of what was going on that parcel and what was it going to cost us to do that has been provided to you from a mitigation standpoint.

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

COMMISSIONER CHRZANOWSKI: Yeah. I just got a question of Gina. Hi, Gina. How are you?

MS. GREEN: Hi. Very good; thank you.

COMMISSIONER CHRZANOWSKI: I was looking at the LiDAR of that area, and that preserve off to the east of Mr. Huber, there is a canal that runs along the northside of Shadow Wood on the south side of that preserve. There's no berm between that preserve and the canal.

MS. GREEN: No. Well, that canal there is actually part of the LASIP project and is being improved for the Lely Area Stormwater Improvement Project.

COMMISSIONER CHRZANOWSKI: Okay. That preserve seems to run right into the canal?

MS. GREEN: There is an existing berm from when that canal was dug that they placed the spoils to the north.

COMMISSIONER CHRZANOWSKI: Okay. So the LiDAR I have is older; doesn't show the berm.

MS. GREEN: I don't know if it's enough of a berm that it would show up that greatly.

COMMISSIONER CHRZANOWSKI: Well, yeah, 6-inch tends to show up on the LiDAR, so if it's greater than 6-inch --

MS. GREEN: There is a slight berm there, which that berm will remain, but all the part of the LASIP, they're adding a big control structure that controls that whole flowway that runs from Cedar Hammock to Naples Heritage, from 12 Lakes, everything that runs down through there to that canal.

COMMISSIONER CHRZANOWSKI: Okay. I was curious because that south part of the parcel you're talking about drains into that canal.

MS. GREEN: Yes.

COMMISSIONER CHRZANOWSKI: Okay. And then you're saying that they put a berm there now?

MS. GREEN: Well, that berm's been there --

COMMISSIONER CHRZANOWSKI: Well, it doesn't show.

MR. SMITH: Craig Smith, for the record.

That -- there is a berm along the entire south property to line of Naples Heritage, and actually a small portion of that berm is actually on the Naples Heritage site. There is one small gap, maybe four or five feet across, on part of the right-of-way tract, I believe.

COMMISSIONER CHRZANOWSKI: But the new five-acre parcel has a berm along the south side of it, too?

MR. SMITH: Yes, sir, all the way across. And the ultimate LASIP design, which has recently been permitted by the district and I believe is getting ready to go under construction, basically is going to improve that entire berm across the entire south property line all the way back to where the canal heads south along the runway, and they're putting in a broad-crested weir up in that corner which will allow flow from everything upstream eventually to dump into that canal.

COMMISSIONER CHRZANOWSKI: Yeah. This is a 2008 LiDAR, so...

MR. SMITH: That thing has been there -- I did work on Shadow Wood, 15 years ago, 10 years ago. It's there.

COMMISSIONER CHRZANOWSKI: I can see a berm on the Shadow Wood side, but I don't see one on the other side.

MR. SMITH: What you see on Shadow Wood is actually a cleared area, so it shows up better. That is very heavily vegetated.

COMMISSIONER CHRZANOWSKI: Okay, thanks.

MR. SMITH: You're welcome.

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

(No response.)

CHAIRMAN STRAIN: Bob, do you have any rebuttal comments that you'd like to make?

MR. MULHERE: I do have a few. We certainly believe we've put on the record sufficient testimony that we did look at a number of alternative sites. I don't know if I mentioned it previously other than just in response to Mr. Schmitt's questions, but also there were some sites that -- there were alternatives that were looked at that didn't really fall into the realm of the Corps, such as I said, putting another story on the -- there was an alternative that looked at a parking structure. It was just too expensive. So I think we did do that.

I mean, there are recreational facilities in hundreds of residential communities throughout Collier County, some of which were planned and proposed at the approval stage and some of which came in later, because each tract in these residential communities allows recreational facilities as an accessory use.

I think the question is, once it's determined that, say, a sub-developer or somebody wants to come in and put a recreational facility -- and this one's pretty limited. It's tennis courts and a small -- relatively small restroom facility. And, yes, it wasn't limited at the beginning.

I wrote the -- as Mr. Huber indicated, I wrote the PUD document. I tend to write a PUD document as flexible as it possibly can be written. But once I understood that there were concerns, we revised the document. I wasn't involved in any of the discussions that may have been one on one with those residents. It's only after they expressed their concerns that I got involved. I said, look, we can change -- we can limit these uses. We can change these provisions.

But, you know, my thought was, maybe some of those other uses might be in the future desirable for the residents. Once I understood that they were concerns to Colonial Court, we took them out and we limited them.

So I think we've demonstrated that it's an appropriate location that we can mitigate for the impacts. And I think once everything is constructed -- everybody will have the aggravation during the construction process. Once it's constructed, the landscaping is in, I believe that this will be a very compatible use.

CHAIRMAN STRAIN: Okay. Does that wrap up your rebuttal?

MR. YOVANOVICH: I would like to add just a couple of things. One: As you're aware, we've started -- in PUDs the Planning Commission asked us to identify either where the recreational facility's going to be or, if we don't know where it's going to be, we come up with development standards to make sure that anybody that may ultimately end up next to a recreational facility that's not identified in the master plan will be happy and safe from a compatibility standpoint.

I think that the standards that we're proposing far exceed anything we've done in those standard PUD development standards that we've done recently for recreational areas.

I would also add that we do have that 25-foot conservation area that for -- except for the portion of that, you know, we will be crossing for access; we certainly can replant that to create additional landscaping and screening and buffering between the property owners on Colonial Court to assist what -- they're concerned about a visual impact, because that area's there. We can just limit our impact to just crossing where we show you our access road. So there are those options, if that's what the community would prefer.

I think when -- certainly, when Mr. Huber bought his property in 1999, that property, as Mr. Strain pointed out -- and I was going to say in my remarks and I want to reiterate, is that's in the urban area. It's only five acres. So I don't know if it's within the density band from an activity center standpoint. I couldn't measure that off, but it's near an activity center. Base units is four.

If you're less than 20 acres, you can get an additional three units per acre, so you can get up to seven units per acre just without even talking about an affordable density -- affordable housing density bonus on the property. And he acknowledged that development could occur on that property.

The document that he put up clearly says it was going to be for future uses of the association. And I don't buy the argument that, you know, you could trade it. You can't trade it. It's not mitigation property within the community for impacts of property. And you know how difficult it is to undo a conservation easement for property that was previously used for mitigation.

As you could see from the dollars and the increased cost for mitigation, it wasn't feasible to impact the areas that they would prefer.

There is not an unlimited source of monies to do this. So when he was told this is the site, it's because an analysis was done about the financial feasibility of the other locations.

So I want that to be clear that nobody was trying to mislead anybody when they were saying those statements, because they were factoring in what it would cost to do it, and this was the location that the facilities needs to go to.

Bob -- the only competent substantial evidence in your record regarding compatibility that sits here today is Bob and Eric. That's what you consider in a zoning hearing is competent substantial evidence. And all of the experts that have testified have said this should be approved.

That's the legal standard that applies. Not popularity. I have more people this time than the other side. Most of the times there's more against me than are for me. But the standard is the same regardless. Competent substantial evidence, and the competent substantial evidence leads to this being approved.

And, again, we are still -- again, that area could be planted if necessary to provide some additional buffering.

MR. MULHERE: And, actually, that -- excuse me. I'm just going to add. That was our proposal. Originally we'd proposed to put the 25 -- landscape buffer in what would be the vacated conservation tract that's 25 feet wide; however, since this was already impacted and it benefited or -- I think Mr. Huber preferred to have it remain clear, we -- in response to that, we removed the landscape buffer there and moved it over here so that that could be retained. I mean, you know, that was done purely as an accommodation, so...

CHAIRMAN STRAIN: And, by the way, since you brought that up, would you blow up the top corner of that property.

MR. MULHERE: Right here?

CHAIRMAN STRAIN: Yeah. It's a little hard to read. So on that -- you've got the 25-foot landscape buffer on the left side of the line on the south of the driveway, and when it flips to the north of the driveway, you put it on the right side of the property line. Is that what you're suggesting?

MS. GREEN: Let me comment on that. Because with everything that has happened with all these objections, we've actually revised the plan for that area you're talking about. We now have taken the conservation area that was to the north of our proposed entry, and we're leaving it exactly -- and I've pulled the water management berm and that landscape buffer all the way in, and that just happened, so...

CHAIRMAN STRAIN: Okay. Now, let me go back to my questions, Bob.

MR. MULHERE: Yes.

CHAIRMAN STRAIN: The landscape buffer that's on the right side of the line, is that intended to be on the right side of the line, or are you telling me this plan is inaccurate as well?

MR. MULHERE: Let me handle it, Gina.

Well, we have to clean this plan up anyway, right?

CHAIRMAN STRAIN: Just answer my question. Where's the landscape buffer going to go on the north side of the driveway?

MR. MULHERE: It's now going to be -- the same place that it is down here, just over here.

CHAIRMAN STRAIN: So it's going to be on the left side of the line?

MR. MULHERE: On the left.

CHAIRMAN STRAIN: That's the only answer I was looking for.

MR. MULHERE: Yeah, the left.

CHAIRMAN STRAIN: Okay. Thank you.

MS. ASHTON-CICKO: Mr. Chair?

CHAIRMAN STRAIN: Yes.

MS. ASHTON-CICKO: Also, for the sake of the new members, I just want to clarify a statement that Mr. Yovanovich said, because substantial competent evidence also does include laypersons that testify as to their own personal knowledge, but they are not permitted -- it's not considered substantial competent evidence as to opinion testimony. So I just wanted to clarify that.

CHAIRMAN STRAIN: Thank you. And I have to clarify something. Or at least let's put it this way. I want to add some balance to one of Mr. Yovanovich's opening statements, and that in which he talked about what this board has historically done in regards to buffers and setbacks and other issues involving recreational facilities in PUDs.

You're 100 percent right, we look at them very separately. We institute rules. We actually have a standard because of the development. I think it was the Brandon or something PUD up in -- north of Immokalee Road where we have certain setbacks we look at as minimums. We have walls and landscaping. And those are done for PUDs that are not developed where owners bought something that they didn't count on necessarily going across the street from them. So there is a stark difference between what would be necessarily required here to get, let's say, mutual compatibility versus what we're doing on a raw project where someone is going in knowing that's what's going across the street from them. I want to make that clarification, because it's starkly different than what was mentioned.

MR. MULHERE: That's why we put enhanced buffers in there.

CHAIRMAN STRAIN: Okay. And other than that, does anybody have any other questions? Joe?

COMMISSIONER SCHMITT: I have questions but probably more from a procedural standpoint having been gone from the county staff for almost seven years.

Procedurally, if they were just to add the five acres to the PUD, that would be one public hearing, and with -- if they --

CHAIRMAN STRAIN: Well, it would be a public hearing in front of the Planning Commission and the Board of County Commissioners.

COMMISSIONER SCHMITT: Board of County Commissioners.

And if they did not include -- the only reason the tennis courts are included here is because that's now part of -- becomes part of the record for the site development.

CHAIRMAN STRAIN: Yes. If they didn't show a use on this property, then they wouldn't be able to get a Site Development Plan for a use, so they've --

COMMISSIONER SCHMITT: Right.

MR. MULHERE: I would like to suggest that we include the site specific plan so that we could commit to the commitments we're making very specifically in the zoning action, because if we didn't put that site plan there, this use is still allowed by the language in the PUD.

CHAIRMAN STRAIN: Right. You could have gone with residential or something like that that wouldn't have -- they'd just plat it and be done with it. This is a community use.

COMMISSIONER SCHMITT: Yeah, that's my questions. Had they just come in and added the five acres and if the use were -- it is allowed in the PUD document --

MR. MULHERE: Yes.

COMMISSIONER SCHMITT: -- could or would they have been allowed just to come back at a later date and ask for the development of this site for --

CHAIRMAN STRAIN: I would think so.

COMMISSIONER SCHMITT: I would, too. My recollection, I would, too.

CHAIRMAN STRAIN: But it wouldn't have been allowed as a RA or a community facility, because those we generally locate on master plans.

MR. MULHERE: Well, we were. We did. We labeled it, so...

CHAIRMAN STRAIN: Okay.

MR. MULHERE: Yes; the answer is yes.

CHAIRMAN STRAIN: You don't know. That's okay. We've disagreed a lot in the past.

COMMISSIONER SCHMITT: I'm just trying to understand procedurally.

MR. YOVANOVICH: No, I think -- no, listen. I think -- and this is where we were being perfectly honest. And I got into this late, but I think we could have labeled that R. Labeled it R, and all the uses in the R, you know, on the residential portion, which includes tennis facilities, could have gone on that property by site plan.

COMMISSIONER SCHMITT: That's --

MR. YOVANOVICH: Because that's an old -- it's an older PUD, we would have looked at the R uses.

CHAIRMAN STRAIN: You don't think we would have questioned that when it came through for a PUD amendment in today's world?

MR. YOVANOVICH: I'm just saying we could have tried to --

CHAIRMAN STRAIN: You think you would have got by this board with that?

MR. YOVANOVICH: Yeah, I would have.

CHAIRMAN STRAIN: Oh, no, you wouldn't have. No, you wouldn't have. Nice try, Rich, but --

COMMISSIONER SCHMITT: Well, that's my questions. No, you wouldn't have. But my question procedurally is you could have --

MR. YOVANOVICH: I could have done it. I could have tried.

COMMISSIONER SCHMITT: Could have just added this acreage and at a later date come back and did an amendment, a master plan amendment?

CHAIRMAN STRAIN: If it was single-family, they probably wouldn't have needed the master plan amendment --

COMMISSIONER SCHMITT: Correct.

CHAIRMAN STRAIN: -- because they could have allocated it as a non-preserve, which would be anything. But I think if you were -- if they were to suggest they were going to put a recreational facility there, the questions would still have been evolved like we have to do. I mean -- Bob?

MR. MULHERE: At the time of zoning, they would. But if the zoning -- I think your question is, if this zoning was approved, we added this, we labeled it RA, what's the process? We wouldn't have had a -- if we didn't have a site-specific plan, we simply go in for an SDP and build it.

COMMISSIONER SCHMITT: That's what I thought. Okay.

CHAIRMAN STRAIN: Yeah. But we would never have gotten -- it would never have gotten through.

MR. MULHERE: No, we knew that, hence the site-specific --

COMMISSIONER SCHMITT: No, it would have been very clear on the development standards for the recreational area. Okay. But you answered my question. That's --

CHAIRMAN STRAIN: Okay. And is there any other questions of the applicant or staff or anybody at this point?

(No response.)

CHAIRMAN STRAIN: Okay. Bob, I've kept track of some things. I don't know what the motion maker will want to make as a motion for this, but I have noted some thing that we discussed so that if the motion maker motions for a stipulated approval, then these could be included. If it's denial, then they don't need to be included.

So just to keep everything clear and consistent with our discussions, the setbacks that are articulated in the narrative will be modified to be consistent with the site plan that was produced today.

MR. MULHERE: Yes.

CHAIRMAN STRAIN: Then the site plan that was produced today will be the site plan that would actually be used in lieu of the one that was given to us in our packet.

You would be working on some language to provide some kind of assurance that should the native vegetation that's in those retention areas -- I think you call them retention areas on your plan -- not survive after a limited amount of time, let's say six months or a year, you would replace them to a density comparable to what they were.

The details on the RA plan, mostly your contours and your lines and all that, they need to be labeled.

You've got different details in there that aren't clear what they are. You're going to change the narrative to make sure that any uses of those buildings are listed, including the shade coverings that you have on the master plan. Just list them as shade coverings or something so that everybody knows what they are and what they're limited to.

The idea of special events, we didn't talk about this, but it's a good time to bring it up. That's another unique factor. You're not really geared, from the size of this, to have a lot of large special events. Were you planning on having special events outside what the area could support on a normal course of business?

MR. MULHERE: No. What happens is they have these tournaments that -- I think Patrick said three times a year. Let's say three or four times a year where folks come in and play tennis from other -- and sometimes these guys go to other locations and do it. Interclub play, okay.

So that being the case, if the numbers are going to be more significant than what would typically be used there, we've discussed it. We would have the guests park in the clubhouse parking lot and have them shuttled down.

CHAIRMAN STRAIN: I think that needs to be articulated. And those events would not be utilized any different hours than what the hours are restricted to.

MR. MULHERE: Correct.

CHAIRMAN STRAIN: And the hours of restriction, you're going to give us a more definitive word than "dusk."

MR. MULHERE: Yes, sunset.

CHAIRMAN STRAIN: That's fine. I just want a different word.

Also, we didn't talk about this. It's something that I've heard mentioned. In a typical Type B buffer when you're up against a -- when a community facility is located within a residential PUD and abuts a residential unit -- now, I know Mr. Yovanovich is going to jump up and say it doesn't abut, it doesn't abut. Well, okay. It's adjacent to.

Then the minimum 50 percent of the trees in the hedge planting shall be located on the residential side of a fence or a wall. Now, I think I heard one of the gentlemen -- or Mr. Huber, actually, speak about the possibility of a wall going in. I don't see as a -- if this is recommended for approval, that would seem to be something that would be warranted, especially with the plantings on the opposite side of it would provide -- at least it wouldn't be a stark wall sitting out there.

MR. MULHERE: So the -- actually, I'm glad you raised that issue. I don't know if he intended to or not, but Mr. Huber indicated that it was his idea, the way I heard it and, actually, I suggested, after discussing with my client, a wall in the landscape buffer along his property, and he never responded yea or nay with respect to that specific recommendation.

Others have said to us they did not want a wall; they wanted a substantial landscape buffer.

CHAIRMAN STRAIN: But if we -- if the wall is installed consistent with a Type B buffer, it's going to be behind some rather intense landscaping because 50 percent of the trees and hedge planting shall be located on the residential side of the wall. So that means your wall would start -- would be along Colonial Court and south to the end of Mr. Huber's property.

MR. MULHERE: Does it require a wall? I think it just allows for it.

CHAIRMAN STRAIN: It allows a wall.

MR. BELLOWS: Yeah, allows.

MR. MULHERE: Yeah, it doesn't require.

CHAIRMAN STRAIN: Right. I know. But if it does -- if a wall does go in, it says right in the Type B buffer standards --

MR. MULHERE: Yes, I agree.

CHAIRMAN STRAIN: Okay. So there wouldn't be a stark wall there. It would be one that would have --

MR. MULHERE: Correct.

CHAIRMAN STRAIN: -- some landscaping on the outside of it, so that's another consideration for any stipulations in that we consider a masonry or concrete wall consistent with these Type B buffer standards.

MR. MULHERE: And if I would suggest -- if you do consider that, I would suggest that that is most

appropriate along Mr. Huber's property line, because when you go north, then you've got Colonial Court separating all of that, so you even have a larger separation there.

CHAIRMAN STRAIN: The area from south of your --

MR. MULHERE: Yeah, south of the cul-de-sac.

CHAIRMAN STRAIN: South -- could you put the site plan back up.

MR. MULHERE: As you can see, the cul-de-sac is here, the roadway is here, and then this property line would be immediately adjacent to the --

CHAIRMAN STRAIN: But, see, I don't know why it would -- why wouldn't you just put a wall along the entire eastern property line?

UNIDENTIFIED SPEAKER: We don't want that.

MR. MULHERE: Kind of a lot of folks have said it's not --

CHAIRMAN STRAIN: Okay. Well, Mr. Huber's the one that brought it up, so...

Before we go any further, if this is a recommendation of approval, I'd like to ask Mr. Huber to come up and address the wall, if that's something that he would like to see included if this were to be approved or not.

So, Mr. Huber, would you mind addressing that question.

MR. MULHERE: Mr. Strain, I don't know if you said it, but you also talked about bollard lighting.

CHAIRMAN STRAIN: Yes, you're right. I thought that would be a correction.

MR. MULHERE: It will be, but...

CHAIRMAN STRAIN: Thank you.

Mr. Huber?

MR. HUBER: From a visibility standpoint, obviously, we didn't want a wall there, if that was, ultimately -- if they were going to be there.

What I suggested is that the landscaping -- all the landscaping that's proposed, that the wall be put adjacent to the tennis courts to deal with the noise issue, and that was my concern.

So whether -- you know, without seeing it, I'm not sure. But I think most of the residents probably would not prefer a wall that they can look at. They like the idea at least of seeing the trees and the buffer in that area; however, you know, the issue is the noise and how are you going to deal with the noise issue, and that was why we raised it, because -- I mean, you have a recreational facility. Noise is going to be created.

We don't have that now. And, you know, you have ball machines, you have a tennis pro, and you're going to have tournaments or -- you know, inner club tournaments, or whatever they're called that's going to occur there. There's going to be noise. And the question is -- that's not something that we have now.

Again, that was another reason we didn't think it made sense to put it there, but that's, you know -- but in terms of addressing your specific question, it's how do we address the noise issue. And the wall was one of the thoughts regarding that, but we don't want to be looking at a wall at our property. That's certainly not going to be something we want to see.

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

Bob, any reaction to how that could be addressed, the sound from that -- mostly the -- Mr. Huber's property is the closest to the southern tennis court. And you have on the right side of the tennis court behind the canopy sun shade, rectangle on the south side, right up against that natural area. You could put a 6-foot masonry or decorative wall to the point where it bends, and that would provide as much sound barrier as possible to Mr. Huber's house, who's closest to this whole --

MR. MULHERE: Right here?

CHAIRMAN STRAIN: Yeah.

MR. JOHNSON: Over here?

CHAIRMAN STRAIN: Right. That line, the second line in.

MR. MULHERE: So what you're suggesting is right along here?

CHAIRMAN STRAIN: Actually, on top of that line that's there.

MR. MULHERE: Okay. Right along here.

CHAIRMAN STRAIN: Right.

MR. MULHERE: And that would be -- I don't know what the distance is, but we'll have to locate

that on the site plan if it becomes a condition.

CHAIRMAN STRAIN: Okay. That would help mitigate the noise. And if the motion maker here in a few minutes wants to include that, that's something that can be considered.

I'm just suggesting -- I'm trying to put everything in order so that you have -- the motion maker has all the options that they want to include or not.

MR. MULHERE: So I just want to reiterate -- Gina, I got it. Thanks.

I just want to reiterate that, you know, we're retaining the landscaping here -- they're not going to be able to see that because that's fairly mature landscaping -- as well as planting a new 25-foot landscape buffer, and we're agreeing to replace any trees if they died, you know, in that landscape buffer.

And we're not having any "I" play. We're not having any audio, you know, any noise. So I really think that we've addressed the issue of noise. Clay courts, they're not as noisy as the other courts. Har-Tru.

CHAIRMAN STRAIN: You're willing to stipulate to clay courts.

MR. MULHERE: Yes.

UNIDENTIFIED SPEAKER: Har-Tru.

COMMISSIONER SCHMITT: Is that even for pickleball?

MR. MULHERE: No, we're not going to build -- we got rid of the pickleball.

CHAIRMAN STRAIN: Oh, you're going to open up a can of worms.

COMMISSIONER SCHMITT: Well, they had mentioned pickleball, and I'm trying to find out --

MR. MULHERE: No, we're not doing that. That -- apparently, I found out a lot about pickleball. It can be noisier than tennis.

CHAIRMAN STRAIN: It can be a noisy sport, yeah.

MR. JOHNSON: Mr. Chair?

CHAIRMAN STRAIN: Yes.

MR. JOHNSON: Over here; Eric. This area over here, where it says 25-foot natural area, could we just find out exactly what this will consist of?

CHAIRMAN STRAIN: It's not theirs. It's not on their property. It's not part of the piece being brought in. It is conservation easement.

MS. GREEN: Yes, it is.

CHAIRMAN STRAIN: The 25-foot natural area is already part of your PUD.

MR. MULHERE: No, no. Excuse me. I got it, thank you. He's talking about this area right here. He wants to know what's being done in there.

MR. YOVANOVICH: No, he doesn't. Bob.

CHAIRMAN STRAIN: Show us specifically -- okay. You're talking about the 25-foot natural area that is supposed to be a conservation area but has not acted like one.

MR. YOVANOVICH: Correct. And what I suggested is if you want us to plant materials in there, we can certainly do that.

CHAIRMAN STRAIN: I mean, I think with the -- if it's -- you've got so much vegetation going from the property line through the 25-foot buffer, through the natural area over to those courts. I'm not sure there's any difference there, but if that's supposed to be a conservation area and it's a conservation easement, I think after this meeting you'll probably get a call from Summer Brown anyway saying, well, why don't you plant this like it's supposed to? So I think that can handle itself.

MR. MULHERE: Okay. So let me -- what -- I thought I was clear about this, but I'll try again. So that's being vacated, so then there won't be any violation when it's vacated.

CHAIRMAN STRAIN: You're vacating the whole thing or just the access across --

MR. MULHERE: We're not vacating the whole thing, but we are vacating that portion. At least that's what Gina just told me.

MR. YOVANOVICH: And that's what I just suggested, Mr. Strain. In lieu of vacating that area, we can leave it in the conservation area and just deal with the crossing of the entrance so it could be replanted. That's what I was suggesting.

CHAIRMAN STRAIN: Mr. Schmitt?

COMMISSIONER SCHMITT: Now, I have a question since we're talking about stipulations, and I

want to make sure -- parking. Does this community allow for golf cart use?

MR. MULHERE: They do.

COMMISSIONER SCHMITT: Within the community? Because it looks like you have some golf cart parking spaces.

MR. MULHERE: Yes.

COMMISSIONER SCHMITT: And then 20 parking spaces.

MR. MULHERE: Yes.

COMMISSIONER SCHMITT: And that has been determined to be the correct amount for these tennis courts?

MR. MULHERE: I think it actually exceeds what the code required by a few spaces.

COMMISSIONER SCHMITT: Well, the stipulation -- who -- is there some kind of security, community security? Because my concern are people parking -- parking along the street and then going into the tennis courts.

MR. MULHERE: There is community security. And I'll tell you, it's a beautiful community, and it seems to me that it can be very easily managed by, you know, a drive through or something like that.

COMMISSIONER SCHMITT: Well, they're not going to have any enforcement power. They can't ticket. But from a standpoint of parking along that street, I think it's -- it would be -- you're going to have a tennis -- there's going to be a situation where folks are up at the clubhouse and then they're going to go down to the tennis court. I don't know what kind of stipulation we can put in from a standpoint there will be no parking on the west side of the street.

MR. MULHERE: Well, I mean, I don't really think there's going to be any parking issue except under a special event circumstance because we exceed the parking requirement, plus we have golf cart parking there and bicycle parking. So I think when that issue's going to arise -- some of the residents already park on the street, so we don't want to --

COMMISSIONER SCHMITT: All right. Well, it's going to be -- I know it will become an issue.

MR. MULHERE: We don't want to -- but I agree, for the special events we have to manage that, and we will.

CHAIRMAN STRAIN: Okay. I hate to belabor a point, but Summer just walked in, and now that she's here, I'd like her to address the 25-foot natural area that's a conservation easement and what can or should have been done with that property or who knows from staff what it's supposed to be.

Thank you, Summer. You deferred nicely to Steve.

COMMISSIONER SCHMITT: We need a purpose for Steve to come this morning anyway.

CHAIRMAN STRAIN: Now we've got to get Matt up here next.

Steve, are you familiar with that area?

MR. LENBERGER: Yes, I am.

COMMISSIONER SCHMITT: Your name, for the record, Steve.

MR. LENBERGER: Stephen Lenberger, Development Review.

It will have to be replanted according to what the agency permits require, very simply, unless they want to vacate that portion. My understanding of what I'm hearing is they're going to vacate some of it but not all of it.

CHAIRMAN STRAIN: Okay. So they -- thank you. And then if they -- if it gets vacated, it just goes to what?

MR. LENBERGER: Well, it will be --

CHAIRMAN STRAIN: Just common area?

MR. LENBERGER: -- some sort of common area, whatever you want to label it as.

CHAIRMAN STRAIN: Okay. You may want to get together with Mr. Huber if you intend to vacate it and see how he would feel about that as -- it's not a matter for this board --

MR. MULHERE: No, I agree.

CHAIRMAN STRAIN: -- as far as the vacations go, but it's just a suggestion to --

MR. MULHERE: What we understood from discussion with Mr. Huber was he'd like it to be retained in the way that it is; that's why we agreed to shift the landscape buffer further in the other direction.

CHAIRMAN STRAIN: Anybody else have anything they want to add?

MS. ASHTON-CICKO: Excuse me, Mr. Chair?

CHAIRMAN STRAIN: Yes.

MS. ASHTON-CICKO: I realize we've closed the public hearing, but this gentleman has asked a couple times if he could speak. He missed the speaking earlier, so I'm just relaying his request.

CHAIRMAN STRAIN: No. We've closed the public hearing, and we're not going to open it up again.

UNIDENTIFIED SPEAKER: It's a safety issue.

CHAIRMAN STRAIN: Sir, I'm sorry. We have a public comments section at the end of this hearing today. You're more than welcome to comment at that time.

UNIDENTIFIED SPEAKER: Thank you.

CHAIRMAN STRAIN: Back to where we are. Do you have anything else you want to add to your time?

MR. MULHERE: No, it's a long list.

CHAIRMAN STRAIN: It is. Anybody on the Planning Commission have anything else?

(No response.)

CHAIRMAN STRAIN: Okay. With that, we will entertain a motion from anybody willing to move forward. Anybody?

COMMISSIONER HOMIAK: I'll make a motion to approve with the stipulations, but no wall.

CHAIRMAN STRAIN: Okay. A motion's made to approve with the stipulations. There are nine of them. I read them all separately, or we talked about them earlier. The last one that was added was that there will be clay courts similar to the hard true type courts will be used. Is that included?

COMMISSIONER HOMIAK: Yes.

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

COMMISSIONER CHRZANOWSKI: I'll second.

CHAIRMAN STRAIN: Motion made and seconded. Discussion?

(No response.)

CHAIRMAN STRAIN: I was the original person who requested information about the neighbors on Colonial Court and Mr. Huber in particular. I also have done enough research to realize that the outcome of the use of this property could have been and most likely would have been worse than a set of tennis courts that are now contemplated and modified to meet some of the compatibility concerns that have been expressed. So for that reason I will be supporting the motion. But it -- had this discussion occurred the first time, I would expect the outcome to be similar to where we are today or close to it.

The information that has been provided plus the added compatibility standards are better than what, in many cases, could have gone on that property if it went through a zoning change under someone else's ownership.

So with that, I'll support the motion as well.

Anybody else?

COMMISSIONER SCHMITT: I have a -- my comment, frankly, has to do with the documentation that was submitted. I believe that there -- it was not forthcoming in explaining the full purpose for why you are proposing a tennis court. I think -- if you want the recreation area, it should have been stated up front. That should have been part of the public record. That should have been part of the record that -- for the permit as well.

I have real problems with that from a standpoint of not laying out the facts to the both -- to the residents, and it seems like there was an argument of which came first, the chicken or the egg here. Which came first, the required parking or the need for an expanded recreational facility.

But with that, I would stress to the Board when this -- or to the staff when this goes to the board that is made clear to the Board of County Commissioners as to the clear purpose of this, that it is not only because we need to expand the parking; it's because we want to build tennis courts, and we want to expand our recreation facility. That should be clear up front, and I don't think it was. When I read -- at least in my reading of the documents. And I'm not going to discuss it, Bob. It's just my feelings.

MR. MULHERE: Okay.

COMMISSIONER SCHMITT: But with that, I concur with Mark. I agree that there could be far more intense use. There's two lots that could easily combined if -- this lot and the one further west.

I would not be happy if I were a resident on that street for the mere fact of purchasing a home and then all of a sudden it becomes a recreation area, but I really can't find a reason to specifically deny the request. So with that, I'll support it.

CHAIRMAN STRAIN: Okay. Hearing no others, all those in favor of the motion to support with the stipulations, signify by saying aye.

COMMISSIONER CHRZANOWSKI: Aye.

CHAIRMAN STRAIN: Aye.

COMMISSIONER HOMIAK: Aye.

COMMISSIONER SCHMITT: Aye.

COMMISSIONER DEARBORN: (No verbal response.)

CHAIRMAN STRAIN: Anybody opposed?

(No response.)

CHAIRMAN STRAIN: Motion carries 5-0.

Thank you-all. This will be moved to the Board of County Commissioners next. I don't know what their schedule will be. Thank you.

And with that, we will take a 10-minute -- well, we'll take a break until 10 after 12. I'd like the Board to work through lunch, is that okay, or do you want to take lunch? We have two cases coming up. I expect they'll be similar -- okay. So we'll work through lunch. We'll break now and we'll come back at 10 after 12.

(A brief recess was had.)

CHAIRMAN STRAIN: Okay, everybody. Let's resume the meeting. Please take your seats.

Joe stepped out for a moment. He'll be right back. In the meantime, we'll go through the reading of the hearing.

***It's Item 9B. It's RZ-PL20160001132. It's for a rezone, actually -- a rezone of a agricultural zoned piece of property for an RSF-1 zoning. It's located on the west side of Morgan Road, approximately 750 feet north of Sabal Palm Road.

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: Okay. We'll get Joe's disclosures when he gets in. Disclosures, starting with Tom.

MR. EASTMAN: None.

CHAIRMAN STRAIN: Stan?

COMMISSIONER CHRZANOWSKI: None.

CHAIRMAN STRAIN: And I had talked to Fred Hood on the phone, and we just talked a few minutes before the meeting started.

Karen?

COMMISSIONER HOMIAK: Nothing.

CHAIRMAN STRAIN: Patrick?

COMMISSIONER DEARBORN: Nothing.

CHAIRMAN STRAIN: Okay.

COMMISSIONER SCHMITT: None.

CHAIRMAN STRAIN: Mr. Schmitt says from out there in space, "none." So welcome back.

With that --

COMMISSIONER SCHMITT: No disclosures, no.

CHAIRMAN STRAIN: Let's move right to Mr. Hood. First of all, I would suggest you can keep this brief. I don't think there's a lot of -- going to be a lot of -- it's a pretty simple application, so it's all yours.

MR. HOOD: All right. Thank you, Mr. Chairman.

Good morning, Frederick Hood with Davidson Engineering, for the record. Davidson Engineering is representing applicant and property owners Nancy and Theodore Naftel for rezone petition.

The rezone that is being considered here today is a request to change from A rural agricultural to RSF-1, residential single-family.

The subject property is approximately 5.75 acres and is located at 275 Morgan Road. Morgan Road is located on the east side of the property, and the property is approximately 750 feet north of Sabal Palm Road.

All of the immediate surrounding properties have been developed with single-family residential and/or agricultural uses, and they all have agricultural zoning.

As previously noted, the purpose of the rezone application is to convert the 5.75-acre parcel from A to RSF-1.

On a personal note, our clients are requesting to change the zoning to provide a home for their son and daughter-in-law who are retiring from the military soon. Their desire was just to originally split the existing parcel in half and build a second home on the resulting parcel, but when they spoke with Collier County staff and Davidson, they realized that with the existing zoning, they wouldn't be able to do that because of minimum lot size requirements in the ag zone.

Through that initial contact, we discussed with the county on what zoning district we should go to. The most similar between the existing ag zoning and what they were intending to do with the property was the RSF-1 district. We also looked at the Estates district as well, but the setback requirements were a little bit more onerous than the A and the RSF-1 district.

The two differences between the A and the RSF-1 were for the minimum building size and for the minimum lot width. So we went with the RSF-1 instead of the E district for that purpose.

As part of the staff report, on Page 5 you will be able to see those differences in the design standards for each zoning designation.

Basically, with the rezone the next application that the Naftels will be presenting to the county will be a final plat application to split the property in half. As part of the staff report, we have also agreed to limiting the lot split in that final plat application to only two lots.

It should be noted that within the area, I did a -- I prepared a map. Quarter mile out from the property you've got approximately 31 existing agricultural lots that are under the five acres. So that just furthers the point that even though we're asking for something that is, you know, not typical for this area, the existing grandfathered-in lots of 31 in nature, we range from -- anywhere from .65 acres, I believe, all the way up to about just under five acres, at like 4.89 or something like that.

The new home that will be being built after we do the final plat application will have to meet the standards of the RSF-1 designation. The existing property that will be left to the north has existing nonconforming buildings on it insofar as they don't meet the setback requirements for either the ag zoning or the resulting RSF-1 zoning.

Those buildings will remain as they are currently. If the Naftels decide to either sell the property or to redevelop the property in the future, they will have to meet the RSF-1 designation design standards.

That is pretty much it.

CHAIRMAN STRAIN: Okay. Any questions of the applicant from Planning Commission?

COMMISSIONER CHRZANOWSKI: Is it too early to move to approve?

CHAIRMAN STRAIN: Yes.

COMMISSIONER CHRZANOWSKI: Okay.

CHAIRMAN STRAIN: I've got to get everything on record. Anybody else?

COMMISSIONER SCHMITT: I'm good.

CHAIRMAN STRAIN: Fred, the staff recommendation's a little different than how you worded it. It says, subject to 5.75-acre -- the subject 5.75-acre property shall be limited to a maximum of two lots. So do you have any objection to that?

MR. HOOD: I don't.

CHAIRMAN STRAIN: Okay. There's a reference under Page 4 of the staff report, school concurrency. The applicant is requesting an exception from school concurrency. The proposed change does not meet the criteria for an exemption. So I'm assuming, from staff's perspective, that's still being processed like any other nonexempt piece of property? Eric? Or whoever wrote that. I assume you since you're still

sitting there.

MR. JOHNSON: Yeah. This is Eric Johnson, principal planner. That was given to me by Amy Lockhart, who works for the school district.

CHAIRMAN STRAIN: Okay. So from Tom Eastman's viewpoint, since he represents the school district, there is no exemption for this. They've still got to meet the school concurrency requirements; is that true?

MR. EASTMAN: Yes, and that would be determined at the time of the SDP.

CHAIRMAN STRAIN: Okay.

COMMISSIONER SCHMITT: Or building permit.

MR. EASTMAN: Or building permit. And there's existing capacity now. That doesn't mean that that will be the case in the future, but we also have oxygen for approval if there is existing capacity in adjacent service areas.

CHAIRMAN STRAIN: Okay. I don't have anything else. Does anybody else?

(No response.)

CHAIRMAN STRAIN: Thank you.

Is there a staff report, Eric?

MR. JOHNSON: Yes, sir. Eric Johnson, Principal Planner, Zoning.

Staff is recommending approval of the request. Just for clarification, Amy Lockhart and I worked on the language together for her portion of the staff report.

It is -- staff is recommending approval subject to the Condition of Approval No. 1: The subject 5.75-acre property shall be limited to a maximum of two lots.

That's all I have.

CHAIRMAN STRAIN: Any questions of staff?

(No response.)

CHAIRMAN STRAIN: Do you have any registered public speakers?

MR. BELLOWS: No speakers.

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

(No response.)

CHAIRMAN STRAIN: Okay. We hear none. There's no need for rebuttal unless you've got something you want to add since you got up, Fred.

MR. HOOD: I certainly do not.

CHAIRMAN STRAIN: Okay. We'll close the public hearing, entertain the motion subject to staff recommendations, assumably.

COMMISSIONER HOMIAK: Motion to approve.

COMMISSIONER DEARBORN: Second.

COMMISSIONER SCHMITT: And second.

CHAIRMAN STRAIN: Seconded by -- we'll let Patrick do one.

COMMISSIONER SCHMITT: Patrick second.

CHAIRMAN STRAIN: Second by Patrick.

Discussion?

(No response.)

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

COMMISSIONER CHRZANOWSKI: Aye.

CHAIRMAN STRAIN: Aye.

COMMISSIONER HOMIAK: Aye.

COMMISSIONER SCHMITT: Aye.

COMMISSIONER DEARBORN: Aye.

CHAIRMAN STRAIN: Anybody opposed?

(No response.)

CHAIRMAN STRAIN: Motion carries 5-0.

Thank you.

MR. HOOD: Thank you-all.

COMMISSIONER SCHMITT: Fred, that was so much easier than the first one we did.

MR. HOOD: I try to make it simple for you.

CHAIRMAN STRAIN: Well, don't get sent back.

COMMISSIONER SCHMITT: By the Board.

CHAIRMAN STRAIN: ***Next item up is 9D. It's PL20160001369. It's an expansion of the Panther Island Mitigation Bank on the north part of Collier County.

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 on the part of the Planning Commission. We'll start with Mr. Eastman.

MR. EASTMAN: None.

CHAIRMAN STRAIN: Stan?

COMMISSIONER CHRZANOWSKI: None.

CHAIRMAN STRAIN: I had a call from Bruce to have a meeting to discuss. I read the application. There was no need to meet to discuss because I didn't see any discussion necessary.

Karen?

COMMISSIONER HOMIAK: Nothing.

CHAIRMAN STRAIN: Joe?

COMMISSIONER SCHMITT: Nothing.

CHAIRMAN STRAIN: Patrick?

COMMISSIONER DEARBORN: Nothing.

CHAIRMAN STRAIN: Okay. Bruce, I would hope that this could be succinct.

MR. ANDERSON: Do you have any questions?

CHAIRMAN STRAIN: Bruce, that's the best thing you could say. Do you have any problems with the recommendations both by staff and by Lee County?

MR. ANDERSON: No, sir. Just one tweaking and one typo in the staff report. Staff report says 350,000 cubic yards. Just to be accurate, our application said 352,360 cubic yards.

CHAIRMAN STRAIN: Why don't we round it up to 355,000, keep numbers even. Does that work for you?

MR. ANDERSON: Sure.

CHAIRMAN STRAIN: Okay.

MR. ANDERSON: By the way, for the record, my name is Bruce Anderson from the Cheffy Passidomo law firm.

The language we want to tweak is Collier County Condition No. 3. And the first sentence would remain as-is, that access to the site is through Lee County. The second sentence would be clarified to read, "There shall be no access to the site through Collier County without prior approval of the Collier County Board of County Commissioners."

And I spoke with Mr. McLean about that, and I don't believe staff has any objection to that.

CHAIRMAN STRAIN: Okay. Any other questions from the Planning Commission?

(No response.)

CHAIRMAN STRAIN: Okay. Staff report?

MR. McLEAN: Matt McLean with Development Review, for the record.

You have the staff report in front of you. The additional two clarifications from Bruce, the 355,000 cubic yards, as well as the additional proposed change to the recommendation on No. 3, we have no issue with that, and we do recommend approval.

Bruce's revised language on that Condition 3, for us, really -- it is really understood that it really doesn't even need to be there. The initial condition just reading "access to the site is through Lee County," it could remain as that, but we have no issue with adding the additional language, which Bruce has proposed.

CHAIRMAN STRAIN: And I would be more comfortable leaving his language in. He has to have purpose, and that will give him purpose for this.

MR. McLEAN: Excellent.

CHAIRMAN STRAIN: Thank you, Matt.

Any request of staff? Any questions of staff?

(No response.)

CHAIRMAN STRAIN: Are there any registered public speakers?

MR. BELLOWS: No speakers.

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

(No response.)

CHAIRMAN STRAIN: Hearing none, then obviously there's no need for rebuttal. We'll close the public hearing and entertain a motion subject to a change to 355,000 cubic yards for the excavation and modifying the second sentence, No. 3, concerning the site access into Collier County.

Is there a motion for approval?

COMMISSIONER SCHMITT: I motion to approve subject to the stipulations as stated.

COMMISSIONER CHRZANOWSKI: Second.

CHAIRMAN STRAIN: Seconded. Those include the staff recommendations?

COMMISSIONER CHRZANOWSKI: Yes.

CHAIRMAN STRAIN: Joe?

COMMISSIONER SCHMITT: Staff recommendations, yes.

CHAIRMAN STRAIN: Okay. And discussion?

(No response.)

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

COMMISSIONER CHRZANOWSKI: Aye.

CHAIRMAN STRAIN: Aye.

COMMISSIONER HOMIAK: Aye.

COMMISSIONER SCHMITT: Aye.

COMMISSIONER DEARBORN: Aye.

CHAIRMAN STRAIN: Anybody opposed?

(No response.)

CHAIRMAN STRAIN: Motion carries 5-0.

I'll tell you what, these last two are a lot better than the first one, guys. Thank you.

MR. ANDERSON: Thank you.

MS. ASHTON-CICKO: Mr. Chair, I do have a housekeeping question before we close.

CHAIRMAN STRAIN: Go ahead.

MS. ASHTON-CICKO: On the Naples Heritage PUD there was discussion on bringing it back for consent, and I just want to make sure that that was the direction of the Board.

CHAIRMAN STRAIN: I know that it was discussed. Staff had said that they basically -- the plan looked -- they didn't have any questions about the plan. Part of the need for consent was to know if staff had any concerns. I didn't -- Eric seemed to think it was fine.

MR. BELLOWS: Yeah. For the record, Ray Bellows. I believe we are find and don't need to come back on the --

CHAIRMAN STRAIN: Yeah. I think that the stipulations were clean enough. I'm comfortable with it. What's the rest of the Board -- and I thank you for pointing that out. I should have got into a further discussion on it.

Does anybody else see a need to have it come back on consent?

COMMISSIONER HOMIAK: No.

COMMISSIONER SCHMITT: No, not to us.

CHAIRMAN STRAIN: Okay. We're good with it. Thank you.

With that, it takes us to new business: There's none listed.

Old business: None listed.

Is there anybody here who would like to have any public comment?

(No response.)

CHAIRMAN STRAIN: With that, is there a motion to adjourn?
COMMISSIONER SCHMITT: Motion to adjourn.
COMMISSIONER CHRZANOWSKI: Second.
COMMISSIONER DEARBORN: I second.
CHAIRMAN STRAIN: Made by Joe. Seconded by Patrick.
All in favor, signify by saying aye.
COMMISSIONER CHRZANOWSKI: Aye.
CHAIRMAN STRAIN: Aye.
COMMISSIONER HOMIAK: Aye.
COMMISSIONER SCHMITT: Aye.
COMMISSIONER DEARBORN: Aye.
CHAIRMAN STRAIN: Anybody opposed?
(No response.)
CHAIRMAN STRAIN: We're out of here. Thank you-all.

There being no further business for the good of the County, the meeting was adjourned by order of the Chair at 12:24 p.m.

COLLIER COUNTY PLANNING COMMISSION



MARK STRAIN, CHAIRMAN

ATTEST
DWIGHT E. BROCK, CLERK

These minutes approved by the Board on 12-15-17, as presented or as corrected _____.

TRANSCRIPT PREPARED ON BEHALF OF
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