

TRANSCRIPT OF THE MEETING OF THE
COLLIER COUNTY PLANNING COMMISSION
Naples, Florida, December 17, 2020

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

Edwin Fryer, Chairman
Karen Homiak, Vice Chair
Karl Fry
Joe Schmitt
Paul Shea
Robert L. Klucik, Jr.
Christopher T. Vernon
Tom Eastman, Collier County School Board Representative

ALSO PRESENT:

Raymond V. Bellows, Zoning Manager
Anita Jenkins, Planning Director
Jeffrey Klatzkow, County Attorney
Heidi Ashton-Cicko, Managing Assistant County Attorney

PROCEEDINGS

CHAIRMAN FRYER: Ladies and gentlemen, good morning, and welcome to the December 17th, 2020, meeting of the Collier County Planning Commission.

Will everyone please rise for the Pledge of Allegiance.

(The Pledge of Allegiance was recited in unison.)

CHAIRMAN FRYER: Will the secretary please call the roll.

COMMISSIONER FRY: Thank you, Mr. Chairman.

Mr. Eastman?

MR. EASTMAN: Here.

COMMISSIONER FRY: Mr. Shea?

COMMISSIONER SHEA: Here.

COMMISSIONER FRY: I'm here.

Chairman Fryer?

CHAIRMAN FRYER: Here.

COMMISSIONER FRY: Vice Chair Homiak?

COMMISSIONER HOMIAK: Here.

COMMISSIONER FRY: Mr. Schmitt?

COMMISSIONER SCHMITT: Here.

COMMISSIONER FRY: Mr. Vernon?

COMMISSIONER VERNON: Here.

COMMISSIONER FRY: Mr. Klucik?

(No response.)

COMMISSIONER FRY: Mr. Chairman, we have a quorum of six.

CHAIRMAN FRYER: Thank you, Mr. Secretary.

COMMISSIONER SCHMITT: Was he going to join us by remote?

CHAIRMAN FRYER: I have not heard, so we'll just -- we'll have to see. But we have a quorum, so we'll continue.

There are addenda to the agenda, as we all know, and my compliments to staff for keeping us on the Planning Commission apprised as soon as you know that there is to be a proposed continuance so that we can be prepared. So thank you, staff, for that. I know Commissioner Schmitt had wanted that, and we all do, really, so --

COMMISSIONER SCHMITT: Thank you.

CHAIRMAN FRYER: -- that's a good thing.

All right. Two continuances. The first is Heritage Bay PUDA. It's PL2020000191. It's proposed to be continued to January 7 of 2021. And the second is the Town of Ave Maria SRAA, which is PL20190002416. That's proposed to be continued to January 21, 2021. Assuming there is -- yes, Commissioner Schmitt.

COMMISSIONER SCHMITT: I heard that the Heritage Bay was continued because their transportation consultant wasn't available for the meeting. But what was the reason -- what happened to Ave Maria? It didn't seem to be that complicated of an issue, and I'm just curious as to what happened. Was it the applicant --

MR. SABO: Good morning. James Sabo, Principal Planner for the county.

The applicant had requested an opportunity to return to the neighborhood, the homeowners association, and have an additional meeting to allow residents' input and ask additional questions about the changes to Ave Maria and their amendment.

COMMISSIONER SCHMITT: Okay.

CHAIRMAN FRYER: Any other questions or comments?

COMMISSIONER SCHMITT: No.

CHAIRMAN FRYER: If not, I would appreciate a motion to --

COMMISSIONER SCHMITT: Thank you. Make a motion to approve the amendment to the agenda as stated.

CHAIRMAN FRYER: Thank you. Is there a second?

COMMISSIONER FRY: Second.

CHAIRMAN FRYER: Any further discussion?

(No response.)

CHAIRMAN FRYER: If not, all those in favor, please say aye.

COMMISSIONER SHEA: Aye.

COMMISSIONER FRY: Aye.

CHAIRMAN FRYER: Aye.

COMMISSIONER VERNON: Aye.

COMMISSIONER HOMIAK: Aye.

COMMISSIONER SCHMITT: Aye.

CHAIRMAN FRYER: Opposed?

(No response.)

CHAIRMAN FRYER: It passes unanimously.

So Heritage Bay will be continued to January 7, Town of Ave Maria to January 21, both of 2021.

Let's see. BCC report, recaps. Mr. Bellows.

Before you start, Mr. Bellows, I skipped an agenda item. We have two sets of minutes for action this morning. Those are our meetings of November 19 and December 3rd, 2020. Are there any corrections, changes, or additions to either of those minutes?

(No response.)

CHAIRMAN FRYER: If not, I'd entertain a motion that they both be approved as submitted.

COMMISSIONER SCHMITT: Motion to approve as submitted.

COMMISSIONER HOMIAK: Second.

CHAIRMAN FRYER: Is there any further discussion?

(No response.)

CHAIRMAN SAUNDERS: If not, all those in favor, please say aye.

COMMISSIONER SHEA: Aye.

COMMISSIONER FRY: Aye.

CHAIRMAN FRYER: Aye.

COMMISSIONER VERNON: Aye.

COMMISSIONER HOMIAK: Aye.

COMMISSIONER SCHMITT: Aye.

CHAIRMAN FRYER: Opposed?

(No response.)

CHAIRMAN FRYER: They are approved unanimously.

Mr. Bellows.

MR. BELLOWS: Good morning. For the record, Ray Bellows.

On December 8th, the Board of County Commissioners heard the PUD for the Naples Senior Center. That was approved during their public hearing by a vote of 4-1 with Commissioner McDaniel dissenting. Be happy to answer questions. Other than that, that's all I have.

CHAIRMAN FRYER: I might also mention that it was discussed and decided at the Board of County Commissioners' meeting that One Naples will be heard on March 1 and potentially on March 2 as well. They talked about a venue for that, anticipating a large number of people, and it was voted that the venue will be right here.

MR. BELLOWS: Yes.

CHAIRMAN FRYER: Anything else? Any other questions or comments?

(No response.)

CHAIRMAN FRYER: Okay. Thank you.

***All right. The first advertised public hearing is the Safety Service Facility, Golden

Gate and DeSoto Boulevard CU. It's PL20190002680. And all those wishing to testify in this matter, please rise to be sworn in by the court reporter.

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

CHAIRMAN FRYER: Ex parte disclosures from the Planning Commission, starting with Mr. Eastman, please.

MR. EASTMAN: None.

CHAIRMAN FRYER: Thank you.

COMMISSIONER SHEA: Staff materials only.

COMMISSIONER FRY: Ditto.

CHAIRMAN FRYER: Staff materials, communications with staff, and a very brief communication this morning with Mr. Arnold.

COMMISSIONER HOMIAK: Nothing from me.

COMMISSIONER SCHMITT: And nothing from me other than staff information.

COMMISSIONER VERNON: And no disclosures.

CHAIRMAN FRYER: Okay. Thank you. Mr. Arnold, please proceed, sir.

MR. ARNOLD: Thank you. For the record, I'm Wayne Arnold with Q. Grady Minor & Associates, certified planner, and I'm here representing Collier County EMS for a new Safety Service Facility that would be a joint facility for fire and EMS.

With me today is Jim Banks, our traffic engineer; Mike Delate from our office, who's a professional engineer; Marco Espinar, the ecologist who's working on this; and I'm not sure if our project manager from the county is here, but Tony Barone is the project manager for Collier County from Facilities Management.

I have a presentation, and I'm having trouble advancing the screen.

MR. BELLOWS: Click the mouse.

MR. ARNOLD: There we go. All right.

So this property is zoned Estates. It's about --

CHAIRMAN FRYER: Excuse me. For some reason I'm not seeing --

COMMISSIONER SHEA: Every other one has got it up here.

CHAIRMAN FRYER: Yeah. On my -- on my county --

(Simultaneous crosstalk.)

CHAIRMAN FRYER: Yeah. Well, I can do that.

COMMISSIONER HOMIAK: Mine's the same.

CHAIRMAN FRYER: Sorry to interrupt.

MR. ARNOLD: No, no problem at all.

CHAIRMAN FRYER: But if we could get those so that those of us up here can see it on our main county computer screen. Sorry. Please continue.

MR. ARNOLD: So the property is about five-and-a-half acres. It's located at the southwest corner of Golden Gate Boulevard and DeSoto, and the property's zoned Estates. It's in a Special Treatment Area because of the wellfield zones out there. That doesn't prohibit the MS station or the septic tank that will be necessary to service the facility.

The subject property is heavily wooded. It's -- a lot of exotics on it. It also has some native vegetation that we'll be retaining as part of our project.

The conceptual site plan that we've come up with that's part of this conditional use identifies, really, a rectangular building. The county has not designed this facility yet, so the envelope that we've shown is probably larger than the actual building that will be placed there but, nonetheless, we have access on DeSoto and Golden Gate. We've wrapped the preserve on our western boundary to act as an additional buffer to the resident that is located to the west. We've moved the building as close to DeSoto as we can to keep it farther away from that resident, and we've placed some parking, and then, obviously, there will be bay doors that are accessible from both front and rear of that building.

We show a water management area and preserve to the south. And there's going to be

future right-of-way needs there, so we've reflected that future. It won't be a take from the county itself, but there will be additional right-of-way utilized for improvements at DeSoto and Golden Gate.

This is an aerial photo that shows you the overlay and how we're retaining some of the native vegetation that we can use as our buffer to the west.

(Commissioner Klucik entered the boardroom.)

MR. ARNOLD: We held our neighborhood information meeting, and we had a few participants, and I would say all were supportive.

I think that this is going to be a needed facility to make sure the level of service remains adequate for this part of Golden Gate Estates and Eastern Collier County. So this will come online sometime late in 2021, is the anticipated date to bring this on board. And, again, as I mentioned, it's a shared facility with the Sheriff and EMS. And while it's not a sheriff's substation, the Sheriff's Office would likely utilize this to do paperwork, et cetera, so they would have some office space in this part of Collier County.

This is a copy from the 2019 AUIR that indicates this is one of the facilities that's necessary to maintain the LOS. I thought I'd put this in just so you understand it is a necessary improvement.

One of the conditions that you have in there -- we talked about this at the meeting that -- examples of what it would look like, more of a residential scale building. These are some examples of stations that are -- one is Hacienda Lakes. The other two are located -- one at Logan was one of the last ones that I personally worked on, and you can see the scale of those.

And the county's probably moving towards something more like Hacienda, they've told us, but they have yet to hire an architect to design the actual building.

So with that, I'll conclude my presentation. I think there were letters of support from the Golden Gate Estates Civic Association and, as I said, I don't believe we had any detractors in attendance at our neighborhood meeting, and I'm not aware of any negative comments from the public.

CHAIRMAN FRYER: Thank you. No one has signaled at this point.

COMMISSIONER FRY: Oh, I did. I signaled.

CHAIRMAN FRYER: Commissioner Fry.

COMMISSIONER FRY: Good morning, Wayne.

MR. ARNOLD: Good morning.

COMMISSIONER FRY: Really just two questions. So would the layout, if it did model the Hacienda Lakes version of the EMS fire station, would it have a similar layout as that in terms of the bay doors being at the south end of the building?

MR. ARNOLD: I don't even know that. Mike Delate, do you know the answer to that? I don't think we know yet, Mr. Fry.

COMMISSIONER FRY: Okay. But some version of that layout where it might be reversed, but --

MR. ARNOLD: It could be reversed. I think from a transportation standpoint, getting the access a little farther away from the intersection for those service doors is helpful for the overall traffic flow for that intersection.

COMMISSIONER FRY: Was that decision made because the Hacienda Lakes station is more residential looking than the others?

MR. ARNOLD: I think it just reflects one of their newer prototypes. The metal roof, less maintenance, things like that.

COMMISSIONER FRY: Okay. One last question. In the NIM, there was a question about buffering and noise abatement from the neighbor to the west. Just give us an update on that, and has that been -- has that concern been addressed and, if so, how?

MR. ARNOLD: The comment was made not by the neighbor itself but a resident of Golden Gate just asking what we were doing. It requires a Type B buffer, which would be either

an opaque hedge or a wall, and I don't think the county has made the determination if a wall will be placed there or not, unless -- Mike Delate, do you have an update on that?

(No response.)

COMMISSIONER FRY: So that was a conceptual concern, not an actual concern expressed by the neighbor?

MR. ARNOLD: That is correct.

COMMISSIONER FRY: Okay. Thank you.

CHAIRMAN FRYER: I have a question also. And in the interest of the fullest disclosure, I should say that I have been involved in this previously in my role as chairman of the County Emergency Medical Authority and have been thoroughly supportive of it for several years, continue to be very, very supportive of it. It's quite necessary. It's going to enhance the service delivery capability of the county. So all are to be commended on this.

I have a couple of questions. I think I know the answer, but just to make a record. First of all, it's my understanding that the county would take title to the ground and the improvements and that it would be leased to Greater Naples; is that correct?

MR. ARNOLD: That I don't know. The county does own the property today, and it's anticipated that they will construct the facility. The facility's management department will oversee that. I don't know about the leaseback arrangement with EMS or not, Mr. Fryer.

CHAIRMAN FRYER: Okay. For everyone else's benefit, it's typical for county EMS to engage in shared facilities agreements with North Collier and Greater Naples and the City of Naples as well, and also the City of Marco for that matter, where one party owns the property and the other party leases it, and sometimes the owner is the fire district, sometimes it's the county, and then the other party becomes the lessee. But it's always worked very, very well. I was just wondering which case this would be.

MR. ARNOLD: Well, in this particular case, the fire district actually owns property farther north on DeSoto, and they've made the decision to collocate here just for economies of scale, so...

CHAIRMAN FRYER: Okay, thank you. And the other question I have, and I believe I know the answer, but for the record, the Fire Station 76 is depicted as a close example of what this would probably look like. And it's my understanding that the new station would also have two bays only; one for EMS and one for fire suppression. It -- my question is, is there room to put a third bay on there at some future time if necessary?

MR. ARNOLD: We don't know whether or not they're going to have two. I think in talking to Chief Butcher previously, I think the answer was there could be two to four depending on whether or not they would put a brush vehicle out here with the fire district, et cetera. So I don't think that decision's been made, but there's adequate room here to put, I think, up to four bays and handle that quite easily.

CHAIRMAN FRYER: Good. That's what I wanted to know. Thank you very much. Any other questions or comments from the Planning Commission?

COMMISSIONER KLUCIK: Mr. Chairman, I just want to put on the record that I arrived around 9:05?

CHAIRMAN FRYER: Thank you. The record will so show.

COMMISSIONER KLUCIK: And I have no disclosures for this. No communication other than with staff.

CHAIRMAN FRYER: Thank you, Commissioner Klucik. Commissioner Schmitt?

COMMISSIONER SCHMITT: Yeah. My only comment -- I'm trying to get to the screen, sorry, where we had a recommendation and you cite the EMS station that will be used, that it be attached as part of the ordinance -- to the ordinance. And I was going to bring that up with staff as well that your -- that it is a matter of record so that it's referred to during the review process.

MR. ARNOLD: That's correct, yeah, and we're in agreement with that condition.

COMMISSIONER SCHMITT: Okay.

CHAIRMAN FRYER: Commissioner Fry.

COMMISSIONER FRY: Slight clarification, Wayne. Whether there are two, three, or four bays, we can understand that will all fit on the conceptual footprint as shown in the conceptual site plan, correct?

MR. ARNOLD: That is correct.

COMMISSIONER FRY: Thank you.

CHAIRMAN FRYER: Any other questions, comments?

COMMISSIONER KLUCIK: Just to get to the -- I guess the basis -- the basic nature of the question, you can build it, and then the idea that you can expand it, is that your -- the nature of your question, that you could put -- build it with two bays, and your question is could you expand it, or can you decide, hey, we need to have four bays and then build it that way?

COMMISSIONER FRY: Are you addressing that to me, Robb?

COMMISSIONER KLUCIK: Yes. The two of you have mentioned the bays, the number of bays. What is it that you're really getting at? Because to me the answer could be, oh, yeah, we can do as many bays as we need to, but then once you build it, you kind of build it in a way that you really couldn't do more bays. And I just am trying to figure out --

COMMISSIONER FRY: My -- I assumed that Ned's question went to if there was space on the site to have more than two bays if needed, and my question was, if more than two bays were needed, is it still within the footprint shown on the conceptual site plan? And I understand --

COMMISSIONER KLUCIK: In five years you mean add one?

COMMISSIONER FRY: Add one, but it's still within that footprint. So they're not expanding into the preserve or the open space in any way. They're still staying within that footprint. That's what I was clarifying.

COMMISSIONER KLUCIK: And I guess that's what I want to know is, was the answer -- was the answer to which question? Is it that you can expand even if you build it with fewer bays without having to go back, you know, and have a new footprint and analysis?

MR. ARNOLD: For the record, this is Wayne Arnold. I think the EMS and fire have not made a decision yet whether it's going to be two bays or four bays, but as they go through the design, they will design it to accommodate what they think their near-term needs are.

COMMISSIONER FRY: To Robb's question, though, if you build it with two and then you needed to add a third and a fourth, would you have to come back before us to do that?

MR. ARNOLD: I think as long as we're generally within the footprint shown on the plan, we're fine.

COMMISSIONER FRY: Thank you.

CHAIRMAN FRYER: Typically, these bays are deep enough or can be made to be deep enough to house two apparatus, one behind the other, one in front of the other, so that you could have four -- potentially four apparatuses, particularly if you had a back bay door as well as a front bay door. So there are ways of configuring this where you could get two apparatuses in -- rather, four and just have it appear from the outside as two.

COMMISSIONER FRY: By "apparatus," you mean vehicles?

CHAIRMAN FRYER: Well, fire suppression apparatus.

COMMISSIONER FRY: Is that like a fire truck?

CHAIRMAN FRYER: No. A fire truck is a hook and ladder, a fire pumper, and together they would be called apparatuses. But thank you for asking.

COMMISSIONER VERNON: Karl, I think you brought a knife to a gun fight just then.

COMMISSIONER FRY: Or less.

CHAIRMAN FRYER: Mr. Arnold?

MR. ARNOLD: Nothing further from me.

CHAIRMAN FRYER: Anything further from the Planning Commission? If not, there

are no members of the public, I was informed by Mr. Frantz, who want to speak on this, and so without objection, we will close the public comment portion of this hearing and turn to our responsibility of deliberation and vote.

Would anyone like to have a word about this?

COMMISSIONER HOMIAK: Make a motion to approve.

CHAIRMAN FRYER: It's been moved to approve. Is there --

COMMISSIONER SCHMITT: Second.

CHAIRMAN FRYER: Second. Moved and seconded. Any further discussion?

(No response.)

CHAIRMAN FRYER: If not, all those in favor, please say aye.

COMMISSIONER SHEA: Aye.

COMMISSIONER FRY: Aye.

CHAIRMAN FRYER: Aye.

COMMISSIONER VERNON: Aye.

COMMISSIONER HOMIAK: Aye.

COMMISSIONER SCHMITT: Aye.

COMMISSIONER KLUCIK: Aye.

CHAIRMAN FRYER: Those opposed?

(No response.)

CHAIRMAN FRYER: It passes unanimously.

MR. ARNOLD: Thank you.

CHAIRMAN FRYER: Thank you, Mr. Arnold.

MR. ARNOLD: Thank you.

COMMISSIONER FIALA: I would like to request a special meeting to discuss the term "apparatus" in the future.

CHAIRMAN FRYER: That will be denied.

COMMISSIONER HOMIAK: I can't make it.

COMMISSIONER VERNON: Still wielding that knife, aren't you?

CHAIRMAN FRYER: ***Okay. Amazingly, we now turn to our last agenda item, which is under new business. It is the comprehensive administrative code amendments. And bear with me one second while I get what I need up in front of me on this.

COMMISSIONER FRY: Before we begin, Mr. Chairman, may I ask just a guidance question?

CHAIRMAN FRYER: Will it be a serious one, sir?

COMMISSIONER FRY: It will, indeed.

CHAIRMAN FRYER: Thank you. Proceed.

COMMISSIONER FRY: In the overview it mentioned that this type of administrative amendment does not need to come before the Planning Commission. So my question is, in the past, to what level of detail do we generally -- if they don't come before us, do we generally vet these types of things and, I guess, what is expected today?

CHAIRMAN FRYER: That's exactly a question that I was going to ask and a suggestion I was going to make. And just to address that, if I may, and then turn it over to Mr. Frantz. The way this came to us this time is not a result of any express language in any legislative document, ordinance, or otherwise. It was remanded to us by the Board of County Commissioners for our input, which I think was a very good thing.

And I don't believe that sending it to us was intended to be a one-off. I don't think there's anything particularly unique about this that would trigger a Planning Commission review where the next one might not. So I'm going to suggest at the appropriate time that we add language in here calling for a layer of review on a regular basis of the Planning Commission.

Mr. Frantz?

MR. FRANTZ: Good morning. Jeremy Frantz, for the record.

I've got a really short presentation, and you've already covered some parts of that, and then we can get to any questions that you have.

So just for everyone's awareness, the administrative code as it's currently written was only established in 2013, although that date is looking a lot further away than it used to. And this is the first time that we've really done a comprehensive update like this. You-all have seen administrative code amendments in the past when they are associated with specific LDC amendments. We usually try and take new processes or changed processes, work them all the way through at that time, and bring everything forward at once.

But as you mentioned, given that there's no requirement for an admin code change that's not, you know, associated with a specific LDC amendment to come to you-all, we went straight to the Board. They asked us to come back here to you-all.

What we're doing with this update is really just trying to bring that 2013 version of the admin code up to date. So we're adding a lot of -- or, rather, we're updating a lot of references, titles, citations. We're correcting processes that have changed over time, bringing the admin code up to speed with how we currently process these applications.

There are some things that we've added or changed into the code -- in the admin code that won't look like just little corrections; however, those are changes that are intended to reflect our current process. An example would be the changes to the sign -- the sign templates. Sorry, I lost the word there for a second. We have implemented that. If you are driving around to some of these locations, you'll see that current template being used, but that had not been updated in the admin code yet. So we're doing those kinds of things with this change as well.

As we talked about the Board -- we originally took this to the Board back in April due to COVID and trying to get a lot of our private petitions through the process, we've kind of held off on bringing this back to you until now.

We do have just a couple of minor changes that we caught after sending it to you-all. In -- I've left off the number there -- J, the primary permits section, there's a number of references to Florida Statutes 250.13. That was a typo. It should have been 205. We'll correct that going forward.

And in Chapter 2A, the Comprehensive Plan Amendment section, in, again, a couple of references to Florida Statutes that were incorrect in the application contents, modifying the reference from 163.3163 to 163.3177. And in the criteria section, a reference from 163.3164 to 163.3194. Just correcting those references.

Heidi just pointed out to me there's actually a chapter missing in relation to one of our previous LDC amendments. That would have been -- or, sorry, yeah. LDC and admin code amendments that you would have seen in the past. And so that's something that we'll add back in and make sure we've got all the existing -- existing sections somehow. That one dropped off.

That's all I have for you. I can take any questions that you have. If you want to walk through the document, we also did provide that memo that kind of explained the changes throughout each chapter so that we can maybe kind of walk through that a little bit faster if you'd like.

CHAIRMAN FRYER: Thank you.

Commissioner Schmitt.

COMMISSIONER SCHMITT: Yeah, one question. Of course, I'm very familiar with all of these procedures. This is an evolution of the departments versus divisions. At one time the subordinate elements were called departments. The -- it was back in my day. It was Community Development Environmental Services Division and then the Building Department, Zoning Department. That has since reversed now, and it's Growth Management Department and divisions. Well, you can argue what is the hierarchy for organizational titles. I only bring that up because you do cite specifically and list the various divisions.

I would recommend maybe making that more generic because -- because over time, because of changes in personnel or changes in mission requirements, that you maybe create some

more generic language so you won't have to come in and amend it if somebody says, I want to change these sections or teams or some other type of language, because it's very specific. These are -- these are -- you list all of them: The operations -- Regulatory Management Division, Development Review Division, Building Division, Zoning Division, and Code Enforcement. And you cite division rather than just a generic organizational title.

I guess Heidi's going to comment.

MS. ASHTON-CICKO: Yeah. As you discuss this item, I just want you to know --

CHAIRMAN FRYER: Identify yourself, please, ma'am.

MS. ASHTON-CICKO: Heidi Ashton Cicko, Managing Assistant County Attorney.

The enacting ordinance does delegate to staff the authority to make the change -- certain changes, and one of them is the changes to the appropriate division or department and so forth. So just -- I wanted you to know that as part of your consideration and direction today.

COMMISSIONER SCHMITT: Yeah. So that if, in the future, I don't know, somebody decides to combine Zoning and Code Enforcement, whatever reason, that it would be done -- they wouldn't have to come back and amend this entire code just because you did some reorganizing.

MS. ASHTON-CICKO: Staff has delegated the authority to make changes to the code without coming back as to the divisions and departments.

COMMISSIONER SCHMITT: Okay.

CHAIRMAN FRYER: Thank you.

Any other questions or comments? Okay.

COMMISSIONER VERNON: Yes.

CHAIRMAN FRYER: I have a few.

Oh, I'm sorry. Commissioner.

COMMISSIONER VERNON: Yeah. I don't think I have a button, right?

CHAIRMAN FRYER: You don't. Sorry, Commissioner Vernon.

COMMISSIONER VERNON: After a year? What do I got to do to get a button here?

CHAIRMAN FRYER: Cure COVID, sir.

COMMISSIONER SCHMITT: Cure COVID, and you can sit right here.

COMMISSIONER VERNON: Cure COVID. It's on its way. I've got two companies working on it right now.

CHAIRMAN FRYER: Thank you.

COMMISSIONER VERNON: I guess my question is a very general question, and maybe my fellow commissioners can help answer. I always think about, well, what am I missing here? This seems pretty perfunctory. So why did the Board of County Commissioners delegate it to us to sort of analyze this? What -- what should I be concerned about? You know, if it's just typos -- I know there's more to it, but what is the biggest issue they really wanted us to look at from your understanding, Jeremy, or if you guys want to comment on it?

COMMISSIONER KLUCIK: The Board was just being prudent. The Board has a lot of respect for the Planning Commission, and they prefer when staff brings things through the Planning Commission to get filtered here and then go to them rather than the staff going directly to the Board of County Commissioners. It's not just this item. It's everything.

COMMISSIONER VERNON: Perfect. Thank you.

CHAIRMAN FRYER: It's similar to the AUIR, I think, in that respect. And it's good that the AUIR comes to us every year, but it doesn't -- it doesn't, I don't think, impose a burden upon us to take it to the level of granular detail that, perhaps, the Planning Commission did some years ago. So I think it's a good thing that it comes to us.

COMMISSIONER VERNON: You're not seeing anything?

CHAIRMAN FRYER: Well, I've got some -- yeah, I have a few comments. I do.

COMMISSIONER VERNON: Okay.

CHAIRMAN FRYER: Commissioner Fry.

COMMISSIONER FRY: I just wanted to ask -- and I think because it was remanded to us

by the BCC, that implies they would like us to look at it at some level of detail, and I share the -- I guess the question expressed by Commissioner Vernon, not really knowing what to focus on. You provided a memo. Would it make sense on something like this to have Jeremy at least highlight the sections that are most in need of review and confirmation, I guess, the more complex, less perfunctory parts of it?

So I'm just throwing that out as a question for how we proceed. I know you have questions, but should we do a little bit more structured review on this one end in the future, is my question.

CHAIRMAN FRYER: Thank you.

COMMISSIONER KLUCIK: Mr. Chairman.

CHAIRMAN FRYER: Yes, Commissioner Klucik.

COMMISSIONER KLUCIK: I mean, we have the chart that has the blue headers. You know, I mean, so that kind of tells us, you know, the precise location and a pretty -- you know, I mean, I don't know. I had the same question, and, you know, and then kind of talking through it with staff, they -- you know, they referenced this, and then it seemed like it was pretty clear to me what the issues are.

Is that -- you know, are your questions -- you know, can you point right to here to this chart and then, you can -- that helped you get to where we could ask the specific questions. I appreciated the level of work that you did, and I think we do have a good basis to do our job, which is to review it.

CHAIRMAN FRYER: I think, frankly, it might have been a little easier for someone with legal training, document training, to know what to look for and aided by the redlining, which in most cases was helpful, although a couple of cases I'm going to raise.

But that's -- I mean, nonetheless, that's a good point, and it certainly -- in the future, if staff identifies something that may rise to a higher level of importance in staff's judgment that you want the Planning Commission to focus its more careful attention to, I think what Commissioner Fry is saying, just flag that for us. That probably would do that.

Commissioner Schmitt.

COMMISSIONER SCHMITT: Yeah. I, again, commend the Board. I want to follow up, basically, on your statement, because every one of these procedures are the underpinnings of what we do in our review process. And I think -- I think for that reason, probably, is why the Board said let's have the Planning Commission look at it, because every one of these are elements that we deal with, at least provide the understanding how applications are processed through and end up coming to us for review.

So anyways -- but I don't have any specific comments. I thought everything in here was pretty clear and straightforward but, again, I'm very familiar with the process, so I'll turn it to you-all if you have any questions.

CHAIRMAN FRYER: Thank you. I have maybe half a dozen or so, and I'll go through them, but other Planning Commissioners, if I come to a subject that you want to be heard on, please feel free to interrupt me.

My first concern arises in -- well, I just have to -- I'll give you the agenda packet page. It's 1538 of 1755. This has to do with insubstantial PUDs.

COMMISSIONER KLUCIK: Could you give the reference again.

CHAIRMAN FRYER: Page 1538. And I'll state my question while people are looking for this, and it has to do with the relationship or the scope of jurisdiction of the Planning Commission versus the Hearing Examiner, the HEX. And if you look at 10.02.13.E of the Land Development Code, which is not up for amendment right now, it currently assigns to the Planning Commission, exclusively, oversight for insubstantial PUDAs.

Now, what we're introducing in the administrative procedures here is that the Hearing Examiner or Planning Commissioner -- Planning Commission, rather, will have jurisdiction based upon something. Now, I'm all for that. I'm not trying to hog jurisdiction and, for something that

is truly insubstantial, it really should be heard by the Hearing Examiner rather than be coming to us.

My question, first of all, the conflict that exists with 10.02.13.E -- and, Mr. Frantz, when I met with staff on Tuesday, I raised this to give you a forewarning so that you could take a look at that.

So this will create a conflict between an existing Land Development Code provision and a brand-new junior document if we approve this and the Board of County Commissioners does. So it seems to me that should be addressed.

But the other question is, going back to the way Mark Strain handled this, as I recall he was conservative and would err on the side of sending something to the Planning Commission if it seemed to him to be controversial or something where a more full and formal hearing should be held by a greater number of recommenders or decision makers, and that seemed to work pretty well.

But I don't know that there are really sufficient specific criteria for the Hearing Examiner or staff or us to decide whether an insubstantial PUDA should come to us in the first instance or go to the Hearing Examiner and then directly to the BCC. Do you have an observation on that, Mr. Frantz?

MR. FRANTZ: Yeah, sorry. I just wanted to pull up the discussion that's here in the admin code. So I'll try and talk through a couple of those.

CHAIRMAN FRYER: Please.

MR. FRANTZ: 10.02.13, as you mentioned, doesn't identify the Hearing Examiner there for the PUD insubstantial changes. In the public notice and hearing requirements sections in 10.03.06, it does identify the potentiality for a Hearing Examiner or Planning Commission, so there is some inconsistency in the LDC right now.

And up on the screen now you can see that's really the only language we have for when the Hearing Examiner identifies whether they want to, you know, hear -- actually, am I looking in the right place?

CHAIRMAN FRYER: The "great concern" language, right, great public interest or concern?

MR. FRANTZ: I think that that is -- yeah, I was in the right place. It really only identifies that if the Hearing Examiner recuses or disqualifies themselves or for some other reason doesn't hear a particular case, that it would come to the Planning Commission. So it's really up to the Hearing Examiner to make that call still, although we've had a transition to a new hearing examiner.

I don't want to speak for the current Hearing Examiner, although he has, on occasion, shared his perspective that unless -- I'm putting words in his mouth now, so take that for what it is. But my understanding is that unless he -- something is abundantly clear that it shouldn't be heard by him or that he hears something from a particular commissioner, the commissioner of that district say, then he's inclined to just hear all items that come to him.

CHAIRMAN FRYER: Okay.

COMMISSIONER KLUCIK: Mr. Chairman, when you have --

CHAIRMAN FRYER: Yes. Go ahead, Commissioner Klucik.

COMMISSIONER KLUCIK: Okay. So what I read in that -- and, you know, I guess I'm looking to see if that -- if it's an accurate reading -- that middle paragraph, a minor conditional use is, it seems to me that that states that if I just -- you know, if I caught wind of something and I bring it to the Hearing Examiner's attention that I find it controversial and that it should come before us as the Planning Commission, then that would be required, then, at that point because it's just one Planning Commissioner can make that call.

CHAIRMAN FRYER: I think one County Commissioner.

COMMISSIONER KLUCIK: Oh, it's County Commissioner.

COMMISSIONER VERNON: Yeah, I don't think it says that.

COMMISSIONER KLUCIK: Okay. Well, that's good. I did misunderstand that, so that's great.

CHAIRMAN FRYER: And that's in the case of insubstantial, because when you get to the level that's called minor, that becomes a staff decision.

COMMISSIONER VERNON: But I think Mr. Klucik kind of highlighted what I was picking up on, and that is the Planning Commission doesn't seem to have any influence on it. It seems to be the County Commissioners or the Hearing Examiner. So the question to me, the bottom line is, who needs to make this call? If it's a close call or controversial call as to who should hear it, should we give that power -- and we may not have the power to change this, but should the power reside in the Board of County Commissioners, the Hearing Examiner, the staff, which I think should be considered as an option, or with us?

CHAIRMAN FRYER: And I agree with that, and that's the main reason why I wanted to raise this. I'm not looking for more work because, believe me, I think we all agree we've got plenty, but -- and I don't mind the Hearing Examiner making the call. But based upon Mr. Frantz's reporting, it sounds like the new Hearing Examiner is looking for a conflict of interest perhaps or something that is so obviously of much greater magnitude than the things he ordinarily hears. And that may be the right standard, but what I want to point out is that that's not the standard that Mark Strain used. Mark erred on the side of caution, I believe.

And the County Attorney can correct me if I'm wrong, but it was my sense if Mark felt that a matter was controversial, he would -- he would send it over to the Planning Commission, and I think it worked pretty well.

MR. KLATZKOW: This issue does fall under your powers because, at the end of the day, it derives from the LDC, all right. If you want to relook at the issue as to what a hearing examiner does and what you do, that's your prerogative. That's part of the LDC. That's what you do. And you can direct staff on this issue to come back, and then you can have a full discussion on it.

The purpose of the administrative code, really, is so that if I'm an applicant, rather than calling up staff and saying, how many copies of this application do I need, what's -- what sign -- what size the sign has to be, it's all there. The administrative code is for stuff that -- I'm not going to say it doesn't really matter, but it's just the nuts and bolts of the operation, not the real legislation. So that this might be worthy just of a separate looking at by the Planning Commission. What do you guys want to look at? What do you think the Hearing Examiner should be doing?

COMMISSIONER KLUCIK: Mr. Chairman?

COMMISSIONER VERNON: If I could jump in.

CHAIRMAN FRYER: Commissioner Shea.

COMMISSIONER SHEA: Yeah. I was just trying to, I guess, take that a little further and understand who does -- the Hearing Examiner -- we don't know what the Hearing Examiner is looking at, so how would we ever know whether we think we should be looking at it, is part of my point. It seems like an awful lot of power to put into one individual's hands.

COMMISSIONER VERNON: Yeah. Can I comment on that?

CHAIRMAN FRYER: Yes, please, Commissioner Vernon.

COMMISSIONER VERNON: Just sort of my gut instinct is just that we should -- if it's a discretionary issue, it almost, in my mind, should be staff, with the power of the Planning Commission, to override that decision. That's just -- because I've got four parties who can make the decision: Board of County Commissioners, hearing officer, this group, or staff. I almost feel like the first blush of it, the staff's probably going to have a better sense than anybody of whether it's going to be controversial, because they're getting the phone calls, et cetera, et cetera. They should probably make that first call.

And there should be baseline, like hearing officer hears these, and we hear these. That should exist. But in the middle ground -- in the middle ground, it seems like the staff should give its thought if maybe we should be hearing this or not, and then we have the final decision.

MR. KLATZKOW: If you want, staff can simply, before bringing a matter to the Hearing Examiner, just say, okay, these are the matters that we tend to bring to the Hearing Examiner; you could review them. If you want to hear any of them, you can pull it from the Hearing Examiner; hear it yourself. And those -- stuff that you don't want to hear, because they're minor, would just move on to the Hearing Examiner.

I mean, I can give you the history of the Hearing Examiner if you want but, you know, it was never meant to supplant the Planning Commission. It was really meant to make things easier for applicants to get through the growth management process.

COMMISSIONER VERNON: Yeah. And I'm with the Chairman; I'm not looking for more work. I just want to make sure that we're not putting it, to Paul's point, all -- you know, a little bit concern, all that decision making is in the one hearing examiner.

CHAIRMAN FRYER: Thank you. Commissioner Klucik and then Commissioner Schmitt.

COMMISSIONER KLUCIK: Okay. Then -- so to go, you know, directly to the page that you referenced, 1538, help me understand. I think the amendment that you're proposing here for this particular page isn't really -- we got into the weeds on something that's sort of related, but this amendment is just making it accurate, because right now -- it either goes before the Hearing Examiner or the Planning Commission, and right now this is inaccurate because it just mentions the Hearing Examiner?

CHAIRMAN FRYER: It's a little more nuance than that, I think, Commissioner. 10.02.13.E sends these insubstantial PUDAs directly to us exclusively. And so as it was previously worded where it was going only to the Hearing Examiner, it was a clear conflict. Now it's just an ambiguity, and probably the way of -- I think we all agree, we're not looking for necessarily --

COMMISSIONER KLUCIK: Well, it was almost -- Mr. Chairman, are you saying it was almost -- it's inaccurate as it is now because, actually, it should say Planning Commission, and the Hearing Examiner is kind of something that we have to maybe think through better.

CHAIRMAN FRYER: And it may be even more complicated than that because --

COMMISSIONER KLUCIK: Okay.

CHAIRMAN FRYER: -- as Mr. Frantz pointed out, there's another provision in the LDC that does reference the Hearing Examiner. So I think what's needed here -- and I'm going to ask Mr. Frantz a question. Is there any reason why this is a matter of immediacy, or could we -- could we send this back to staff with a recommendation to clean this up and clean the LDC language up in a way that makes sense, or would that result in an unnecessary delay of this getting to the BCC?

MR. FRANTZ: I'd suggest maybe asking us to move this forward without this particular change and to bring that back later as a separate item.

CHAIRMAN FRYER: Okay. But without the change it's even worse because it's even more in conflict.

MR. FRANTZ: Understanding that we'd be coming back to you with a change to rectify that problem.

CHAIRMAN FRYER: Okay. Commissioner Schmitt.

COMMISSIONER SCHMITT: Yeah. Just to clarify for my fellow colleagues. The Hearing Examiner was really created for items that were pretty much noncontroversial, you know, kind of binary. It's a yes or no. This panel used to be bogged down significantly with boat dock extensions and other type of items that opened the issue to a lot of subjectivity rather than just following the criteria in the code. And as I said, it was a binary decision. Either you get it or you don't. That was the attempt of the Hearing Examiner to take those items that were very simple. An insubstantial change for -- on a Site Development Plan, I guess, or --

MR. EASTMAN: Like a parking lot.

COMMISSIONER SCHMITT: Yeah, a park -- those type of issues that were pretty simple. They needed to be publicly advertised, they needed to be public noticed, but they were not

items of concern that would be significant to bring in a public meeting like this. It was more for the Hearing Examiner to deal with. That was the idea of the Hearing Examiner, especially to take some of these items from the Board, because those kind of issues would come to us, and the next thing you know, they would springboard right into the Board of County Commissioners when, in fact, there was an attempt to try and take some of those items and just remove them from the Board's agenda that were pretty simple in nature. I guess that's the best way to explain it.

CHAIRMAN FRYER: And further to your point, which is well taken, if a matter is heard by the Hearing Examiner, it doesn't automatically go to the Board. The applicant has a right of appeal.

COMMISSIONER SCHMITT: Right.

CHAIRMAN FRYER: But if something's heard by us, it does automatically go to the Board. On consent, perhaps, but it does not only -- it does not only add to our agenda and time but also adds to the Board's if it comes to us.

And I think we all agree that none of us is looking for more work. But if I hear the sense of the Planning Commission, Mr. Frantz, I think -- I think we would like staff to come back with a recommendation perhaps with more specific criteria when something goes to the Hearing Examiner and when something comes to the Planning Commission for us to at least look at and also a proposed amendment to 10.02.13.E which right now directly conflicts with the other section of the LDC you mentioned and the administrative procedures that I'm talking about.

MR. KLATZKOW: And keep in mind, I wanted a fail-safe built into the LDC, because there may come a point in time when the Board of County Commissioners decides it no longer wants your Hearing Examiner. And so a lot of this stuff you'll see it's either you or the Hearing Examiner. It's not because it's supposed to go to you but, in case we don't have a hearing examiner, we have somebody to hear it.

CHAIRMAN FRYER: As we saw recently. Good point.

Commissioner Fry.

COMMISSIONER FRY: Am I correct that Mark Strain was the first hearing examiner?

MR. KLATZKOW: The hearing examiner was specifically drafted with Mark Strain in mind.

COMMISSIONER FRY: So hearing that, we have a pretty substantial change, which I think you've picked up on, which was that we had the same person in the role as hearing examiner and chairman of the Planning Commission. So he would very naturally be a natural fit to make the decision which things were escalated to the Hearing Examiner, but now that's no longer the case.

CHAIRMAN FRYER: No longer permitted either.

COMMISSIONER FRY: No longer permitted. I mean, I just think that bears more evidence that we really need more of an objective rather than subjective method for deciding what issues come to us versus the Hearing Examiner.

CHAIRMAN FRYER: Commissioner Shea and then Mr. Eastman.

COMMISSIONER SHEA: So how many cases does the Hearing Examiner actually hear?

MR. FRANTZ: I don't have that number off the top of my head, but I could bring that back when we --

COMMISSIONER SHEA: The only reason I say that, I don't see why we can't approve the agenda. In other words, if there's an agenda go to the Hearing Examiner of items, why can't we see it and say we agree or don't agree so at least we have notice and we can look. Because right now we're operating in the dark. We don't know what the Hearing Examiner's doing, and that scares me.

MR. FRANTZ: Well, I think that when we come back, as you all -- it sounds like you are on the same page about we could show you what all the different criteria are, all the items that the Hearing Examiner currently hears, and we can talk through those specific items that there's currently flexibility on, and we could get into that in more detail, and we could give you some

recommendations as well.

CHAIRMAN FRYER: Is that -- yes, Vice Chair.

COMMISSIONER HOMIAK: I sometimes look at what goes to the Hearing Examiner, and I have seen a few times where there's things that we have heard not that long ago in a PUD, and they're going there for a change, and sometimes it's something that we specifically put into that PUD as a stipulation.

CHAIRMAN FRYER: That's interesting.

COMMISSIONER HOMIAK: Square footage of a unit.

MR. EASTMAN: Mr. Chair?

CHAIRMAN FRYER: Yes, sir, Mr. Eastman.

MR. EASTMAN: Just adding to Commissioner Schmitt's points. I agree with everything he said. And my sense was that Mr. Strain was trying to reduce the amount of work that this body had to do and that some of these things that the Hearing Examiner would hear were ministerial, binary, noncontroversial, and that when Mr. Strain found something where even one member of the public raised an objection and he knew that there was some type of controversy, he would bring it to this board. He would transfer it to this board, and that was kind of his level of scrutiny or a filter that he used in determining whether he would hear it at the Hearing Examiner level or elevate it to this board's and everyone's input and analysis.

CHAIRMAN FRYER: That's my recollection as well, and I think he had a very good intuition about that and was able to flag things that should be heard by us. The vast majority of things that the Hearing Examiner hears really are noncontroversial and don't need our attention. But I think it sounds to me like the new Hearing Examiner, perhaps, has a different view of the role that may not be 100 percent in sync with how we see our responsibilities.

So I believe, once again, it's the consensus of the Planning Commission, Mr. Frantz, that, you know, whether you take forward the rest of the administrative procedures to the BCC now or wait until we've passed on everything -- because I do have some other questions about this. It's entirely staff's -- within staff's purview.

My question, though, is, is this a matter of urgency or immediacy, or can it slip for two weeks?

MR. FRANTZ: It can slip.

CHAIRMAN FRYER: Okay. That's kind of what I thought.

All right. Let me -- let me then continue, and, again, invite Planning Commissioners who want to weigh in on anything I raise to feel free to do so.

On Page 1538, interestingly, there's a reference to the requirement of a NIM, and in this new language, the Hearing Examiner in his or her discretion would determine whether there's a requirement of the NIM, and the way it's written, that would also, perhaps, be the case if the matter were coming to us, but the Hearing Examiner would be the only person who would be authorized to say we don't need a NIM. I just think that, when you relook at this language, you should relook at that provision as well so that it squares with whatever we ultimately decide we want to do with this.

All right. Then I go to Page 1558, which has what almost looks like a definition of comparable-use determination. And I believe such a definition is sorely needed, and I believe that the one under L, where it says "applicability" on that page, is an excellent definition because, as I've said numerous times up here, the fact that two things are comparable, any two things in the universe can be compared to one another no matter how dissimilar they are. So when you say something is comparable, what you really mean, I think, has to do with similarity, compatibility, consistency. And this definition that appears on 1558, comparable-use determination, is -- I believe, hits it right on the bull's eye.

Now, on Tuesday we discussed whether this definition should be made wide ranging in the administrative procedures, and staff, I think, very appropriately advised that it should be in the LDC. What I'm saying is that it needs, I think, to be somewhere, because I don't think we're going

to -- the phrase "comparable" is so boilerplate in the staff's materials that, without a definition of that word that pins it down more, we run into difficulty that could be taken advantage of by an opportunistic lawyer.

And so that's my suggestion that -- that this definition that you've offered under "applicability" on this page is an excellent one, and I believe it should be in the Land Development Code at the appropriate time.

All right. Then -- all right. Then I go to 1589, and this is just a request for how you proceed with us with respect to redlining in the future. Beginning on 1589, we go multiple pages where everything is redlined out. Then that's followed by multiple pages where everything's in blue, has been inserted. Now, a spot check told me that not every single word that was redlined out is really out; it's been repeated. And so it's hard for someone doing what we want to do, which is to see how things have changed specifically, to give us five or six pages of everything redlined out and then five or six pages of stuff inserted in blue.

So, for future, I'd appreciate it -- and I certainly would stand corrected by members of the Planning Commission, but I think it would make our job a little bit better if you could be more granular in your redlining somehow.

MR. FRANTZ: Sure. And I apologize for the confusion that that might have caused. I think that formatting got a little confusing as well when we were doing that. And so we did try and capture the actual changes in that memo, but --

CHAIRMAN FRYER: I saw it, and that got me over the hump for this one, but it just took a little more time. Thank you.

Okay. Now I go to really, I think, the second of two rather significant issues that I want to raise.

COMMISSIONER KLUCIK: Mr. Chairman?

CHAIRMAN FRYER: Go ahead.

COMMISSIONER KLUCIK: Just I think it would be fitting at some point -- I don't know if this is a good time, but you're covering a lot. So so far you've raised three items.

CHAIRMAN FRYER: I believe -- yes.

COMMISSIONER KLUCIK: And I would just say that I think those are all great things that you brought up, and I generally agree, you know, with you on all three of those, and I think it would be good, you know, to maybe -- maybe I'm wrong, but, like, to hear the consensus on at least those three things before we move to the next.

CHAIRMAN FRYER: Thank you.

COMMISSIONER VERNON: I concur.

COMMISSIONER SHEA: I concur.

CHAIRMAN FRYER: Okay. Thank you.

All right. Well, we're developing a consensus, Mr. Frantz, that we'll probably want to send this whole thing back rather than bifurcate it, and perhaps put it on our agenda two weeks from now if there's room, and we'll make every effort to close our role in this.

Okay. The next thing I have has to do with NIMs themselves. And I would invite everyone's attention to Page 1729 of the agenda packet. And there is -- on that page and the following page, the applicant -- with respect to a transcript of the NIM, the applicant is instructed to provide an audio or video transcript to the staff, and then staff, at our request, has consistently provided that to the Planning Commission because I believe most of us feel that having the exact transcription of the NIM is very, very important in our work. So thanks to staff for forwarding that to us when it comes to you. I don't think anything further needs to be done on that part of it.

However, here's what I think needs to be added. I've always interpreted an audio or video transcript to be incomplete unless the speaker is identified in that transcript. So that's why I have consistently, for four years now or over four years, been critical of applicants when they don't require every speaker -- I'm most interested in the applicant's representatives, but Mr. Strain, my predecessor, was also interested in hearing the identities of the members of the public.

But we were at a point at the Planning Commission that we wanted to have an identity, or each person who speaks, before they do so, to identify themselves.

And I would ask, respectfully, that staff add that provision in here in the appropriate places so that there's really no question about it; that it's very clearly required that the applicant, as part of their obligation to deliver us a true and complete transcript in some form or other, audio or video, will require people to identify themselves. And I'd ask at this point for the views of the other members of the Planning Commission on that.

COMMISSIONER VERNON: The only comment I have is I'm not sure in this day and age whether we even need the word "audio" in there. It seems like video is so easy to do. It's more reliable. If they forget to say their name -- I think it's a great idea if they're required to say their name, but people may forget -- you can see who it is speaking.

I used to work -- do a lot of work in a forum where they had the old cassette tapes -- show how old I am -- and it was horrible, for the reasons you stated as well as others. So in 2020, maybe, do we really need to even have the word "audio" in there? It should be a video with sound.

CHAIRMAN FRYER: Thoughts of -- Commissioner Schmitt.

COMMISSIONER SCHMITT: Yeah, the -- I'll go back to the origin of the NIM. The NIM was created back in the time of Collier County, the perception that the developers were getting away with everything and the public wasn't informed. But understand that the NIM is the applicant's responsibility. It's the applicant's meeting. Staff is in no way, shape, or form supposed to be carrying the water for the applicant. It's not -- they're not even -- they're there only to answer questions and to guide. It's not -- it's not a staff-run operation. It's the applicant and the applicant's responsibility alone, because they are informing the public, and it's to prevent any perception by the public that the staff is a proponent of the proposal.

So in that regard, that's how that thing evolved. It was nothing more than an information meeting for the applicant to advise the public of what's going on.

I have no argument. In today's day and age, a video is certainly -- you can record it digitally at very little expense. Twenty years ago when we started this -- I think it was probably almost 20-, 18, 19 years ago -- it probably would have been a significantly different expense, so -- but that's -- that was the purpose of the NIM.

CHAIRMAN FRYER: Exactly. And to that point, I noticed that staff is proposing to remove the reference to the planner who attends as moderator, and I'm okay with that. I pointed out four years ago to Mike Bosi that it said -- he wasn't aware that the staff planner under the old language was to be the moderator. Well, for the reasons that Commissioner Schmitt mentioned, I think it's good that that concept is going to come out.

COMMISSIONER SCHMITT: Yeah. The only reason, on the sign, the staff was identified was so that the public would have a point of contact.

CHAIRMAN FRYER: Exactly.

COMMISSIONER SCHMITT: To send any comments or objections. But they were not meant to be -- that's a good point. They were not meant to be the moderator. They were only meant to -- well, I guess what other word you could use -- but there just to make sure it was conducted in accordance with the procedures as outlined in either -- back then the LDC, Land Development Code.

CHAIRMAN FRYER: And that may be the language we would like in there to replace the moderator language, that they're there -- the way you said it, Commissioner.

COMMISSIONER SCHMITT: Just to make sure that they're in compliance with the code.

CHAIRMAN FRYER: Yes, yes. I think --

MR. KLATZKOW: A facilitator? Facilitator?

CHAIRMAN FRYER: That might be a better word, yeah.

COMMISSIONER SCHMITT: That's basically -- they were not --

MR. FRANTZ: That is the language that we're striking.

COMMISSIONER SCHMITT: They were not supposed to be -- in any way, shape, or form appear to be supporting a proponent. Just nothing more than to identify, hey, I'm the staff person. You got a complaint, you send the complaint to me so I can make sure that it's distributed properly to the Planning Commissioners or to the County Commissioners.

COMMISSIONER KLUCIK: Well, I almost -- you know, since we're reviewing this, I think people don't understand who's there and why, and I think maybe we could even direct the staff to make sure that they announce, you know, this is me. I'm here. This is -- you know, I work for the county. I am not here -- I'm neutral. I'm just here so that I can clarify things, you know, and -- you know, whatever, so that the people that are at the meeting understand that that person is nobody's ally. That person is, you know, theoretically an objective ally of the truth, you know, to just kind of make sure that no one gets misled or they can clarify things, you know, on the fly, and that's really it. So that way -- when you're there and you're a citizen and you don't really understand it and it's new to you, it's confusing and it's intimidating.

CHAIRMAN FRYER: Very good point, and I agree completely with it and also the way Commissioner Schmitt expressed it. And so, Mr. Frantz, you're getting all this? Perfect.

Commissioner Fry.

COMMISSIONER FRY: Personal preference, I really like the written verbatim transcript, because it allows me to reference page numbers and actual comments verbatim in the written record while asking questions. So we've talked about video and audio. I personally don't listen to the audio. I look at the written transcript and the summary, because I can refer to them. So I would just like to be sure that there is a written transcript. I wholeheartedly agree with the assertion that every speaker should be identified by name, and that should be a written requirement in this document.

COMMISSIONER KLUCIK: Mr. Chairman?

CHAIRMAN FRYER: Yes, sir.

COMMISSIONER KLUCIK: I would, you know, say, just as an example, okay, so the SRA item that was, you know, on the agenda for today for Ave Maria, the developer did a good job. They had a -- you know, a really nice, thorough transcript of the NIM. I was at the NIM. I was not on the Planning Commission at the time. But some of the residents noted, you know, in social media conversations about the upcoming hearing that a representation had been made by the applicant or the petitioner, and, you know, having, you know, looked at that more closely, I contacted the applicant, or the petitioner, and reminded them of that, and they, withdrew, you know, temporarily. You know, they chose to ask for a continuance so that they could go ahead and honor the commitment they had made. And it's a perfect example of what the NIM does, you know, for the process. It really is helpful.

And, you know, to the petitioner's credit, they didn't even hesitate. As soon as I, you know, brought it to his attention, you know, he was like, yes, we want to -- we want to go ahead and honor what he said, you know. And I think that this is a perfect example of this particular element is so important, and it helps people feel comfortable or more confident that the process is fair and that they have a chance to have meaningful -- a meaningful chance to get information about what's coming before them so that they can decide how they're going to react and participate.

MR. FRANTZ: If I could, I'd kind of like to maybe think through some of the implementation of what format we might actually use, whether that's video, audio, or a transcript.

CHAIRMAN FRYER: Yes.

MR. FRANTZ: So maybe that's something we could come back to you with a little more detail on what we think might work best.

CHAIRMAN FRYER: Yeah. I'm going to weigh in support of Commissioner Fry. I'm willing to listen to audios, and I do it all the time when there's not a written transcript, but my preference is for a written one. And, obviously, video is even better, because you can really get a sense of what's going on at the meeting.

So staff's going to re-think this and come back to us with a recommendation. I think that's very good.

COMMISSIONER VERNON: And if I could ask a question. Who pays for the transcript?

CHAIRMAN FRYER: The applicant.

COMMISSIONER VERNON: Okay. Then in that case, I totally agree. I was just trying to keep costs down. But I think a written transcript -- I agree with both of you, a written transcript, and if we want to make it perfect, it's a written transcript plus a video and skip the audio, and then you get both.

CHAIRMAN FRYER: Okay. Does anyone disagree with Commissioner Vernon's statement?

COMMISSIONER HOMIAK: I prefer written anyways.

COMMISSIONER KLUCIK: What if you have an opportunistic lawyer who gives you the video but there's no sound? No, I'm just kidding.

CHAIRMAN FRYER: We've seen weirder things.

COMMISSIONER HOMIAK: It's a requirement.

CHAIRMAN FRYER: Commissioner Klucik, we've seen weirder things come in these days.

COMMISSIONER KLUCIK: There's opportunistic lawyers around? Come on. I'm afraid there aren't.

COMMISSIONER SHEA: Are there any others?

CHAIRMAN FRYER: I tried to think of a reasonably respectful word. That's as close as I could come.

COMMISSIONER KLUCIK: Well, I always say 99 percent of the lawyers make the rest of us look bad.

CHAIRMAN FRYER: Us. Am I included?

MR. EASTMAN: The point is well taken, though. I mean, if you have a transcript and a video, the video could have no audio. I mean, with --

COMMISSIONER KLUCIK: Yeah. Clear audio is kind of a -- we shouldn't have to say it, but maybe we should say it, because, you know, that's what we're looking for.

COMMISSIONER VERNON: My point is the written transcript -- as long as the applicant and not the government or the staff's paying for it, the written transcript, I completely agree with Commissioner Fry, is the best. A video is a nice supplement, because sometimes things go on that do not appear in a transcript.

MR. EASTMAN: Agreed. And you can get the flavor of it more than just from the written word, just like an email.

One question I have is, in the transcript you're supposed to identify who the speaker is, that actual person. Whose responsibility is that? Someone just gets up in the middle of the NIM and they start talking, they don't identify themselves. Is that on the applicant, or is that on the county facilitator? Because that should probably be spelled out.

CHAIRMAN FRYER: We're in the process of possibly changing that. Right now in the first instance, it's the responsibility of the applicant, but we've got that word "moderator" in there, which confuses it somewhat. And if we do add a concept that the facilitator, if that's what we call the staff person, is partly responsible for assuring that the applicant requires speakers to identify themselves. That, I think, would be appropriate.

COMMISSIONER FRY: In my experience the facilitator is the moderator. In my experience as a consultant, when you facilitate a meeting, you are the moderator. So I prefer to think of staff as a supporting resource, you know, presented as a neutral supporting resource rather than a facilitator or a moderator, but --

MR. FRANTZ: I'd like to come back with some suggested language. Whether it's facilitator or we spell out what the rules are, I think we can make it clearer.

CHAIRMAN FRYER: Perfect.

MR. EASTMAN: Or they could just be referred to as the county's representative at the meeting.

CHAIRMAN FRYER: Yes. Or just county planner. I mean, there are lots of options. But I think the best way, rather than us try to craft this, is to send it back to staff and then ask you to bring it forward. You've -- I think for the most part we're pretty unanimous up here in the things that we would like to see in a redraft of this.

And I do not have any further points to raise. Does any other Planning Commissioner wish to make a comment on this draft before we take action?

(No response.)

CHAIRMAN FRYER: Hearing none, Mr. Frantz, did you have anything further you wanted to say, sir?

MR. FRANTZ: I don't think I do.

CHAIRMAN FRYER: Okay. So I believe we've -- I'm going to try to tick these off and be sure that we're all on the same page.

But that with respect to future amendments to the administrative procedures, that the CCPC be built in as a layer of review before it goes to the BCC.

Number two, two points with the HEX: First of all, somehow correct the inconsistency or ambiguity between the LDC and the administrative procedures as to who has what role.

And the third point also having to do with the HEX is how do we decide which matters would come to us and which would go to the HEX? It worked better, frankly -- in my opinion, there was not need for specific language on this because I think Mark just had good intuition. He knew when to kick something over to us. Now, of course, the Hearing Examiner is not allowed to sit on the Planning Commission, so there's more distance between us and him. So those first three points.

Then the third point dealing with speaker identification -- the fourth point, rather. And then the fifth point, what we call the staff person, facilitator, emphasizes neutrality, planner, and to enforce the Land Development Code or see to it that the administrative procedures and LDC are being followed by the applicant, I think, is the concept.

And then, finally, a strong preference for a written concept -- transcript, rather, and -- as between an audio and a video, a preference for video.

Did I cover -- did I leave anything out?

(No response.)

CHAIRMAN FRYER: Then I'd entertain a motion that we ask staff to address those points and come back at the next meeting, if possible, with a revised proposal.

MR. FRANTZ: And this one doesn't require any advertising, so if, you know, we move it around, maybe not next meeting, or wherever it fits, that's fine with us.

CHAIRMAN FRYER: Okay. The Chair recognizes Ms. Jenkins.

MS. JENKINS: Ms. Jenkins, for the record, Division Director.

I would caution two weeks to bringing this back. We're going into the holidays, and Jeremy has some time off, so I'd prefer not to put it on the record that we'll bring it back in two weeks.

CHAIRMAN FRYER: Do we want to do a date certain at all, or just when you're ready?

MS. JENKINS: When we're ready.

CHAIRMAN FRYER: That's fine; fine with the Planning Commission?

COMMISSIONER SCHMITT: Oh, I think Jamie ought to be working Christmas Eve and --

CHAIRMAN FRYER: Okay.

COMMISSIONER SCHMITT: -- right through New Year's.

CHAIRMAN FRYER: As soon as reasonably practical, can we say that?

All right. Any further discussion on that?

(No response.)

CHAIRMAN FRYER: If not, all those in favor, please say aye.

COMMISSIONER SHEA: Aye.

COMMISSIONER FRY: Aye.

CHAIRMAN FRYER: Aye.

COMMISSIONER VERNON: Aye.

COMMISSIONER HOMIAK: Aye.

COMMISSIONER SCHMITT: Aye.

COMMISSIONER KLUCIK: Aye.

CHAIRMAN FRYER: Opposed?

(No response.)

CHAIRMAN FRYER: It passes unanimously.

Mr. Frantz, thank you very much, sir.

MR. FRANTZ: Thank you.

CHAIRMAN FRYER: And I've got a couple more things here.

COMMISSIONER KLUCIK: I had a couple items I just wanted to mention.

CHAIRMAN FRYER: The Vice Chair is saying that there wasn't a motion, and that's entirely possible, and the court reporter agrees.

So I'd entertain a motion to that effect, please.

COMMISSIONER HOMIAK: The motion is to -- whatever you just said.

CHAIRMAN FRYER: Yeah. Well, I'll state it. The motion is for staff to return as soon as reasonably practicable --

COMMISSIONER HOMIAK: Oh, okay.

CHAIRMAN FRYER: -- to address the six points and offer solutions to these six points that have been raised by the Planning Commission.

COMMISSIONER HOMIAK: Okay. That's my motion.

COMMISSIONER SCHMITT: Second.

CHAIRMAN FRYER: Is there any further discussion?

(No response.)

CHAIRMAN FRYER: If not, all those in favor, please say aye.

COMMISSIONER SHEA: Aye.

COMMISSIONER FRY: Aye.

CHAIRMAN FRYER: Aye.

COMMISSIONER VERNON: Aye.

COMMISSIONER HOMIAK: Aye.

COMMISSIONER SCHMITT: Aye.

COMMISSIONER KLUCIK: Aye.

CHAIRMAN FRYER: Opposed?

(No response.)

CHAIRMAN FRYER: Motion carries unanimously. Thank you, sir.

Now, one more thing under new business, if I may, and this has to do with our hoped-for workshop. And I think with the new membership on the Commission and also just a refresher for all concerned, it would be very useful to have a workshop, and I would like to shoot for sometime in the first two months of 2021, and I'd like to ask Ms. Jenkins to weigh in on that, please.

MS. JENKINS: Mr. Chair, Ms. Jenkins, for the record. I heard the Planning Commission at the last meeting have several topics, one to understand legislative, quasi-judicial, and the criteria that you look at to review items. As you can see on the schedule, we have one item continued to January 7th. And so if the County Attorney is able to go through those items on January 7th with you, then we could do that, and we could schedule those items for that time rather than waiting till February. You have a very busy February schedule.

CHAIRMAN FRYER: I see. So now the one item we have is potentially controversial,

though, correct? It's Heritage Bay.

MS. JENKINS: Yes.

CHAIRMAN FRYER: Yeah. So that could take some time. And I like your suggestion; I just want to be sure that it's understood we may not be able to deal with a full plate of workshop items after we deal with Heritage Bay. But it's certainly worth starting the workshop and maybe, if we can't get it finished, we can decide what to do when we see that's the case.

MS. JENKINS: And maybe we could ask the County Attorney how long it would take to go through those items.

MR. KLATZKOW: It depends on the questions.

CHAIRMAN FRYER: Yeah.

MR. KLATZKOW: I mean --

COMMISSIONER KLUCIK: Remember, I'm going to be there.

MR. KLATZKOW: Hours and hours and hours. Look --

COMMISSIONER SCHMITT: Wait a minute. Four attorneys now.

COMMISSIONER HOMIAK: One hour each.

CHAIRMAN FRYER: Let's think of the court reporter now.

MR. KLATZKOW: I believe in brevity. I mean, I think the human attention span is only so long. But I will be handing out materials prior to it and then briefly covering them.

CHAIRMAN FRYER: Okay. Would it be appropriate to ask the members of the Planning Commission to send, I don't know, either Ms. Jenkins or the County Attorney specific issues that they would like addressed so that we're sure that we don't omit anything? So far all we've got is legislative versus quasi-judicial, I think. And I know I've got two or three that I'd like to --

MS. JENKINS: Also, the criteria to review your petitions was asked by Commissioner Vernon.

CHAIRMAN FRYER: Yes, yes.

MR. KLATZKOW: Well, that's quasi-judicial. By all means, just -- if you can send me a one-way communication as to what you'd want to hear, we'll put something together for you. If you want to do it January 7th, that's plenty of time.

CHAIRMAN FRYER: Perfect, thank you. We'll certainly start it, then, on January 7. Maybe complete it.

All right. Is there any new business -- any other new business?

Ms. Jenkins, is that all you had, or you had more?

MS. JENKINS: That's all.

COMMISSIONER KLUCIK: I just have my items, but I don't know what they fall under.

CHAIRMAN FRYER: Oh, let's do it now, Commissioner Klucik. Thank you.

COMMISSIONER KLUCIK: Ms. Jenkins, if you could come up. I just wanted to go ahead and congratulate Anita Jenkins on her promotion. And I also wanted to explain that and thank you and thank Ray Bellows and all of your staff for helping me feel more comfortable with, you know, your processes, your staff, how we operate, to become more knowledgeable, you know, for this. But I definitely wanted to congratulate you on your promotion, and I really have appreciated working with you.

(Applause.)

CHAIRMAN FRYER: I echo that. Thank you.

Thank you. Anything else under --

COMMISSIONER KLUCIK: Yes, yes.

CHAIRMAN FRYER: Commissioner Klucik.

COMMISSIONER KLUCIK: I also wanted to go ahead and -- Attorney Klatzkow, you have always answered my calls promptly and been very good in helping me -- you know, when I have questions, helping me resolve those and giving me information that I need, and I appreciate that very much, and I just wanted to go ahead and thank you for that out loud.

COMMISSIONER FRY: Robb, is Mr. Klatzkow one of the 1 percent or the 99 percent?

COMMISSIONER KLUCIK: Yeah. It's always -- you know, it's always a mystery. There's so many attorneys that we can all like to think that we're in the 1 percent.

COMMISSIONER FRY: He's definitely in the 1 percent, I will say.

COMMISSIONER KLUCIK: And then I wanted to go ahead and -- you know, I celebrate Christmas and, of course, I celebrate New Years, but I know people celebrate all, you know, various holidays around town. I want to wish everybody a Merry Christmas and a Happy New Year, and I'm sure, you know, everyone has those warm sentiments this time of year, and I just wanted to express those out loud.

CHAIRMAN FRYER: Thank you, Commissioner.

Anything else?

(No response.)

CHAIRMAN FRYER: Okay. Anything from anyone else at this point?

(No response.)

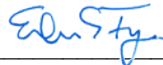
CHAIRMAN FRYER: All right. I would like to add an expression of Happy Holidays and Blessed Seasons Greetings to all, whatever your religion may be, if any; that you will use the time to contemplate and be spiritual, if that's appropriate, and hope you have a wonderful holiday season.

Thank you for everything you've done for us in 2020. It's been very greatly appreciated. We're well staffed, we are well served by an excellent group of people, and I just want to say that to everyone.

And, without objection, we're adjourned.

There being no further business for the good of the County, the meeting was adjourned by order of the Chair at 10:18 a.m.

COLLIER COUNTY PLANNING COMMISSION



EDWIN FRYER, CHAIRMAN

These minutes approved by the Board on _____, as presented _____ or as corrected _____.

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