

TRANSCRIPT OF THE MEETING OF THE
COLLIER COUNTY PLANNING COMMISSION
Naples, Florida,
January 21, 2021

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. (appeared remotely)
Christopher T. Vernon

ABSENT:
Tom Eastman, Collier County School Board Representative

ALSO PRESENT:
Raymond V. Bellows, Zoning Manager
Jeffrey Klatzkow, County Attorney
Heidi Ashton-Cicko, Managing Assistant County Attorney

PROCEEDINGS

CHAIRMAN FRYER: Good morning and welcome to the January 21, 2021, 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: Before I ask the secretary to call the roll, we need to take action on a preliminary matter. Commissioner Klucik has requested leave to participate remotely in this meeting. He's having some automobile difficulty. And his request, of course, requires the physical presence of a quorum, which we have, based upon my preliminary observation, and our favorable action upon that request. So at this point I'd entertain either discussion or --

COMMISSIONER HOMIAK: I'll make a motion that Mr. Klucik --

COMMISSIONER FRY: Second.

CHAIRMAN FRYER: It's been moved and seconded. Sorry, I'm interrupting.

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.

Good morning, Commissioner Klucik.

(No response.)

MR. SUMMERS: He's not on right now. He hasn't joined.

CHAIRMAN FRYER: All right. Well, we'll continue here anyway.

COMMISSIONER FRY: Would you like me to call --

CHAIRMAN FRYER: Yes, please, call the roll, Secretary. Thank you.

COMMISSIONER FRY: Thank you, Mr. Chairman.

Good morning, everyone.

Mr. Eastman?

(No response.)

COMMISSIONER FRY: Mr. Eastman?

(No response.)

CHAIRMAN FRYER: 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: Commissioner Schmitt?

COMMISSIONER SCHMITT: Here.

COMMISSIONER FRY: Commissioner Vernon?

COMMISSIONER VERNON: Here.

COMMISSIONER FRY: Commissioner Klucik?

(No response.)

COMMISSIONER FRY: Mr. Chairman, we have a quorum of six present and one soon to be joining us remote.

CHAIRMAN FRYER: Thank you, Mr. Secretary.

First, on our addendum to the agenda, let me indicate that we have a request before us for another continuance of what is listed on today's agenda as 9A1. This is PL20190002416. It's the Town of Ave Maria SRA amendments. The correct -- the request is to continue to a date certain, namely our February 4, 2021, meeting.

Is there any discussion, or may I have a motion to continue?

COMMISSIONER FRY: So moved.

CHAIRMAN FRYER: Is there a second?

COMMISSIONER HOMIAK: Second.

CHAIRMAN FRYER: Any further discussion?

(No response.)

CHAIRMAN FRYER: If not, all those in favor of the continuance, 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.

Welcome, Commissioner Klucik.

COMMISSIONER KLUCIK: Thank you.

CHAIRMAN FRYER: Mr. Bellows, any late-breaking changes to the remaining agenda?

MR. BELLOWS: No other changes.

CHAIRMAN FRYER: Thank you.

Planning Commission absences. Our next meeting is on February 4 of 2021. Does anyone know if he or she won't be able to attend that meeting?

(No response.)

CHAIRMAN FRYER: Looks like we'll have a quorum then. Good.

How about -- same question for our meeting of February 18th.

(No response.)

CHAIRMAN TAYLOR: Looks like we're going to have a quorum, we hope, at both meetings.

Approval of the minutes. We have only one set of minutes before us for action, and those are the minutes of the December 17, 2020, meeting. Any corrections, changes, or additions on those minutes?

COMMISSIONER HOMIAK: Yes.

CHAIRMAN FRYER: Vice Chair.

COMMISSIONER HOMIAK: On Page 3, like, in the middle of the page, it says Chairman Saunders. It should be Chairman Fryer; and on Page 8, Commissioner Fiala should be Commissioner Fry.

CHAIRMAN FRYER: Thank you. Any further proposed changes?

(No response.)

CHAIRMAN FRYER: If not, is there a motion to approve?

COMMISSIONER HOMIAK: Motion to approve with those changes.

CHAIRMAN FRYER: Thank you. Is there a second?

COMMISSIONER SCHMITT: I 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.

COMMISSIONER KLUCIK: Aye.

CHAIRMAN FRYER: Those opposed?

(No response.)

CHAIRMAN FRYER: It passes unanimously. Thank you.

BCC report and recaps, Mr. Bellows.

MR. BELLOWES: Yes. On the January 12th meeting, the Board approved the Bembridge PUD amendment.

CHAIRMAN FRYER: Thank you very much. All right.

Chairman's report. I do have one this morning. In keeping with our expressed interest in playing a greater role in the oversight of which matters go to the Hearing Examiner and which come to us, I had asked staff to circulate to the Planning Commission a link to the HEX meeting agenda for the previous hearing, I believe the one on January 14.

Yesterday, at my request, Mr. Bellows also circulated to all of us the complete February look-ahead, this document right here, which shows not only our upcoming agenda for the month of February but also the Hearing Examiner's.

I always asked for these, and I just assumed that other members of the Planning Commission would like to have them as well. I find them very informative. If you want to get ahead of the agenda, you can always go to CityView and at least see what the state of affairs is with respect to the documents that have been filed so far, which I almost always do. So thank you, Mr. Bellows and staff, for doing that.

What I was looking for was not critical words or suggestions from Planning Commissioners with respect to items that are already booked for the -- for the Hearing Examiner, but I want to have all of us, including myself, be in a position of understanding fully the kinds of matters that the Hearing Examiner routinely hears. So that's kind of where we are and why I'm sending you that, or it's being sent to you by staff.

Generally speaking, for those of you who may not already know, the HEX hears matters which I think it's fair to characterize are of less consequence than matters we do, and his decisions are not automatically reviewed by the BCC. They're typically such things as reducing setbacks on individual residential properties, approval of boat dock extensions over the maximum length of 20 feet, granting of residential variances, allowing residential pool decks to extend seaward of the coastal construction setback line, et cetera.

In my view, the vast majority of these kinds of matters should, indeed, be heard by the HEX and not by us, but sometimes such applications are contested. Sometimes there is a special public interest that has been expressed in a particular matter, and sometimes there's an extraordinary amount of money that is at issue. And in some of those rare cases, I believe that it's more appropriate that they be heard by the Planning Commission.

Of course, if we do opt to take up a matter, then it must then go on to the BCC for final action, and so we don't want to defeat the purpose of the HEX ordinance except for what I would call significant, very consequential, or contested matters.

Now, one approach that I've been thinking about is for us to establish what I will call more clear criteria for staff to apply to determine whether a matter should come to us or go to the HEX. Mark Strain was intuitively aware and sensitive to things that should come to the Planning Commission, and he would, not infrequently, defer matters or send them over to us. And we have a new Hearing Examiner, and I'm not sure that he has yet developed the sensitivity that someone with Mark's level of experience has had. So I believe it is useful for us to take a look at this question.

And I also presume that if we decide somehow to at least propose changes to the structure of how matters are decided, whether they go to the HEX or to us, that really we should be making -- and I guess I'm looking at the County Attorney for this. We should be looking for a

recommendation from us to the BCC as opposed to some kind of final action on our part.

Would that be correct, Mr. Klatzkow?

MR. KLATZKOW: I think the better way to deal with this would be to have staff review the issues and for staff to make a recommendation one way or the other, not this board.

CHAIRMAN FRYER: Okay. Perfect. Thank you.

And when we come to new matters after we have the scheduled workshop items, I'm going to invite all of you who wish to comment or make suggestions to staff so that they can consider them when they take the matter to the Board of County Commissioners. We should have some time this afternoon for that. So let's defer further action on that for later during the new business.

Okay. Consent agenda, there is none.

***Advertised, we have two companion matters and that's it. The Meridian Landing small-scale GMPA and the Camden Landing RPUD amendment. They are PUD -- or, excuse me, PL20190001387 and PL20190001364, respectively. Without objection, as usual, we will hear and discuss both matters together but vote on them separately.

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: Thank you.

Ex parte communications from the Planning Commission starting with Commissioner Shea, please.

COMMISSIONER SHEA: Staff materials only.

COMMISSIONER FRY: Staff materials; public record.

CHAIRMAN FRYER: Staff materials and materials also from the applicant and discussions with staff.

COMMISSIONER HOMIAK: I spoke to Mr. Arnold.

COMMISSIONER SCHMITT: I spoke with Mr. Arnold and also had a conversation with staff regarding the history of the Serus Point project which was the predecessor and the name that was given to this project prior to its current name, whatever it's called now. I can't -- but I'll enlighten more on that when we have the discussion because I want to talk about the --

CHAIRMAN FRYER: Where we've been.

(Simultaneous crosstalk.)

COMMISSIONER SCHMITT: -- petition.

CHAIRMAN FRYER: Okay. Thank you very much.

Commissioner Vernon.

COMMISSIONER VERNON: No disclosures.

CHAIRMAN FRYER: No disclosures. All right. With that --

COMMISSIONER KLUCIK: Mr. Chairman.

CHAIRMAN FRYER: Oh, yes, Mr. Klucik. I'm sorry, sir. Commissioner.

COMMISSIONER KLUCIK: Yes, I reviewed the staff materials, and I also met with staff to discuss them.

CHAIRMAN FRYER: Thank you, sir.

With that, we'll begin with applicant's presentation. Mr. Yovanovich.

MR. YOVANOVICH: Thank you. Good morning. For the record, Rich Yovanovich on behalf of the applicant on both matters.

With me today are Greg Warderberg, who is the property owner representative; myself; Mr. Arnold; James Banks -- and is Jeremy here? No -- to answer any questions that you may have that I can't answer or more specific to their particular areas of expertise.

I'm going to do just a general overview of each of the petitions, talk a little bit about the history of the project and then have Wayne come up and get into more of the details of both the amendment to the Comprehensive Plan and the PUD.

The property is identified on this exhibit as Camden Landing. It's approximately 9.93 acres. It's at the intersection of Bayshore and Thomasson, and is currently the Serus Point PUD. The Serus Point PUD is a PUD that was approved initially in 2005. It was approved as a project that had an affordable housing density bonus associated with it. It was approved at 108

units with 44 of those units being affordable housing.

At the time we were getting that project approved, the ability to use density units from the Botanical Gardens was not an option. So since the property was basically nine units -- 10 units an acre, the maximum density, as you've seen through your report, was 30 units, and that just was not a feasible option.

So we came through, and I'm sure Joe will recall, it was slightly contentious, but we did prevail, and an affordable housing density project was approved.

There are a couple of other projects in this area that are probably in the affordable workforce housing -- serve that purpose as well as I think Botanical Place was later approved with an affordable housing density bonus.

The CRA, over the years, became more active -- or the CRA Advisory Board became more active and preferred that market-rate housing be provided in this area and not have more affordable housing in the area.

So in 2013, Mr. Arnold and I began the odyssey of trying to convert this PUD to a market-rate PUD, and in doing that we proposed what we're doing today, basically, which was a Growth Management Plan amendment to be able to utilize the density bonus units from the Botanical Gardens and amend the PUD to go to purely market rate.

When we started that process, we initially wanted to do apartments, rental apartments, and the residents said, we don't want rental apartments. We want for-sale product. So we made amendments -- we made amendments to that to go to market-rate for-sale product and came to this body. I don't think maybe -- I don't know if Mrs. Homiak was on there or not at the time when we got unanimous recommendation of approval on both the Growth Management Plan amendment and the PUD amendment to go to a market-rate product.

I believe we were on summary agenda when we were continued by the Board of County Commissioners, and the Board of County Commissioners -- and this is in, I believe, in your zoning executive summary, so I just want to get this a little bit more detail and flavor on the record. The Board of County Commissioners said the original developer received a loan through another entity to provide affordable housing. Although they did not have a direct relationship with the then current owner of the property, they wanted that then current owner of the property to pay that money back prior to rezoning the property to something market rate.

And what I had suggested was, if we did not provide affordable housing as part of the project, we would repay the \$320,000, and that's in your executive summary. I want to give you the history of why there's a recommendation that those monies be repaid if we don't provide affordable housing.

I and my client said, it would be unfair to repay the 320,000 that was supposed to go towards affordable housing and be unsuccessful possibly on the rezone and still have to provide the affordable housing.

To make a story a little bit longer, five years later we still couldn't get a hearing, and we were asked to withdraw the zoning petition of the Comp Plan amendment. I think that was in 2017. So we did withdraw those petitions because we couldn't get a hearing.

A new owner buys the property, the new owner is before you today, and started, again, the process of going to a market-rate product. We thought we were past the issue of what to do with the repayment. We were held up on having our hearing in front of the Planning Commission.

I went back to the Board of County Commissioners a few months ago, and the Board said, yes, we understand. We would like the Planning Commission to consider the petition. We'll address the repayment of those monies if you don't provide affordable housing. So we're here to hopefully complete a process we began almost eight years ago.

So before you today are two petitions to amend the Growth Management Plan. One is to -- one is to amend the Growth Management Plan to allow for 127 market-rate units and the utilization of 97 of the density bonus pool that comes from the Botanical Gardens and to amend the PUD to go from 108 units, with 44 of those being affordable units, to 127 market-rate units. They have to be for-sale product.

We went back to the CRA advisory board again about the proposed project. The CRA

advisory board recommended approval 5-2 for this, what is proposed and before you today. Your staff is recommending approval of both agenda items, and we don't have any objections to the conditions in those items.

So after Wayne goes, we'll come back up here again and ask you to recommend approval to the Board of County Commissioners of both of those items, and I will turn it over to Wayne to take you through in greater detail the -- and we're frozen -- the petitions.

CHAIRMAN FRYER: Before you withdraw --

MR. YOVANOVICH: Sure.

CHAIRMAN FRYER: -- Mr. Yovanovich, does anyone up here have a question or comment for Mr. Yovanovich? Commissioner Schmitt.

COMMISSIONER SCHMITT: Yeah. Just to reiterate on the history of this. Of course, in my former capacity as the administrator for Community Development, which was the predecessor to the -- what's now deemed Growth Management Division, this was a pretty contentious project. And Mr. Yovanovich is correct, it did subsequently reach approval. But I just want to point out to my colleagues that this was a project, when it was originally proposed called Serus Point, there was significant opposition due to the height, due to the density, and due to the setback. And now we're dealing with a project with even greater height, even more density, and even -- with a reduced setback than what was originally proposed.

But I believe -- and it was my recollection, and I did have a discussion with Cormac on this as well as James Sabo, regarding the history of this, that there was a lot of opposition, but the opposition pretty much stemmed on the proposal of affordable housing.

This was market-rate purchased affordable housing units, and that was what led to the approximately \$300,000 being -- coming out of the Affordable Housing Trust Fund to help subsidize the affordable housing. So that was the most significant issue. And I think the underlying factor was -- though nobody stated it publicly, but the underlying factor of the opposition was because of the affordable housing.

It was later eliminated, and by that time I was gone. I was in other parts of the world at that time. And it did receive approval. But I just want my colleagues to know and understand that the history of this was dealing with a project -- and it had some opposition from Windstar and from other folks involved and, of course, went through the commissioner at that time for that area in regards to opposition.

But that said, the staff -- we worked with the developer and at least were, at that time, successful in getting it approved. I just want to note that, of course, now it's even greater density than what was once approved, and the height is even greater than what was one of the most significant issues.

But that all said, this area has changed significantly from what it was back in 2005 with, of course, the development that has taken place along Thomasson Drive, and I just want you-all to understand the history of it. Certainly, I'm not in opposition of it; I just want to note the history of it because it sort of reminds me of let's just let this thing sit for 10 years, and now we'll come back and we'll get something even more dense and of greater height than what we originally had asked for.

CHAIRMAN FRYER: Thank you.

MR. YOVANOVICH: If I may, just so we're -- the timing. We didn't sit for 10 years.

COMMISSIONER SCHMITT: Yeah, I know.

MR. YOVANOVICH: We were -- we were forced to sit. We came back in. And each time we've come to the residents with the proposed changes, they've been supportive of the proposed changes.

You're right, the initial comments about height and density all related to the fact that we were putting an affordable housing project near some other communities. But we've not had any substantive resistance to what's before you today. But we did try to get this done in early 2013. So I just don't want it to appear like it's -- we just sat and sat and waited. We fought and fought to try to have a hearing.

CHAIRMAN FRYER: I went back. Not only did I read the transcript of the portion of

the excerpt of the transcript of the September 8th, 2020, BCC meeting, but I actually went back and looked at the video to get an even better flavor of the sense of things, at least on the part of the BCC when it did -- I mean, it voted five to nothing, but there was a concern expressed by both Commissioner McDaniel and Commissioner Solis to be sure that it was understood that the \$320,000 loan is not a quid pro quo for getting greater density. It is -- it is secured. It's collateralized by a second mortgage on the property, and the only way that it gets released is if affordable housing is built. So it's not and should not be tied to density.

MR. YOVANOVICH: Correct.

MR. KLATZKOW: Just for clarity, it was not a loan. I was, way back then, involved in this deal. Joe and I just have history here that sometimes gets lost in time.

That money -- think of it more as a partnership, as a public/private partnership on this one. The county gave the developer \$300,000, or whatever the amount was, and developer used that to purchase the property. And the quid pro quo was, okay, I will now put affordable housing units on the property. It was not a loan, all right. It was just more in the nature of a public/private partnership than anything else. And anybody subsequent could still develop that property under the terms of that PUD, in which case the county's benefit of the bargain would have been met.

The issue has been that subsequent to that deal there have been a number of people interested in developing that property as market rate. At that point in time, well, if you're going to do market rate and the county invested \$300,000 to get into affordable housing, then we need our money back.

COMMISSIONER SCHMITT: Correct.

CHAIRMAN FRYER: That's how I understand it as well.

MR. YOVANOVICH: Yeah. Just to muddy the waters a little bit more, the actual loan, the monies went to, I believe -- and Cormac, if I get the entity wrong -- was the Collier County Housing Authority, which was not a county agency. The county gave the money to the Collier County Housing Authority who then entered into the arrangements with the previous developer, Mr. Fields. Just to be -- just to make sure we have it factually correct.

It is secured by a second mortgage, and we don't need to get into the details of where second mortgages fall into it. But at the end of the day, I think maybe Mr. Fryer was on this board when someone else brought forward another PUD amendment to actually do affordable housing on the property a year or two ago, I think it was, and I think this board unanimously -- and, Ms. Homiak, I know you were on the Board -- unanimously recommended not -- for this project not to be developed as an affordable housing project.

So I think what we're trying to do is get to what the residents want, which is a market-rate project. We think under the merits it's a good project. Absolutely correct, the money has nothing to do with the density, but there has to be a commitment that if we don't build affordable housing, the money gets repaid. And that's -- there's no quid pro quo. It's just that if we don't build affordable housing, that's what the Commission wants to see happen.

CHAIRMAN FRYER: And I would like to say, for my part, that I agree with those -- well, starting with former Commissioner Fiala and others who have observed, that there is already, perhaps, an excessive amount, or putting it, perhaps, better, that East Naples is experiencing or shouldering more than its fair share of affordable housing.

So I personally would like to find a way to get to yes on this. And the fact that we're losing some affordable housing here, potentially, I think, should be offset by affordable housing in other districts.

But it's just, I think, very important for us to mention that the developer is coming in with more than just wanting to pay back the money and get market-rate housing. There's also the issue of greater density, greater height, and things that are not at all tied to that, because if the affordable housing isn't built, that money has to be paid back.

MR. YOVANOVICH: Correct.

CHAIRMAN FRYER: And, presumably, the value of the second mortgage was factored into the purchase price when your clients bought it.

MR. YOVANOVICH: We've already said we don't have an issue with -- if affordable

housing isn't built on the property, having those monies paid back.

CHAIRMAN FRYER: Okay.

MR. YOVANOVICH: That's not an issue. And I believe when you get to the merits of what we're proposing, hopefully you'll agree with the CRA, because we are going to be pushing the price points in this area and, you know, taking a leap of faith that this is going to -- this is going to further benefit the CRA with higher-priced units, and when we go through that presentation, hopefully you'll agree.

CHAIRMAN FRYER: Commissioner Schmitt, then Commissioner Vernon.

COMMISSIONER SCHMITT: Yeah. I, just for the record, though, want to note that there certainly wasn't anything nefarious done by Mr. Fields. Jim Fields was a very -- in my opinion, very honorable guy, and when -- as Jeff pointed out, when this all was negotiated, unfortunately, he also got hit by the -- many other developers got hit at this time as the economic downturn that kind of put an end to the first proposal on this.

So in that regard, but it is -- in fact, I would agree, Mr. Chairman, that the loan is tied to affordable housing, and if there's no affordable housing then, as we approach a recommendation, it would be contingent -- the zoning is not contingent upon the repayment. The removal of the affordable housing density bonus would trigger the repayment.

CHAIRMAN FRYER: Thank you.

Commissioner Vernon, then Commissioner Fry.

COMMISSIONER VERNON: You mentioned the CRA several times; they voted 5-2. Can you tell me, the two who dissented or opposed --

MR. YOVANOVICH: Sure.

COMMISSIONER VERNON: -- what -- summarize what their concerns were.

MR. YOVANOVICH: The two that dissented, it was height. And we explained why we needed the additional height, to get the more modern ceilings, to get another floor so we can get enough units to make it economically viable to develop the property. That -- those were basically the concerns of the dissenters. The five in favor understood the rationale for what we were asking for and supported it 5-2 to move forward.

COMMISSIONER SCHMITT: You're also facing a change in the base flood elevation on that -- since the original zoning, are you not?

MR. YOVANOVICH: I'll have to defer that to Wayne. But if we are, it's measured from there anyway, so -- but, you know, again, it was exactly those issues that we've historically had. You know, what -- if we have to do an affordable housing project, we'll do an affordable housing. Not our first choice, not the community's first choice. But we have to get to a certain balance in order for it to be economically viable to take the risk to invest the kind of money --

CHAIRMAN FRYER: Commissioner Fry.

COMMISSIONER FRY: Hi, Rich. Two questions. First, just to be clear, if this is approved as a market-rate project, the \$320,000 will be paid back?

MR. YOVANOVICH: Yes.

COMMISSIONER FRY: Thank you. And second, by my math, 97 density bonus units/credits out of 388 is about 25 percent of those --

MR. YOVANOVICH: I trust your math.

COMMISSIONER FRY: -- of the available credits.

MR. YOVANOVICH: Okay.

COMMISSIONER FRY: What is the process -- is the CRA responsible for approving those 97 to be allocated to this project? I just wanted a little bit more insight into how those 97 units are allocated, because if they're used on this project, they aren't going to be used on the next project. So please explain that process.

MR. YOVANOVICH: The Board is the actual CRA. There's a CRA advisory board that we go to, but the Board of County Commissioners sitting as the CRA is the entity that decides which projects can use the 388 units that were created from the Botanical Gardens. For example, the project across the street from this that Mattamy Homes is building, some units were allocated -- of those bonus units were allocated to that project. We're asking the Board allocate to

this project those units. Others may come in later and say we would like -- we would like some of these units. So the Board of County Commissioners ultimately decides, sitting as their -- as the CRA, how to divvy up or allocate the 388 units.

COMMISSIONER FRY: So they are not preapproved; they are yet to be approved by the BCC?

MR. YOVANOVICH: Part of what we're doing will have them allocate to us those units. And in your agenda you'll see if we don't use them within a seven-year period of time, they go back. So you can't just tie them up and hope some day you're going to use them. There's a time frame by which to use them.

COMMISSIONER FRY: Thank you.

CHAIRMAN FRYER: I'm going to ask Commissioner Klucik if he has any questions before Mr. Yovanovich brings up Mr. Arnold.

(No response.)

CHAIRMAN FRYER: If not, I think we're ready for Mr. Arnold.

MR. YOVANOVICH: All righty. Thank you.

COMMISSIONER KLUCIK: I do apologize. My mute button was on, and I couldn't find it.

CHAIRMAN FRYER: Do you have a question before Mr. Yovanovich steps aside?

COMMISSIONER KLUCIK: No.

CHAIRMAN FRYER: Okay.

COMMISSIONER KLUCIK: Thank you.

CHAIRMAN FRYER: Thank you.

Mr. Arnold.

MR. ARNOLD: Good morning, Mr. Chairman and Planning Commission members. I'm Wayne Arnold, a certified planner with Q. Grady Minor & Associates. And as Rich gave you quite a summary of the odyssey of getting here -- and I think that was a good term, because it's a long road, and hopefully we can bring some closure to this in the next couple of months.

So one of the other -- just to build on what Commissioner Fry said, one of the other projects that you-all were involved in was the Courthouse Shadows project. They also received an allocation of density in order to be able to make that project work as a market-rate project in the CRA boundary. So between that, Mattamy, and this project, those are the only three potential recipients to date of those allocated units that come from the Botanical Garden.

So I'm going to go through some of the details. Rich has already told you about the existing zoning and change, and one of the changes we are making that I don't think Rich mentioned specifically is that we're changing the name of the project from Serus Point to Camden Landing. So we will break free from the Serus Point past, and we will move forward as Camden Landing on the project.

So as Rich said, we're amending your Future Land Use Element under the Bayshore/Gateway Triangle description to add language that specifically talks about the allocation of the units to this specific piece of property. It's going to allow 127 multifamily dwellings or townhouses, condominiums, and the language is further noted that it's to be a for-sale product. It's not a rental community. It's a for-sale product.

We've modified the master plan, and I'll take you through some of those changes. We've modified the Development Standards Table, and we have a couple of deviations that are necessary to bring forth the development plan that the developer needs. That's the allocation of units that Rich talked about, so I don't need to spend more time on that.

Our subdistrict language is in your document, but it's very specific to this piece of property. We are a small-scale amendment because it affects a piece of property less than 10 acres.

We have two deviations. One is a parking deviation for our amenity center. The project is compact. We don't feel that the very small amenity center needs more parking than just a couple of spaces. So we have a handicapped parking space and a couple of other drop-off spaces. We think that people will be walking to the pool and small community structure. It's not a large clubhouse. It's not a large number of units that are sharing it. So staff is supporting that

deviation.

The second deviation results in an open-space deviation, which is unique. It's the first one that I think I've been involved in, but it's -- it's justified in the sense that the right-of-way that gets allocated as part of this project for the Thomasson improvements takes away just enough land. So we've asked for a minor deviation to go from a 60 percent open space down to 54 percent open space, which is the number that results from the project that you'll see in just a moment.

Staff is also supporting that, and it's justified. The county's getting a usable piece of property that helps them complete their streetscape improvements.

The approved master plan is a very generic bubble plan. A lot of the elements have not changed. Our only access point will be from Thomasson Drive about midpoint of the project, and the preserve area that's shown on the existing master plan that's shaped around the north and west side of the property will continue.

This is the new proposed master plan. Again, the access point is midpoint on Thomasson Drive. This plan is a little more specific in that we've identified the amenity center area as the AA area, and we have the preserve that's still along the northern and western, and it wraps down along part of the eastern portion of the property. If you've made a site visit, you've seen that the county is actively using that site as a construction staging ground for the Thomasson improvements. That's something that the applicant volunteered to let the county utilize. They didn't have any really other good places to do that, and it's in the middle of our site that will hopefully be developed for the residential structures. It doesn't impact the preserve area or any other feature.

The applicant has been doing a lot of research in the market. They really are trying to bring forward sort of the -- probably the highest level of housing that's going to be developed or has been developed to date in this corridor. So they are coming along with what's considered a more coastal contemporary type of architectural structure. Light gray roofing, concrete block construction, impact glass, stucco finishes, balcony railings, and all HVAC units will be located on rooftops and not at ground level.

Floor plans, basically we have 16 units per building, so the buildings are fairly small in scale. One of the units will have 15 units, so we get to the 127. But the units that they're looking at in terms of the concepts today, the smallest unit's around 1,500 square feet; significantly greater than what's permitted as the affordable rental project that's there today. I think that aspect of the project and the architecture was well received by the residents and the CRA Advisory Board.

This is a rendering of that master plan that gives you sort of the aerial view of this, and we've depicted the future roundabout at the corner of Thomasson and Bayshore Drive. And, again, you see the site features. And separating us from our nearest project to the north will be the preserve area and enhanced landscape buffer. Small amenity areas, I noted, and then the buildings will front on both Thomasson and facing the preserve.

The buildings are four stories over parking. I think it's important to note that most of the parking is under building. That also is part of the reason that the height gets elevated, Mr. Schmitt. But Christian Andrea created some architectural renderings to show what some of the views would look like. And we have views from the future roundabout that's at Bayshore and Thomasson along Thomasson Drive, along Bayshore Drive. And we showed these same renderings to the CRA advisory board, and I think generally they were well received. And as Rich said, the dissenters were really about whether or not the height of four stories over parking was just too tall for the area. And I think when we showed the renderings and how the landscape as it matures was going to shield that view, especially as you're closer to the roadway -- you know, if you're walking as a pedestrian or driving along Thomasson or Bayshore, the heavier landscaping is going to obscure the building. You don't have long views to these buildings. So the view over the landscaping doesn't occur very many places.

More renderings showing you what the buildings will look like. Again, four stories over parking. I know that staff at the CRA advisory board had talked about this in relationship to the Naples Square project, which is located at Goodlette and 41 in the City of Naples, and some of the buildings may be as tall but, again, with 16 units maximum per building, the entire scale of these buildings is substantially less than those buildings in Naples Square, which I think most of us have

driven by and are familiar with that.

That's really the bulk of our presentation. I know that we spent a lot of time talking to staff and the CRA advisory board. The two conditions you've talked about; the one condition, which was the repayment of the dollars if this does not get developed for affordable housing. The other condition is really a condition that's already in the PUD document that we were striking, and staff asked if we would commit to retaining that language, and it's about a proportionate-share payment for some of the streetscape enhancements along the front of our property.

And Mr. Warderberg, who's here representing the property owner, indicated our agreeability to do that and retain that. So one of the changes we would make would be to unstrike the language that's stricken as one of your conditions.

And, I found notes where we had spoken to Deb Forester previously, and it looks like the dollars are somewhere around \$140,000 plus or minus. I don't know the exact amount. But we would also pay that money, and that's one of your conditions that we agree to.

So with that, I'll be happy to answer specific questions you may have about the project and -- or Rich will, and --

COMMISSIONER VERNON: Mr. Chairman.

COMMISSIONER KLUCIK: Mr. Chairman.

CHAIRMAN FRYER: Commissioner Fry, and then we'll go with Commissioner Vernon and then Commissioner Klucik.

COMMISSIONER FRY: Mr. Arnold, how many of the 388 density bonus units from Botanical Gardens are allocated between this project, Mattamy Homes, and Courthouse Shadows that you referenced earlier?

MR. ARNOLD: I think that takes up about 75 percent of the units available. Each project can have a maximum of 25 percent of those, which is the 97 units. So we're asking for the maximum allocation that we can achieve.

COMMISSIONER FRY: So the other two projects made similar requests, it sounds like.

MR. ARNOLD: That is correct, yeah, I think so. I'd have to go back and look at each, but I think they did, yes, sir.

COMMISSIONER FRY: Okay. Has there been any resistance to having 75 percent of the units allocated at this point with only three projects? I mean, have you -- has there been objection within the CRA advisory board or otherwise?

MR. ARNOLD: No, I wouldn't characterize there is any objection. I mean, they're there to be used to help stimulate development activity in this corridor, and I can assure you that they're absolutely necessary for this to achieve a market-rate status.

COMMISSIONER FRY: Okay. Regarding the parking deviation, you have shown a pool and a small cabana. But I believe in the text it allows other uses like pickleball and other recreational activities. Your parking deviation is based on the minimal amenity area uses. What -- is there language that restricts adding additional activities after approval that would then require additional parking that is not provided?

MR. ARNOLD: If we deviated from the plan today, which is the small cabana with a pool, then it might be. The parking calculation for amenity centers is tied to square footage of your pool surface area, square footage of the actual building itself, and then separately for tennis courts, et cetera.

We don't think that we're going to have an opportunity to have an outdoor recreational component other than in this area. If you look at this master plan that's rendered there, I mean, the areas that could be are really allocated for resident parking. So unless there would be some sort of rooftop feature, then the parking deviation, I don't think, would even be necessary.

COMMISSIONER FRY: Okay. So if you changed the amenities, then the staff would have an opportunity to require additional parking?

MR. ARNOLD: I think they would, yes.

COMMISSIONER FRY: Okay.

CHAIRMAN FRYER: Thank you.

Commissioner Vernon.

COMMISSIONER FRY: Oh, I'm not quite -- I have one more question.

You showed the architectural design concepts which was a list of architectural features. If you'd go back to that slide. Are those commitments, or are those serving suggestions?

MR. ARNOLD: Well, I think that's the concept of which this plan has come forward, those coastal contemporary styling points, and that's what those represent. I don't know if there's a hard commitment. I haven't seen any renderings that don't reflect that style. So I don't know what to say. I mean, if you're asking us if that's a commitment, I think there are -- certain things we're committed to, which is to have -- you know, I didn't -- one of the things I didn't point out, that units are going to have balconies and there's going to be railings that are architecturally detailed, et cetera.

COMMISSIONER FRY: In the past on other issues -- and, Commissioner Schmitt, you've got a lot of experience with this -- we have -- we have included a condition that the actual product does resemble the renderings. I can't remember the exact language. But what is your recollection of that?

COMMISSIONER SCHMITT: I mean, we typically -- you're correct on the -- in regards to the -- if they show the rendering, it typically should be stated that the -- what is submitted is -- would comply or resemble what was presented at the public hearing. But in regards to specific comments that -- like are stated here, I don't recall in the past whether we get -- we're concerned about concrete block and tie beam construction. All those kind of things -- many of these things are already in the code or part of the architectural standards as outlined. I would -- but I leave it up to you if you want to put that in as -- in the proposal but, typically, we don't get to that kind of detail.

What was the other point I wanted to make, though? In regards to -- in regards to that, though, is it would be part of the architectural review, but we don't have an architectural review committee, so it's a matter of staff making sure that what is presented, it complies with it. And like everything else, we -- in Collier County, we went from stucco and Tuscan look to coastal contemporary to next week it will be something different. So it's difficult to tie it, because, you know, maybe next week it will be Key West, whatever. So that's the only danger in regards to being that specific.

COMMISSIONER FRY: Thank you.

One last question, Wayne. The -- what are the actual heights of other projects in the area? You're -- I believe you're asking for 61 feet zoned and 71 feet actual, or I may be off by 10.

MR. ARNOLD: No, you're correct. And I do have -- some of the other projects in the immediate area, I have a list that I made. If I can just locate it here in my file, I will be happy to share that with you.

COMMISSIONER FRY: And the question really has to -- it really goes to, is this height significantly out of balance with the surrounding properties, or is it slightly higher, or is it the same or less?

MR. ARNOLD: It's -- it will be the tallest, there's no question about that. The other projects that have been approved in the area vary in height, but their actual heights -- for instance, at Arboretum across the street that Mattamy Homes is developing, they had an actual height of 50 feet, and at Botanical Place, which is located to the north, they have a 50-foot height, zoned height, so there's no expressed actual height for that project. But the zoned height was 50 feet, and it's four-story maximum. So in this particular case, we're asking for a zoned height of 61 feet. So we're about a story above.

And part of the discussion that Mr. Warderberg had at the CRA meeting was, you know, looking for very modern buildings. We want high floor-ceiling plates. We have underbuilding parking. So when you start adding 11, 12 feet per floor, it's easy to get up to that 61 feet. And, of course, we want nice architectural features, which is why we asked for the additional 10 feet to get the embellishments as part of the -- as Rich says, the tippy-top actual height.

COMMISSIONER FRY: So you are aiming for at least 10 feet -- 10-foot ceilings inside each unit?

MR. ARNOLD: Yes, at least.

COMMISSIONER FRY: Thank you.

CHAIRMAN FRYER: All right. We'll go in this order. Commissioners Vernon, then Klucik, then Schmitt.

COMMISSIONER VERNON: Actually, I was going to touch on both the same issues Commissioner Fry touched on. And just thinking about it, if I lived there, I had guests there, how much do you have for guest parking?

MR. ARNOLD: We didn't ask for a deviation from parking, but anything more than a one-bedroom unit requires two parking spaces per unit in Collier County. That includes guest parking.

COMMISSIONER VERNON: So there's no designated guest parking?

MR. ARNOLD: I don't know if we're that far along yet to know that a guest parking space is designated under this plan. It's --

COMMISSIONER VERNON: And there's no room for guest parking at the amenities? I guess that's what I'm concerned about. And probably a lot of people have one car. But if everybody has two cars, there's absolutely no place for any guest to park.

MR. ARNOLD: Yeah, I think just the experience that I've had on many other projects, the typical buyer at the price points these are going to be are going to be what's called older adults. They're not going to be families. So the necessity to have two vehicles as a, you know, early retiree may not be necessary. You've got, we think, a lot of other assets in the community that allow walkability, like the community park. There are schools nearby. There's the boat ramp park. There's the Botanical Gardens. And so there are a lot of features there that provide for walkability.

COMMISSIONER VERNON: Yeah. But that's just one of my concerns. If somebody had a party or something, there's just -- people will be parking everywhere, I would think, because there just doesn't seem to be anything in the way of guest parking.

The other one was with respect -- going back to my question for Rich, on the two dissenters in terms of the -- I mean, you can answer, probably. The two dissenters who were concerned about the height, did they voice any alternative or just say it's too high?

MR. ARNOLD: I think their alternative was similar to staff's position at the time, remove a story. And we said, losing a story means we lose 16 units across the project; it makes it infeasible to develop it.

COMMISSIONER VERNON: That's all I had.

CHAIRMAN FRYER: Thank you.

Commissioner Klucik?

COMMISSIONER KLUCIK: Yes. I had a really simple question. When I was looking at, you know, the drawings -- and maybe you can bring it up -- of the -- when you show the drawings, are they oriented as a map would be, the north/south, east/west? And I'm talking about, like, the map drawings.

MR. ARNOLD: The rendering that's on the screen --

COMMISSIONER KLUCIK: Is that north south, east, west like a map would be as far as --

MR. ARNOLD: It is, yes. North is on top.

COMMISSIONER KLUCIK: Okay. So if you go just north of that to the community that's just north of that -- that's fine. We don't need to look at it, but it seems as though the large wooded buffer is on the east end of the project rather than the west end, and I'm just, you know, wondering why, you know, they picked the opposite end.

MR. ARNOLD: Mr. Klucik, it reflects really where the best-quality vegetation is that needed to be retained on site. It's also going to function as part of the water management system for the project. So it's been strategically placed for not only because of the vegetation, but it provides, then, the buffer to our neighbors to the north.

COMMISSIONER KLUCIK: Okay.

CHAIRMAN FRYER: Anything else, Commissioner Klucik?

COMMISSIONER KLUCIK: No, I have no other questions. Thank you.

CHAIRMAN FRYER: Commissioner Schmitt.

COMMISSIONER SCHMITT: Yeah. Wayne, on this drawing here you show the traffic circle, and it appears, and the southern portion must be some kind of an indent for a bus stop. Are those improvements part of the project? Are you putting a traffic circle in, or is that -- will that just be something that's funded as part of impact fees given to the county?

MR. ARNOLD: The road improvements, Mr. Schmitt, that are underway today on Thomasson Drive will eventually include the roundabout.

COMMISSIONER SCHMITT: Yes.

MR. ARNOLD: So the roundabout is part of the county's project for Thomasson Drive. It's a CRA-sponsored project. And part of our impact fee dollars would presumably go to that. Some of the tax dollars that are paid here will go to the MSTU that will also fund some of the improvements; likewise, the commitment that staff's asked us to restate in the PUD. The streetscape plans, those are -- there's some beautification elements that I'm not sure of what all of those are, but there's some street lighting, there's some pathway enhancements, there's some other landscape materials that those dollars will help fund.

COMMISSIONER SCHMITT: Okay. So it's no -- nothing connected to the project itself other than -- it's staff and then the monies from impact fees or elsewhere will be funding this.

MR. ARNOLD: Correct.

COMMISSIONER SCHMITT: Okay.

MR. ARNOLD: Yep.

CHAIRMAN FRYER: Thank you.

I have a comment, and it has to do with traffic. Do you want to handle it, Mr. Arnold, or do you want your traffic engineer?

MR. ARNOLD: I guess it depends on your questions.

MR. YOVANOVICH: Depends on how hard it is.

CHAIRMAN FRYER: Okay. Well, I'll ask it, and --

MR. ARNOLD: If it involves math, I'll ask Mr. Banks to answer it.

CHAIRMAN FRYER: Okay. It has to do with the East Trail Segment 92, which pursuant --

MR. ARNOLD: Mr. Banks is your man.

MR. YOVANOVICH: That was quick.

MR. ARNOLD: I knew the answer.

COMMISSIONER SCHMITT: Good thing you brought Jim along.

MR. BANKS: He heard the number 92, and he panicked.

For the record, Jim Banks.

CHAIRMAN FRYER: Mr. Banks, under the 2020 AUIR, Segment 92 of the East Trail has become deficient.

MR. BANKS: Correct.

CHAIRMAN FRYER: You're aware of that?

MR. BANKS: Yes.

CHAIRMAN FRYER: Yeah. And, furthermore, whether you're going out Thomasson or Bayshore, either way, the traffic would have to come in and out of that segment, correct?

MR. BANKS: That's correct.

CHAIRMAN FRYER: Yeah. So my concern is is that when you go from 108 dwelling units to 127 dwelling units and your computation tells you that that adds 10 more peak p.m. trips, and you think to yourself, well, 10 doesn't sound like a large number, it's de minimus, but the trouble is if each subsequent developer comes in and asks for de minimus, pretty soon you have really created a significant problem. You've exacerbated the deficiency on Segment 92, and that's of concern to me.

MR. BANKS: Okay. And I -- not to down-play. It's actually six additional directional trips. We measure impacts on the road networks based upon the peak direction. So we're actually six additional vehicles, not 10 additional vehicles.

CHAIRMAN FRYER: But they're additional vehicles nonetheless.

MR. BANKS: But there are additional vehicles, yes, sir.

CHAIRMAN FRYER: And I anticipate that your argument is that this is de minimus.

MR. BANKS: It is de minimus, and we are in the south U.S. 41 TCA district, so there is ways to mitigate projects, and we will be dealing with that when we deal with Matt McLean's department when we come in for our site development approvals.

CHAIRMAN FRYER: My personal opinion, those mitigation factors are ineffectual, but that's another conversation.

So, again, my main problem with this is that subsequent developers will come in and have low numbers, whether it's 6 or 10, and pretty soon in the aggregate you have really made your deficiency much worse, substantially worse. And what, if anything, can we as a Planning Commission do about it?

COMMISSIONER FRY: To your point, Commissioner Fryer, I mean, just to throw this in, we could review the mitigation strategies. And I don't know if this is within our purview or how that would happen, but come up with -- I agree with you in a lot of ways. The strategies may not be effective or mitigate the additional traffic you're putting on the roads, but I guess the question is, how do you change what those mitigation strategies are so that they truly do have an impact?

CHAIRMAN FRYER: Well, I -- unless other planning commissioners want to weigh in on this, it's -- and I'm just giving staff a heads-up -- I spoke with them about it two days ago, and I want to talk with them about it again and find out whether there are any practical solutions for us, or we are just absolutely stuck.

MR. KLATZKOW: Oh, God, you say no. If anybody -- anytime somebody asks for an increase in density, you can say no, all right. So, you know, it's -- and it will be part of my presentation. You're the Planning Commission. It's on you.

CHAIRMAN FRYER: Thank you.

MR. YOVANOVICH: And if I can, Mr. Fryer, my understanding is the trips that we're putting on that segment, under the analysis that's in your Comprehensive Plan and in your LDC and in your TIS, you do a 3-2-2 analysis.

MR. BANKS: Two-two-three.

MR. YOVANOVICH: Two-two-three, I'm sorry. So we don't -- where those trips are occurring are beyond where we would be doing the analysis.

So under your current rule, yes, you know, we technically probably put a trip anywhere in Collier County. I mean, but your analysis is focused in a confined area, 2-2-3, and you keep going until you get under the 3. And we're not tripping any of the analysis that, under your current rules -- and I know Mr. Klatzkow's going to get up there and say you could still say no. I don't want to -- but I'm just saying, under the traffic analysis, we're not violating the traffic analysis review in your Comp Plan and your LDC and your TIS.

CHAIRMAN FRYER: Commissioner Shea.

COMMISSIONER SHEA: Just clarification, for either you or the applicant.

MR. YOVANOVICH: I'm sorry.

COMMISSIONER SHEA: When we do these analyses, like, for instance, we've got 398 credits available for higher density. When you come up with the analysis that we're doing right now, do we consider the -- like Mattamy and the others that have already started using some of these credits? Because, obviously, these credits are going to make it even worse because you're building higher density than the original plan was. But are they considered in the analysis, the ones that are actually under construction?

CHAIRMAN FRYER: That's a very good question and, of course, it has to do with the concept of a trip bank. And my suggestion is is that we wait until staff's presentation, and we --

MR. YOVANOVICH: I just want to correct one thing for Mr. Shea. The units, the 388 units, came off of another piece of property that was -- so that density was already planned for under the Comprehensive Plan. So we're not increasing -- even though we're moving -- we're moving that planned-for density from the same area to this particular piece of property. So those 388 units were already factored in under the Comprehensive Plan.

COMMISSIONER SHEA: My only point is, we're already at a crisis situation with the highway, so however it was planned before isn't working.

MR. YOVANOVICH: Well, we, the county --

COMMISSIONER SHEA: Yeah.

MR. YOVANOVICH: -- created a TCEA, which is an exception area, and two TCMA's, if I'm correct, management areas, recognizing that there were going to be some areas that you're simply not going to be able to build your way out of, so you're going to look at it globally; 85 percent of the links within a certain area have to meet the adopted level of service.

The county recognized that, because I'm sure Mr. Klatzkow would tell you what it would cost the county to build their way out to meet its obligation under the Comprehensive Plan just was never going to happen. I think Mr. Schmitt may have even been around when all of those of revisions to the Comprehensive Plan came about.

CHAIRMAN FRYER: Anyone else have questions for the applicant at this time?

(No response.)

CHAIRMAN FRYER: Mr. Yovanovich, do you have anything further, sir?

MR. YOVANOVICH: No, sir. We'll just respond to any further questions you may have or anything that may come up through the staff review and if there are public speakers.

CHAIRMAN FRYER: All right. If there's nothing further for the applicant at this time, we'll ask staff to make its presentation, please.

Mr. Sabo.

MR. SABO: Good morning. James Sabo, Comprehensive Planning manager.

Give me a moment here to -- I will go through these slides quickly. Not too quickly. I'll make sure to cover all the points.

The project is Camden Landing, the PUDA, as well as Meridian Landings, the GMPA, those staff numbers. The Growth Management Plan, it's small scale, 9.93 acres, increasing density from 10.89 to 12.8, and they are using that 388 density pool -- units from density pool.

Those four points -- I won't go over them, but those four points are how the credits -- the bonus pool credits are allocated.

The change is from 108 to 127, again, using the 30 base units, which is the urban coastal fringe subdistrict, 30, and then adding the 97 to get to 127.

There is a seven-year time limit on which to use those credits, and it is related to market-rate housing.

For zoning they -- again, 108 to 127. They increased height from 40 to 71 feet actual. Two deviations proposed; we're recommending approval for those: Essentially, the parking and the open-space requirement.

The Community Redevelopment Agency, the advisory board, Ms. Ellen Summers is here if we have questions of the advisory board, and Mr. Cormac Giblin is here as well if there's issues or questions related to affordable housing.

So the PUD language added a commitment to pay the third of the costs of the Thomasson right-of-way improvements and, again, that was a 5-2 support.

This is from Community and Human Services. They requested to eliminate the affordable housing density bonus. Bottom line is if the developer intends to eliminate the 32 affordable housing units, then \$320,000 should be immediately repaid to the county's Affordable Housing Trust Fund, and Mr. Giblin can clarify.

Now, the recommendation here, two stipulations: The CRA stipulation, and then the affordable housing repayment -- or recommendation on repayment of the \$320,000.

I'm here to answer any questions, and Mr. Giblin and Ms. Summers are here as well.

CHAIRMAN FRYER: Okay. I thought that there was a third. I mean, we've got the one-third payment for the Thomasson improvements. We've got the 320,000 repayment. Wasn't there another staff condition?

MR. SABO: I don't believe so.

CHAIRMAN FRYER: Okay. All right. Commissioner Fry.

COMMISSIONER FRY: Is staff supportive of the deviations requested by the applicant?

MR. SABO: Yes. We find them to be reasonable.

COMMISSIONER VERNON: Mr. Chairman?

CHAIRMAN FRYER: Yes, Commissioner Vernon.

COMMISSIONER VERNON: I'm going to ask -- it sounds like a basic question, but why is height important? I mean, from my perspective, primarily, looks, aesthetics, number one -- or not number one, but one of the reasons. The other reason is density. It's just another way to talk about density, and which leads to the traffic issue.

So why -- am I missing something? Is that why height is important? Is that -- are those the factors I'm looking at in deciding height issues?

MR. SABO: For density? That's their request. Their request is height so they can get their density and they can park underneath the building. Ms. Summers did a very detailed analysis of the height for the CRA board. I would defer to her in terms of the research that she did related to the height.

But they -- my understanding is they want height to create that density, and they -- and they're moving from 10.89 to 12.8 units.

COMMISSIONER VERNON: Right. And I just -- very generic question, and I'm probably not asking it well. But just, generically speaking, why should staff -- or why should me and my colleagues be worried about height? It's how it looks, how it fits in the community, and density, which leads to traffic.

CHAIRMAN FRYER: May I take a crack at it --

COMMISSIONER FRY: Yes.

CHAIRMAN FRYER: -- and then be --

COMMISSIONER FRY: I want to make sure I'm not missing something.

CHAIRMAN FRYER: I want to -- and be corrected if I'm incorrect.

But as we have looked at previous projects -- and I'll just take, for example, One Naples. The subject of canyonization comes up, and that is a concept that involves height and setbacks and compatibility with other heights in the nearly surrounding area. It's -- arguably it is subjective, but it is a concept that is important, I think, from planning purposes, and height is one of the elements to be considered. Did I --

MR. SABO: You did a great job.

CHAIRMAN FRYER: Thank you. If -- now it's time to go to Commissioner Fry.

COMMISSIONER FRY: This is a general question for staff. I'm not sure who is best to answer it. But in my two years on this commission, I've noticed a pattern. That pattern is that every applicant says, we cannot reduce density. We cannot reduce height. We cannot reduce the number of units. We cannot reduce the number of vehicles because the project will no longer be financially feasible.

I do not have the expertise to understand whether those are true statements. I certainly like to take people at their word, and I know that these are upstanding citizens before us.

But does the county staff have anyone in the process pathway of these projects that actually can vet a reasonable balance between density and height and units and the financial feasibility of projects so that we up here -- because as our illustrative attorney says, we can say no but, you know, I have to say, I'm often feeling like that's too high, that's too many units, that's too dense, but nobody else in -- the staff is not saying no, and it's very hard for me to know that it's justifiable to say no or to ask for a reduction in any of these things.

CHAIRMAN FRYER: County Attorney.

MR. KLATZKOW: Keep in mind that you only see the rezones. There are projects that are done in this county under land that was previously granted development rights at whatever density it is. You could task staff to study that, okay, whether or not it's, indeed, necessary to have the increased density or are people actually developing property with less density. They're your staff. You can task them with that if the majority of this board wants them to do that.

COMMISSIONER FRY: So look at the data of other projects that were developed with less density and still considered financially feasible by the applicants, is what you're saying?

MR. KLATZKOW: Yes.

COMMISSIONER FRY: Thank you.

CHAIRMAN FRYER: One thing that I want to get confirmation on. It's my understanding that neither staff nor the Planning Commission gets access to the internal business plan where we could really see the projected profit to be made off of these developments.

MR. BELLOWS: Yeah. If I may, for the record, Ray Bellows, Zoning Services Manager.

CHAIRMAN FRYER: Yes, please.

MR. BELLOWS: The criteria that staff reviews all rezone applications is contained in your staff report. It's in the Land Development Code, and there's several criteria, many criteria, both PUD and rezoning criteria. That type of financial impact or feasibility is not a criteria that is in the Land Development Code, and we don't have the expertise to understand what is financially feasible or not, so we don't -- that's not part of the requirement of a rezone.

In regards to building heights and density, that's regulated through setbacks and capacity of the roadway. If there's capacity, then taller buildings could be allowed in order to provide those trips. But it's also a design feature, and if you're looking for compatibility with surrounding areas, a very tall building next to single-family homes may not be as compatible. So that's part of the subjective review by staff in the staff report.

CHAIRMAN FRYER: And the final analysis is, I believe, that when an applicant stands up and pushes back, if you will, by saying if we knock off 16 units from this project, what we've done is we have crossed over the line between profit and loss, we must take the applicant's word for that, because we don't have access to business plans; is that a fair statement?

MR. BELLOWS: For one developer it may be true. For another developer, they may be able to work it out financially. So that's a hard decision to know, because one builder may say I can't do it for that cost. Another might be able to do it for that cost.

COMMISSIONER KLUCIK: Mr. Chairman?

CHAIRMAN FRYER: Yes, Commissioner Klucik.

COMMISSIONER KLUCIK: Yes. Well, it seems to me, Mr. Chairman, you said that we have to take their word for it. I mean, to state it another way, you know, you can say that a project is unsightly or you could say the project is beautiful, and in the same way you can say -- I mean, you could give objective data if you wanted to, if you were an applicant, you know, to show why you're saying that it's, you know, not feasible. But if they don't present that data, it seems to be -- you know, I don't even think we should even consider it taking them at their word. What we're doing is we're relying on a factor that's -- in that context without data is very, very, you know, subjective rather than objective, and I think we can give whatever weight we want to to that, and I think that we need to be basing our decision then on, you know, whatever other criteria are there, and it seems like in the code, you know, under the rules that apply to this process, in the end, the county commissioners can impose, you know, extra criteria, you know, for or against, you know, in making their decision. You know, they can really decide whatever they want. We have to try to go by whatever the objective guidelines are.

And so I think we factor it in, I think we generally give benefit of the doubt, you know, to our fellow commissioner's, you know, concern that there seems to be a pattern. I think that that's good to point that out. There is a pattern. And I think we tend to make our assessments as commissioners, and I think that's all we can do. I don't think there's a better way to factor this in, but maybe I'm wrong.

CHAIRMAN FRYER: Thank you, and I take your point, and I agree with it that it may go to the weight of the evidence. And some developers, some applicants might come in with business plans to demonstrate -- or a third-party economic analysis to demonstrate where the point of crossing from profit to loss is so that we could make a more objective analysis, but without that, a -- if you will, with all due respect, a bald statement that we can't do it unless we have those 16 units may not be entitled to as much weight as some other evidence that is substantiated.

COMMISSIONER KLUCIK: Oh, I agree, Mr. Chairman, and I think that that's -- I think that's the risk that an applicant takes that we're just going to accept an assertion like that. And I don't see why we would accept assertions like that in a vacuum. I think, you know, we have to

base it on what we see from, you know, from -- you know, if we have an applicant, for instance, that's been active and they tend to, you know, be known to do good projects and have good results that the neighboring communities are -- you know, are pleased with and that the community seems to be pleased with, they would probably get more -- their claims or assertions would receive more weight and more credibility than the others, you know, without -- without the data that might help us be more objective about our analysis.

CHAIRMAN FRYER: Thank you, sir.

COMMISSIONER KLUCIK: That's all I have to say. I think it's a good point, and I'm glad it was raised.

CHAIRMAN FRYER: Thank you.

COMMISSIONER VERNON: Mr. Chairman.

CHAIRMAN FRYER: We've got -- I've got two before you, but I'll -- let's go first with Commissioner Fry, then Commissioner Shea, then Commissioner Vernon.

COMMISSIONER FRY: I just think that I brought this up because it's a general concern. I do think there's a fine line, because these are private entities coming in, and there is some privacy that goes with having a private entity. I'm a small business owner, and I believe in everybody's right to make a profit. So it is not about extracting sacrifice from the applicant. It's simply us being judicious in our decisions up here.

In this particular case, you know, we have an advisory board for the area, which I would assume is intimately -- much more intimately aware of the circumstances in that area, and they have voted 5-2 in favor of this. So I find this to be less of an issue on this than something that is highly contested.

You brought up One Naples, and I think that is one where they're building a very large project with a lot of units. And, you know, is it important that they might be able to scale it down and still make it financially successful? I think that would be more important in that type of an instance than in this one. There's no opposition, at least, that we've heard of as of yet. So I just think it is a fine line. But I appreciate the conversation.

CHAIRMAN FRYER: Thank you.

Commissioner Shea.

COMMISSIONER SHEA: Well, my comments were along the same lines. There's a lot of criteria that are very project specific, and for me one of the inputs, among many, is always are you getting a strong opposition from the neighborhood? And I don't -- I don't see that here, like we did with One Naples where it was so out of whack that the neighbors just, you know, came out in droves to protest it. I don't see that here.

CHAIRMAN FRYER: Commissioner Vernon.

COMMISSIONER VERNON: Yeah. Just very specific on the issue of: Well, we can't do the project if you do this. To me, this is sort of the number-one conceptual issue that I've struggled with since I've been on the Board, and my position may evolve, but as it sits here today, my opinion -- and this is a personal opinion just from sitting here and trying to figure it out, a quasi-judiciary board is, to me -- whether they're going to make a profit or not or whether they say they can or can't do the project is almost irrelevant.

COMMISSIONER SCHMITT: Right.

COMMISSIONER VERNON: And I was going to see what Joe thought, because he's been doing this a lot longer than I have. So he agrees with me.

But the only time I think it is relevant and it is, in my opinion, appropriate to think about it is when we think about what's going to be there if we don't approve it. And I think that came into play with One Naples.

So I kind of was kind of like, am I going too far in my analysis here with One Naples? But I say no because I think they credibly presented that what might be there is an alternative that we had a lot of concerns about.

So it can become relevant because our job, I think, is to, you know, help see this community grow in the right way. So it can become relevant if we're looking at what will be there if we deny this.

But other than that -- and this is my personal opinion -- and it sounds like Joe agrees with me -- it's really not relevant because -- why I think that is it gets us so deep into the weeds -- almost we're becoming a codeveloper, and we're saying, what's a fair profit? And I'm just philosophically not comfortable with that.

CHAIRMAN FRYER: Thank you.

Commissioner Schmitt.

COMMISSIONER SCHMITT: Yeah, just to clarify, and I do believe -- or I agree with Chris.

The only place we have any capability of reviewing the economic feasibility of a project is through the SRA, because that is in the code. And if you recall, any SRA-type application in the Rural Lands Stewardship Area is supposed to be economically -- what's the term? Within 10 years it's got to be economically equal or --

CHAIRMAN FRYER: Self-sufficient.

COMMISSIONER SCHMITT: -- self-sufficient.

So even if you recall then when we discussed an SRA application, we're still not privy to the inner-workings of the model. You recall Mark Strain, when he was chair, wanted to have access to that so he could play with the numbers. But I think that's way beyond our scope as planning commissioners.

Ray is correct, their criteria is clearly spelled out in the Land Development Code, which in your staff report they cover the rezoning criteria, and the applicant's criteria, which staff does the analysis, none of which discusses the economic feasibility. It really -- it doesn't. And I don't think -- I don't think we want to go down that avenue, just my opinion.

CHAIRMAN FRYER: Thank you. No one else is signaling on the -- oh, Commissioner Fry.

COMMISSIONER FRY: I'd like to comment on what you were saying, Commissioner Vernon. If you remember One Naples, the opposition called it the parade of horrors, that is, presented as, oh, if you don't approve this, this is what's going to happen.

And in talking -- and I won't name names, but in talking with several people that have lots of experience at the county, I kind of have arrived at a different point of -- a little bit different interpretation of that in that they said that while those things are technically possible, in most cases the economics of the projects that would -- that would realistically be developed are generally not as intense as what is presented as what might go there.

And so it -- for myself, it kind of deluded that argument a little bit for me in that there -- I believe there, overall, is a more reasonable balance struck even if we don't approve something between what might end up there than what might be presented as the extreme possibility. So I just wanted to throw that out there.

COMMISSIONER VERNON: You're just saying that in advocating they may be suggesting that it's going to be worse than it might actually be as practical matter?

COMMISSIONER FRY: They may be overstating what would actually be economically feasible and realistic to ever get developed there.

COMMISSIONER VERNON: Right, and I do agree with that.

CHAIRMAN FRYER: No one else is signaling on the deliberator. I'll ask our two commissioners who don't have access to that if they have anything further. Commissioner Vernon or Commissioner Klucik, anything further, gentlemen?

(No response.)

CHAIRMAN FRYER: If not --

COMMISSIONER KLUCIK: No.

CHAIRMAN FRYER: If not, I'll ask Mr. Sabo to wind up.

MR. SABO: Certainly, Mr. Chairman. One of the things I did want to mention, you brought height into the discussion. The Planning Commission always has the opportunity to present maybe a negotiation. So if you are not comfortable with the heights as they are, you can present to them, all right, we'll give you 71 feet on interior buildings, and because the ones near -- front the street will have a greater impact, we'll give you one less story on those buildings

that front the street. Now, the developer may object, obviously, but that's within your purview. And then Mr. Klatzkow also said that you can say no as well, so...

CHAIRMAN FRYER: Thank you.

I have one final question. We've mentioned -- or it's been mentioned that there are 388 total bonus points available for this overlay area, and of that, 97 each would be going to Courthouse Shadows, already is, and, if approved, also this development leaving whatever the difference is after subtracting two times 97. Is it staff's point of view that of all the foreseeable possibilities for use of those density units, that this is a laudable use or a good use that is deserving of the taking the 97 away from the 388?

MR. SABO: Yes, we believe so because it incentivizes development in an area that is -- could use this type of incentive, and that's why it was created to begin with.

I also have updated and accurate numbers on the bonus density credits. So Mattamy Homes is at 62, Courthouse Shadows is at 97, and this project would be at 97, leaving 122.

CHAIRMAN FRYER: Do you have anything in the pipeline that is sufficiently far along that you'd feel comfortable about comparing to this one?

MR. SABO: I am not aware.

CHAIRMAN FRYER: Okay. That's fine. Thank you.

All right. Before staff -- I'm sorry, Vice Chair.

COMMISSIONER HOMIAK: What's the base elevation in that area? It's in a flood zone, so I just want to know.

MR. SABO: I don't know. I'd have to defer. We could find that out for you.

CHAIRMAN FRYER: Okay. Any other questions or comments or observations for staff?

(No response.)

CHAIRMAN FRYER: If not, thank you, Mr. Sabo.

MR. SABO: Thank you very much.

CHAIRMAN FRYER: All right. We are at a point very close to when we would ordinarily have a break, and this might be the best time. I'm looking at the court reporter for an idea of whether this is a good time or we should ask Mr. Yovanovich if he wants to rebut first.

MR. YOVANOVICH: Are there any public speakers?

CHAIRMAN FRYER: Good point. Thank you. There weren't earlier, but we need to ask that question again.

So, Mr. Frantz, anybody signed up since we spoke last?

MR. FRANTZ: (Shakes head.)

CHAIRMAN FRYER: That's a negative, okay. No, zero.

So what does the Planning Commission want to do; take a break now or hear rebuttal?

COMMISSIONER SHEA: Rebuttal.

CHAIRMAN FRYER: Rebuttal.

All right. Mr. Yovanovich.

MR. YOVANOVICH: I don't have a lot of rebuttal, but I do want to talk about a couple of concepts that you-all were battering back and forth in your trying to figure out the density/height issue and whether you can rely upon what a developer tells you.

I just ask you to put yourself in my shoes when you ask me, Mr. Yovanovich, is your client willing to reduce the density on a project? And we've made our case that we think our height is consistent with -- or compatible with what's around the neighborhood. And I know your job is maybe to try to push back and see if you can reduce something that's before you. I can simply say to you no or -- I don't think you probably appreciate my just saying no. You'd want some type of an explanation as to why I'm telling you no.

Now, we're never going to show you our projected internal rate of return in what an individual developer is willing to spend at risk and what they would like to see the rate of return to be. No guarantee you're ever going to see that rate of return. And I could tell you, look at this project. I bet you Jim Fields would have showed you that when he was going into this project, he was going to make a decent profit. That's what he would -- he asked for the opportunity to do that.

He lost the property. He paid on his personal guarantees. His rate of return was negative. So he would have shown you a potential number that they may get to. He didn't get there.

What we're telling you is, when we come up here, we do our homework. We do look at what makes sense for a property owner. I would expect you, if I came in here and asked you for a 200-foot-tall building and said I can't go to 180 feet because I can't get a rate of return, you would have said to me, Mr. Yovanovich, there's nothing else anywhere near 180 feet. I didn't bring that project to you. I will never bring that project to you.

But we brought you a project that is consistent with and compatible with the neighborhood. Your staff had no issues with the height. We were asked at the CRA, could we reduce the height, and we respectfully said no, because, believe it or not, there's a lot of money that goes into building these buildings, and we have to spread those costs out, and this developer said it didn't make sense for him to put that amount of money at risk.

I didn't say that's a criteria for you to look at. But you asked me -- when I'm asked the reason why we say no to adjustments, I think I owe you an explanation as to why. I'm not saying our desire to make a profit is something you should factor.

But, at the end of the day, I'm not giving you a horrible that isn't realistic. I have zoning on the property that is for an affordable housing project. Will someone want to do an affordable housing project on that property? The answer is, if I gave them the land, probably yes, or I deeply discounted the land, probably yes. Someone else wanted to do an affordable housing project on this project, and they were told no.

So I don't think it's a legitimate -- I don't think it's a factor, but I don't want it to be held against us when we give you the reason why we're saying no; otherwise, I'll just come up here in the future and just say no without an explanation.

The CRA was created to entice investment and development in this area. A density pool was created to entice development in the area to increase density above, basically, three units per acre. Our densities are not inconsistent with what's in the area. Our height is compatible within the area.

James' one slide where he said, we're going from 40 to 71, he was comparing zoned height to actual height. We are -- you know that, Mr. Fry. We are going up in height from 40 zoned to 61. So there is a 21-foot increase. It's not a 30-foot increase from zoned height. I just wanted to make sure the record was clear on the -- on what was being compared as to apples and apples.

I will also tell you Collier County has changed. We're now an infill development. We have smaller parcels. You have to have higher density for smaller parcels to work. In the old days it was easy. You would do a golf course community on a few -- you know, several hundred acres. You'd have this artificially really low density because you had a golf course as the amenity, and everything worked.

The world's different here in Collier County now. You've got smaller parcels. Property owners are demanding and getting the higher price, and everything else is more expensive. So you do need density to make it all work.

But, again, I'm not saying profitability is factor for you to consider. You need to look at the height around us, the density around us, and what does the community, the CRA want. And the fact that you don't have anybody here complaining about what we're asking for, I think, is important based upon some of the factors that you guys have looked at in the past.

I do want to -- I do want to make -- it's not related to this project. It was just more about the economic analysis discussion. There is no profitability analysis that goes into the SRA analysis. You're going to have an SRA in front of you soon, so I want to make sure everybody's mind is clear when it comes forward. It is a fiscal-neutrality analysis that shows that our project will not have a negative fiscal impact on Collier County at buildout. It's not whether or not my client makes a certain amount of money within a period of 10 years. It's a fiscal neutrality analysis. I just want to make sure that's clear so when those come forward in the future, we're not -- we're not looking at this.

I will tell you that Greg and Michael have got other projects in Collier County. One's by Bear's Paw. They are a known developer here doing high -- high-quality, high-end product.

We're not somebody new coming to town, so I do think there should be some comfortability. And if you want me to bring them up here and tell you about their projects, I'm happy to do that. But we're not new.

We have no objections from your staff. We have, really, no objections from the CRA, and you don't have any objections from the public. I hope you'll follow the staff recommendation to recommend approval to the Board of County Commissioners.

And with that, I will stop talking and hopefully allow you-all to do your deliberations either before your break or after your break.

COMMISSIONER VERNON: I had a quick question.

CHAIRMAN FRYER: Commissioner Fry, then Commissioner Vernon.

COMMISSIONER FRY: I just want to be clear that my question that I raised was not specific to this developer. I plan to vote in favor of this project and I will say, primarily, because the CRA advisory board is in favor of it, and I consider it much more in their interest to scrutinize the project and decide if it's right for their area. And if the County Commission sitting as the CRA itself feels otherwise, I think that's up to them.

For myself, there's nobody in opposition, so I plan to vote for it. It was not at all directed at this particular developer. It was simply that after sitting here for two years it kind of finally dawned on me that that's something I struggle with. So the timing had nothing to do with this project, so I just wanted to make that clear.

CHAIRMAN FRYER: Commissioner Vernon.

COMMISSIONER VERNON: I just want to be clear that -- hear from you, Rich, and staff that Commissioner Fry's question about not going to be able to add amenities without coming back before and getting some additional approval; that that's going to be in the approval we're approving. Do you remember when he asked -- he was concerned about the pool and the chickee hut and that, you know, we're not going to -- if you come back and add pickleball or something later, that you'll have to come back before us because there won't be enough parking.

MR. YOVANOVICH: Well, I might have answered that question a little bit differently, but...

COMMISSIONER VERNON: Well, I'm glad I asked it then.

MR. YOVANOVICH: I think the general basis for the deviation is the location of the amenities and the size of the project and whether or not people will really be driving to them.

This is a -- this is a very small piece of property. Even I can walk from the furthest unit to the swimming pool. If we swap out a swimming pool for a pickleball court, or I decide that I have a little bit of room to add a pickleball court, I don't want to misrepresent that we're definitely coming back through the review process. I think Wayne was right that that's -- that's what's going to be there and that's generally going to be the size of it, but I think the reason, generally, for the approval was the size and scope of the project and the easy walkability. Ray may have a different opinion on that.

So I don't want to misrepresent that I'm absolutely coming back if I add a pickleball court somewhere on this property because I can find a place to put it, but I don't think we're getting that deviation just because we're showing a small clubhouse and a pool. I think we're -- I think we've made the case that it's a small site; that wherever we put the amenities, it's easy to walk to.

Am I wrong, Ray?

MR. BELLOWS: For the record, Ray Bellows.

The Land Development Code under the parking requirements includes some similar reductions in parking requirements for proximity to amenities. So I don't see a problem, if you're going beyond that, to add additional reductions.

MR. YOVANOVICH: But if you make it a condition, we'll live with it, but I just don't know that it's really necessary.

CHAIRMAN FRYER: Anything further from the Planning Commission?

(No response.)

CHAIRMAN FRYER: If not, anything further, Mr. Yovanovich?

MR. YOVANOVICH: No. Just if you have questions, we're happy to answer them.

CHAIRMAN FRYER: Okay.

MR. YOVANOVICH: And we ask for approval.

CHAIRMAN FRYER: All right. Then we'll close the public comment portion of this meeting, and I'll ask the Planning Commission, do you want to take a break first and then deliberate or deliberate and vote and then take a break?

COMMISSIONER SHEA: Deliberate.

COMMISSIONER FRY: Deliberate.

CHAIRMAN FRYER: The deliberators have it. All right.

COMMISSIONER FRY: Well, that was just two people that spoke up.

COMMISSIONER HOMIAK: Either.

COMMISSIONER SCHMITT: Either way is fine with me. We'll move --

COMMISSIONER VERNON: We're fine -- I'm fine deliberating. I'm fine.

CHAIRMAN FRYER: All right. Then I'm going to ask any planning commissioner who wishes to be heard on this before we take a vote to please so signal. And no one is alighted. And I don't hear from either of our commissioners that don't have the advantage of the deliberator device.

So with that, I'd entertain a motion from --

COMMISSIONER HOMIAK: Make a motion to approve.

COMMISSIONER VERNON: Vernon seconds.

COMMISSIONER SCHMITT: You have to have a motion to approve each one.

COMMISSIONER HOMIAK: Oh, that's right. Two separate motions.

CHAIRMAN FRYER: We'll take the GMPA first. This is on the GMPA.

COMMISSIONER HOMIAK: Okay. I'll make a motion to approve.

CHAIRMAN FRYER: Okay. Is there a second?

COMMISSIONER VERNON: Vernon.

CHAIRMAN FRYER: Second by Mr. Vernon.

The only other thing that I want to say before I vote is there are two issues here that are somewhat unrelated but, nonetheless, give me conflict. The one, the fact that there will be de minimus increases in traffic on a deficient segment going forward, undoubtedly, and, ultimately, I fear that those de minimus exceptions or increases will add up to a significant further deficiency and a further negative impact on the people who use Segment 92.

But I'm not going to oppose this for the main reason that, first of all, I think the location of affordable housing, I think it is saturated in East Naples at this point. As a county we need more of it, but I'd personally like to see it more evenly distributed, and no members of the public sought to be heard on this, and I find that to be a significant factor in determining how I vote, and so I'm going to vote in favor of it.

Anybody else want to make any statements?

COMMISSIONER HOMIAK: I just want to speak on the traffic for a second. I've lived in this same area for 33 years, and I've traveled these roads all the time, and the only time they're always bad is in season, because the rest of the time it's livable. It's not a -- it's not a horrible situation, so...

CHAIRMAN FRYER: Okay.

COMMISSIONER HOMIAK: And this area's been waiting for this kind of a thing for a long time.

COMMISSIONER SCHMITT: Right.

CHAIRMAN FRYER: Okay. Seeing no further indications of people wanting to speak, I'll call the question. All those in favor of -- this is the GMPA. 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: That was an aye from Commissioner Klucik?

COMMISSIONER KLUCIK: Yes.

CHAIRMAN FRYER: Yes, it passes unanimously.

Now a motion on the PUDA, please.

COMMISSIONER SCHMITT: I make a motion to approve the PUDA for Camden Landing, PL20190001364, motion of approval, and in that motion it would be subject with the recommendation to the Board of County Commissioners that if the applicant chooses to revoke the affordable housing density bonus, that they're subject to repay the monies owed back to the Affordable Housing Trust Fund, which is inherently part of this, but -- it's not a quid pro quo for the zoning, but it's subject to -- specifically to the elimination of the affordable housing density bonus, which is up to the applicant to do that.

CHAIRMAN FRYER: Okay. And before there's a second, I think we want, just to be sure the record is clear, that the second staff condition, if you will, which I believe has been agreed to by the petitioner, was that one-third of the cost of the Thomasson road improvements will be paid for by the applicant.

COMMISSIONER SCHMITT: Yes.

CHAIRMAN FRYER: So that's also part of your motion?

COMMISSIONER SCHMITT: Yes.

CHAIRMAN FRYER: Is there a second?

COMMISSIONER HOMIAK: Second.

CHAIRMAN FRYER: Any further discussion?

(No response.)

CHAIRMAN FRYER: If not, all those in favor of the approval of the PUDA, 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: And it passes unanimously.

Thank you, applicant and agents.

MR. YOVANOVICH: Thank you.

CHAIRMAN FRYER: We will stand in recess for 10 minutes until 10:48, please.

(A brief recess was had from 10:38 a.m. to 10:48 a.m.)

CHAIRMAN FRYER: Ladies and gentlemen, let's return to session.

***We come to new business, and we have before us the opportunity of a workshop. We've received materials from County Attorney Klatzkow, and I propose that we ask the County Attorney to take us through these materials at this time. And one caveat, if I may, just as a respectful suggestion to my colleagues, unless a planning commissioner deems it absolutely necessary to interrupt the presentation in order to gain an immediate understanding of what's being presented, I would suggest that we hold our questions and comments until Mr. Klatzkow has finished at least each individual topic.

I believe Growth Management staff has not prepared a formal presentation, but I'll also ask for any questions or comments that they may have at the appropriate time.

And our agenda shows two items for discussion, legislative and quasi-judicial actions, one; and the second, Sunshine. After we cover these subjects, I'm going to open up the discussion for

any other issues any planning commissioner may wish to raise in the workshop and also, as I mentioned at the beginning of this meeting, that would also be a good time for us to have further discussion of what staff is going to be proposing with respect to oversight of the HEX agenda.

So without objection, we'll proceed along those lines, Mr. County Attorney.

MR. KLATZKOW: Yes, and this was prepared at your request and your direction. And it's -- I would welcome questions as we go through this because this is really something that I'm doing for your behalf. I'd like to thank Sally on this, by the way. She's the one who put together the presentation, because my IT skills are just -- well, I was good at DOS and after that, I just -- I gave up.

COMMISSIONER HOMIAK: DOS.

CHAIRMAN FRYER: Mr. Klatzkow's willing to be interrupted, but I suggest to him that he's careful of what he wishes for.

MR. KLATZKOW: No, that's fine. That's fine. I like -- I enjoy a give and take.

All right. Just to state the obvious here, which sometimes gets forgotten, you are the Planning Commission. The Planning Commission, okay; your job is to plan.

You've got three sources of authority. You've got the Florida Statutes, you've got a 1967 Special Act that's unique to Collier County, and then you've got ordinances. All three of these basically say the same thing.

On the Florida Statute, every local government has a local planning agency. You are that local planning agency. If you're wondering why Mr. Eastman sits with us, it's because of this section that requires us to have a member of the school board with us. And if you're wondering why he doesn't vote, that's the reason he doesn't vote.

You have the primary responsibility for the Comprehensive Plan. Let me say this again. This board, okay, has the primary responsibility for the Comprehensive Plan. You are the agency that was responsible for initially drafting this plan. You are the agency that's responsible for any plan amendment. You are the agency responsible to make any recommendations as far as changing it goes to the Board of County Commissioners. It rests with you.

The 1967 act, unique to Collier County, again, established a Planning Commission. It says more or less the same things as the special -- as the Florida Statute, and our ordinance, again, is going to mirror both the 1967 act and the legislation.

I would note that some of the quirks in here is that you also sit as the county's Environmental Advisory Council. And the reason for that is once upon a time we had an Environmental Advisory Council. We've got, between our various codes, many references to them. When the Board elected to eliminate the advisory council, it was thought that rather than go through and get rid of all these requirements in the code, that we simply would give them to you, and should there be one day a decision by the Board to re-establish a separate environmental council, we would do so.

The staff over at Growth Management is your staff by ordinance, all right. You are authorized to direct them to do tasks from time to time. That doesn't mean you as a planning commissioner can do that, okay. But as a board, if there's anything you wish staff to present to you, a study, whatever, it is your prerogative, okay, to seek that, and it is their obligation to give that to you. I think that might be unique as to all of the advisory boards.

In addition to your primary role as the keeper of the Comprehensive Plan, you also hear anything that really amends the Land Development Code, which includes rezonings. The Board also has you look at conditional uses. These are quasi-judicial hearings as compared to legislative. The difference between a legislative hearing and a quasi-judicial, legislative you're setting policy. In other words, from time to time you may wish to amend the Comprehensive Plan. That is setting new policy for the county. That is in your legislative function.

There are other times when you're implementing the policy. A rezoning is the typical methodology that you do that, and you have criteria to review as part of that. There you're acting in a quasi-judicial role, and I'll get to the meaning of quasi-judicial.

Again, at its core, if you're looking at criteria, you're quasi-judicial. If you're looking at legislation, it's legislative.

Quasi-judicial, think of it as light beer, all right. You're not a court, just like light beer, is not really beer, but you're sort of like that.

COMMISSIONER SHEA: I object.

MR. KLATZKOW: It's not, okay.

COMMISSIONER FRY: I second.

MR. KLATZKOW: It's a nice drink, but it's not real beer.

All right. So in other words, you're acting sort of in a judicial capacity, but you don't have all the attributes of court.

People come before you, court reporter swears them in, okay. Cross-examination is allowed. All right. You have to follow a minimum due process standard. You've got to be free from bias. The decisions have to be based on substantial competent evidence. Opportunity of the interested parties to be heard; however, unlike a courtroom, there are no formal rules of evidence. You'll never hear anybody say "I object," you know, or that nature, and you may freely engage in conversations amongst yourself, which is not something that would happen in a judicial proceeding.

Generally speaking, a quasi-judicial proceeding has an impact on a limited number of people: Variance, a rezone. It's a policy application again. Legislation generally involves many people.

I've talked about that.

Burden of proof. It's on the applicant to come forward and prove that his petition complies with the county Land Development Code and consistent with the Comp Plan. In other words, the applicant has the burden of showing that it meets the criteria. Once he's met that burden, it then shifts to the other side, whomever that other side might be. It's really anyone seeking denial. It could be the neighbors. It could be -- it's county staff. They're there to then simply provide substantial competent evidence that, no, it does not comply, all right.

Typically, it comes down to whether or not the rezoning application is compatible with the neighborhood. It seems as if that's the argument that I hear most often. It is a very subjective argument, but it is really at the crux of the matter. And One Naples is right there. It's not compatible with our neighborhood. It's too dense, what have you. Then you'll hear staff say that residential is always compatible with residential, whatever that means.

Ex parte communications, okay. Because you're functioning as sort of a court in a quasi-judicial proceeding, you've got to be careful with ex parte communications, and ex parte communications is a communication that's made outside of this room to you. It doesn't mean -- unlike a judge who won't listen to the parties, you're allowed to hear them, but then you've got to, when you get in here, disclose that, yes, I spoke to Mr. Yovanovich on this matter. And the reason you do that is the right of cross-examination, all right. Because they're saying -- they are saying things to you outside this room that the -- that another party might want to cross-examine on. That's the reason we do this. It's statutory requirement, and it's part of a resolution that we have that I've given to you. I will tell you that in all the years I've been here and before the Board of County Commissioners, only one time did somebody actually make an issue of ex parte and wanted to cross-examine. It just doesn't happen, but because it could happen, we ask you to do that.

Bert Harris. It is the Florida state policy to encourage development, period. That's been the policy in this state for a very, very long time.

Private property rights --

COMMISSIONER KLUCIK: Mr. Chairman.

MR. KLATZKOW: -- are sacrosanct in Florida.

CHAIRMAN FRYER: Commissioner Klucik.

COMMISSIONER KLUCIK: Yeah. If I had a question about a specific topic, should I wait until the end, or is it better to ask it now?

CHAIRMAN FRYER: Mr. Klatzkow is inviting questions at any time.

COMMISSIONER KLUCIK: All right. So go to your last slide on ex parte communications. I think that was your last slide. So if -- it's saying that, you know, the Jennings

rule, we can't discuss zoning matters outside of the public hearing. And I get it, you know, because the idea is the applicant or others have a right to know, you know, because it's ex parte.

As long as we disclose it, then we're fine and that's -- and then it's up to them if they want to make an issue of it. Is that basically the essence of what I heard you say?

MR. KLATZKOW: That's the essence. And, really, it's a balancing act. You have an elected official, Board of County Commissioners, for example, and people have the right to talk with their elected official. So it's a balancing right, it's a balancing thing where you've got the right to talk to your elected official, but if you're going to do so in this context, then the official has to disclose it. We talked about this. So there's an opportunity for somebody to cross-examine on that issue.

COMMISSIONER KLUCIK: So if I -- you know, for instance, if I were to talk to an applicant, then someone who's opposed to the application might be suspicious -- you know, whatever. I mean, obviously I'm giving a scenario. They could say, okay, well, gosh, we don't know what they said.

MR. KLATZKOW: Well, no, they would ask --

COMMISSIONER KLUCIK: If we want to go ahead and --

MR. KLATZKOW: They would ask you what was said, and then you would disclose that.

COMMISSIONER KLUCIK: Right. And then that would be subject to whatever sort of scrutiny the -- what, then, could that be subject to? Could there then be -- they could bring up the other person and ask them to confirm what was said?

MR. KLATZKOW: Yes.

COMMISSIONER KLUCIK: They could put me -- and me as well?

COMMISSIONER VERNON: He said, and him as well.

MR. KLATZKOW: Yes.

COMMISSIONER KLUCIK: Okay. So it's just -- it's not really a big deal. It's just, you know, if we're doing our job by trying to be well informed, we just need to understand that that's fine, but everything you say, you know, is -- you know, might turn into an issue, and you just gave a -- you just gave a practical point, though, that that just, in practice, doesn't happen very often.

MR. KLATZKOW: No. And one of the reasons it doesn't happen is that we have so few representatives for the applicants here. We've got Mr. Yovanovich, and I don't know who else right now, and before him we had Bruce Anderson along with him, and Bruce retired. And so you just don't have this as an issue here.

COMMISSIONER KLUCIK: Thank you.

MR. KLATZKOW: Rich is not going to cross-examine himself.

COMMISSIONER KLUCIK: This little discussion, you know, in your presentation is very helpful. Thank you.

MR. KLATZKOW: Thank you.

CHAIRMAN FRYER: I'd like to, if I may also, go back, and I apologize --

MR. KLATZKOW: No, no.

CHAIRMAN FRYER: -- for doing that. But with respect to on-site visits, which is generally related to a previous topic that you covered on, what, if any, limits are placed upon our findings or conclusions or discoveries in connection with that on-site visit?

MR. KLATZKOW: Nothing. I, in fact -- personally, if I have a matter, I will always go there and see for myself what is the dispute, whether it's a taking matter of major import or what have you. I think it's important to actually be there and understand what it is. You just have to disclose you did it.

The only other caveat I would have is go there alone; otherwise, you're risking Sunshine issues.

CHAIRMAN FRYER: Let's say that I make a site visit and one of the issues is setbacks. The setbacks are inadequate in my opinion as a planning commissioner. And let's say that I, then, undertake to measure the actual setback -- and this is all hypothetical -- of the Ritz-Carlton and discover that it's 700 feet of setback. What, if anything, are the limits or constraints placed upon

me with respect to that information that I've acquired?

MR. KLATZKOW: You can do that. You'll need to disclose that, and then you'll be subject to cross-examination.

CHAIRMAN FRYER: All right. So at what point do the things that I learn subject me to cross-examination?

MR. KLATZKOW: You have to disclose what you've learned. You say I did a site visit, all right and, you know, these were my findings, and at that point in time you would be subject to cross-examination as to whether those findings were accurate or not.

CHAIRMAN FRYER: So as a practical matter, that would strongly discourage us from making, for lack of a better word, findings of our own based upon what we see at a site visit.

MR. KLATZKOW: If you want to take a tape measure -- if you want to take a tape measure and start doing setbacks, I think you might find some problems with that; if you want to just look at the site to get an overall view of how it fits in with the surrounding neighborhood -- and for compatibility that's a key portion of it -- there's very little to be cross-examined on.

CHAIRMAN FRYER: So if a planning commissioner were to do a site visit and make a general observation, not a tape measure but a general observation, that the Ritz-Carlton has a huge setback, and the planning commissioner could come back and ask the applicant what -- how he accounts for that huge setback when he is attempting to draw comparisons to the Ritz-Carlton in relation to his project.

MR. KLATZKOW: It's -- it's subject to a conversation by this board, if that's what you want. Always subject to cross-examination.

CHAIRMAN FRYER: All right. But --

MR. KLATZKOW: Which is why at an earlier proceeding when you came forward with a detailed analysis, I said, it's probably not a good idea that you continue here, because the cross-examination could have gone on and been very, very lengthy on that.

CHAIRMAN FRYER: I understand. And, of course, I took your advice to heart, as I always do and would, but, nonetheless, I see an issue, and I -- maybe -- maybe it's not an issue for others, but...

COMMISSIONER VERNON: I do have a comment about it.

CHAIRMAN FRYER: You want to go ahead?

COMMISSIONER VERNON: Yeah.

CHAIRMAN FRYER: Please do.

COMMISSIONER VERNON: To me the litmus test is, the only reason I would go do a site visit is to get something that I can't get the equivalent from from staff or the applicant or both.

You know, we're going to -- from staff -- so we're kind of getting both sides. From staff and the applicant, we're going to get the setback numbers. We're going to get -- I mean, that's what the staff's for, to give us that kind of information.

The only reason I go out to a site is just to get the subjective feeling: Huge setbacks compared to short setbacks as opposed to 725 feet versus 125 feet, because then I think we get into the point where -- at some point somebody's -- some smart lawyer is going to cross-examine you, and all of a sudden your numbers don't jive with the staff's numbers, and then we -- you know, it almost also falls under the heading of "no good deed goes unpunished" from my perspective. You're trying to do your job really well, but it ends up making it more complex.

Jeff, does that make any sense to you?

MR. KLATZKOW: Yeah, it makes all the sense in the world to me.

COMMISSIONER KLUCIK: I have a quick question.

CHAIRMAN FRYER: Go ahead, Commissioner.

COMMISSIONER KLUCIK: All right. So -- and it's -- I know it sounds sort of pedantic, and I hope you'll excuse it. I think, you know, I can sense in my fellow commissioners we all -- well, at least some of us are kind of scratching our heads. So if I have driven by whatever site a million times, I don't have to disclose it, because that's just knowledge that I have obtained through my life experience versus, hey, this is on our agenda, I'm going to go look at it?

MR. KLATZKOW: That is correct.

COMMISSIONER KLUCIK: Okay. So, for instance -- and this is a perfect example. So the Ave Maria SRA is coming up, you know, soon. I obviously know a lot about the community because I've lived here for 13 years, and I have very particular knowledge about certain things. So when I bring that up, there's really not a need to disclose anything unless I went out and sought particular knowledge again or to reconfirm something because I saw there was this petition.

MR. KLATZKOW: Yeah, that's correct. I mean, you'd have to disclose whatever conversations you've had with the applicant. And I'm going to assume you're going to be having conversations with the applicant, or at least they'll try to have conversations with you. But, yeah, just your general knowledge having lived in the community, it is what it is.

COMMISSIONER KLUCIK: Okay. Thank you.

CHAIRMAN FRYER: Thank you.

MR. KLATZKOW: There's a reason -- there's a reason that the Planning Commission is set up so that we have a planning commissioner from each district. I mean, we want the knowledge on this board of what the community impact is going to be. If we had everybody on this board who lived in Naples, you wouldn't have that knowledge. It's why we geographically dispersed this board, just for that knowledge.

COMMISSIONER SHEA: I had a comment, too. I guess -- is that lighting up?

CHAIRMAN FRYER: I see it now. Commissioner Shea.

COMMISSIONER SHEA: I don't want us to feel legally we shouldn't go to the site. I go to almost every site, and for the reasons Chris is talking about, which is just get a feel for the lay of the land. You can't get that in a two-dimensional drawing, you know. And you really have to have that feel when you're listening to both sides of it. I think it's really important. And I don't want the legal side of this thing to scare us away from doing that. I think we do a better job when we do go to the site and we do see what it feels like out there.

MR. KLATZKOW: Which is a difference between the visiting a site and taking out the tape measure.

COMMISSIONER SHEA: Exactly.

COMMISSIONER HOMIAK: Well, you'd have to have permission to be on somebody's property.

MR. KLATZKOW: Well, usually you're in public right-of-way.

CHAIRMAN FRYER: Yeah. Sorry to interrupt.

MR. KLATZKOW: No, no, no. I would prefer that you do that. This is for your benefit.

Let's just talk about private property rights for a second. So the understanding is that private property rights are jealously guarded by the Florida legislature and the Florida Constitution, and in an eminent domain trial, it's 12 members for a jury, all right. For a robbery, it's six, all right. So the state legislature puts greater protections on private property rights than it does on, well, not going to jail. It's -- that's how deep the policy is in this state.

CHAIRMAN FRYER: May I interrupt?

MR. KLATZKOW: Yeah.

CHAIRMAN FRYER: Is the state policy with respect to private property rights more favorable to those of developers versus those of individual residents, neighbors?

MR. KLATZKOW: Developers.

CHAIRMAN FRYER: Applicants?

MR. KLATZKOW: Applicants. It's -- you've got a right to develop your property in this state, and I'll get into that more, but -- and it's a -- it's a strong right.

That's why you've got the Bert Harris Act which basically tells local governments, if you're going to try to unfairly deprive somebody of the ability to develop their property, there are significant financial repercussions.

CHAIRMAN FRYER: But if the property-right holder happens to be an individual as opposed to a developer or a contract purchaser or -- you know, it's equal.

MR. KLATZKOW: Equal, yeah.

CHAIRMAN FRYER: Okay. Thank you.

MR. KLATZKOW: All right. Let's talk about concurrency.

CHAIRMAN FRYER: Before we do, Commissioner Fry has a question. Sorry.

COMMISSIONER FRY: Jeff, last meeting we had The Quarry, and we had the -- what was the name of the road, the little road, private road?

COMMISSIONER SHEA: Limestone.

COMMISSIONER FRY: Limestone. Limestone Trail. And by -- it was a privately owned road, and by the public using it, they would have additional maintenance costs and maybe security issues and liability issues. And then we talked about allowing the two-way access inside the developments, which would have done similar things to the roads internal to their developments. Would they have had -- I brought it up then, but I just wanted to understand more perspective. Would they have had a Bert Harris case?

MR. KLATZKOW: My view is substantially different than staff's view on that, all right. It's my belief that if the -- if the Board of County Commissioners wanted that as an access road, we could have required that in the PUD and we -- failing that, staff could have made sure that when it was platted, it was platted as a public road. Staff did not do that. So that from a planning standpoint, it was planned to be a private road. So my view on that is different from staff's, and I'll leave it at that.

COMMISSIONER FRY: But it was a private road and the roads internal were private roads. So if we had approved that and forced public traffic on a private road, not allowed them to put up gates, would they have, then, had a Bert Harris?

MR. KLATZKOW: Well, the gates are a different issue. When that project was -- when this project came forward, it was a unitary project. One developer was supposed to be integrated. I don't know how many times I've sat in that chair over the last 15 years having people say, well, the traffic impact is going to be lessened because we'll have internal capture, all right. And so they'll say, instead of having 100 trips, it's going to be 85 trips because the people will have access to the commercial, then they would have to go out on the arterial road, and then a couple years later they're always asking to cut that out, because once the residents take over, they want the gates, because that's what Naples is. It's people coming from all over the country without gates. They get here. Now they want their gate. It's just how we are.

But the times change and, you know, needs change, and then it was no longer a unitary project. It got balkanized over the years into separate developments, separate commercial, separate residential developments. Now everybody wants their own gate, and I understand that.

But the original concept was a unitary development where people could go to the commercial centers without having to pour onto the arterial road first. It's an internal capture issue. That's the gate issue. But there's a difference between a gate issue, which allows the internal movement throughout the entire place, than having the public utilize those roads. Those are two separate things.

All right. Concurrency. Under the Florida Statute, the only real concurrency is sanitary sewer, solid waste, drainage, and potable water. Everything else is discretionary to the local government, all right. So on a statewide basis, you have to have the ability to turn on the water and you have to have the ability to flush and you have to have the ability to get your garbage somewhere else, and these are just basic public health issues, all right.

The Florida Legislature then says to the local governments, you're allowed to put concurrency on a bunch of other things if you want to, okay, and this county has. But understand what -- the point of this. Statutorily, the point of concurrency is so that you'll have the facilities available at the time that development is actually in place, all right.

So when Trinity comes in here and talks about the impacts to the road, the purpose of that is not for you to say no to the development. The purpose for you is to figure out, because you are the Planning Commission, okay, how, over time, we're going to increase road capacity to handle all of this.

We also do this as a county every year in the AUIR where staff gives you a report saying this is where we are from a capital element. This is what we think we're going to need. And that's your -- that's your time to review it and say, well, I think we need more here or more or less

there.

So the point of concurrency is not to stop development, other than water, because you can't have a house without water, all right. The purpose of concurrency is to plan. That's why we have a Capital Improvement Element in the Comprehensive Plan, which is saying, okay, we know what growth's going to be over the next five, 10, 15 years. In order to plan for this growth, we need these much roads, these many schools, these many fire stations and so forth. It's a planning tool. It's not a tool to be used to say no to development.

If our roads are too crowded, that's not the particular development's fault. That's on us because, for whatever reason, we did not plan for that level of capacity, and it's as simple as that.

COMMISSIONER SHEA: Can I ask -- I don't get the term "concurrency." I understand planning, planning infrastructure, but for some reason concurrency doesn't -- I'm not sure what that means.

MR. KLATZKOW: What it basically means is that by the time you open up that development, there's going to be room in the schools for those children. There's going to be adequate road capacity for their cars. There's going to be adequate parks that are open for them to recreate in. There's going to be adequate library facilities for them to use. There's going to be adequate fire and EMS, you know, in case there's an emergency. That's what we really mean. We're planning for future growth, and it's hard, all right. I mean, the Soviets had these famous five-year plans that never worked because you make a plan in year one, and by the time you're in year three, let alone year five, circumstances have changed, but we try to do the best we can.

The county has internally struggled with this. There was a point in time where we had separate divisions between Planning and Transportation. Then the thought process was to merge them both together so that the Transportation people and the Planning people can talk about what the impacts of these things are. That had mixed success, quite frankly, and there will probably be another reorganization along those lines because, you know, people are -- people grow tired of traffic, and whatever we're doing currently isn't working. It's just not.

CHAIRMAN FRYER: If I may follow up on that. We've got a significant concurrency problem on Road Segment 92, which is the East Trail. And, of course, you know, as a Planning Commission, we -- we have the right to deny an application or recommend denial, I should say, of an application based upon the lack of concurrency, but on the other hand, that places the burden on the developer rather than the county.

MR. KLATZKOW: You really don't have the right -- unless it's water, you really don't have the right to say no. It's -- again, the problem is not the developers. The problem is us.

Now, when somebody comes in here and says, I need more density because that's the only way to make this project work, which, personal opinion, is nonsense, all right, because they bought the damn thing with the current zoning on it, so there is some reasonable expectation, all right.

And, in the 15 years I've been here -- and I've been sitting in that chair for 15 years now -- I would say that 95 percent of all the applications asking for increased density have been granted. And so you've got these five-year plans and these 10-year plans and, ultimately, these 30-year plans that are based on a certain number of people coming to the county, and that number's always moving. And it gets to a point where for the area of the county that is west of 951, we six-laned everything. We're done. We can't put in any more roads.

In the 15 years I've been here, we six-laned all the arterials. We put in, as a new road, Livingston. At this point in time, we're down to making intersection improvements. I can tell you that they are exceedingly expensive because commercial tends to abut the right-of-way at that point in time, and now these takings get to be extraordinarily expensive if that's what's needed.

We're talking flyovers in an effort to get rid of this. The reason we had that problem is because the Board, a generation ago, decided to allow golf courses in this area, which destroyed any grid system you can have. So the sheer number of golf courses we have destroys the grid system, which requires us to have an arterial system, and, you know, there's only so much you can do with an arterial system.

Now, the trick's going to be what we do with Eastern Collier County, how we manage that growth and -- because we're pretty much done with building out the area that is west of 951 as far

as what we can do for roads other than overpasses. But that will be the -- that will be the trick.

And the thought process is half the population of this county is going to be on the other side of 951 by the time we're built out. So, you know, don't think of it as just a minority of the population. It's going to probably be at least half the population when all is said and done. So this board has the chance to make sure that the infrastructure gets in right.

Now, mind you, the Board of County Commissioners has the ultimate say. And at the end of the day the Board of County Commissioners has to program funding for all of this, and that's a lot harder than it is to say. But this is the board that's primarily responsible for making the recommendations to the Board of County Commissioners that this is what we need to do. It's not staff. It's you. Now, staff can make recommendations to you but, ultimately, it's you.

And I will tell you that in the 15 years I've been sitting in this seat, this is by far the strongest Planning Commission I've had the pleasure of working with. Mark Strain was absolutely outstanding but, as a group, this is -- this is as strong a group as we've ever had, and I'm very appreciative of that, and I believe that the Board is very appreciative of that, too. So what you have to say to the Board has a great deal of weight at this point in time.

If there are no other questions, I know I have Colleen Greene here who's going to give a brief presentation on the Sunshine and public records.

CHAIRMAN FRYER: Thank you.

COMMISSIONER FRY: May I ask Jeff a question before you leave?

CHAIRMAN FRYER: Go ahead.

COMMISSIONER FRY: Jeff, you mentioned 15 years in this chair.

MR. KLATZKOW: I've been sitting in that seat for 15 years. I started out working or running Horseshoe office when it became -- and I sat in that seat. When I became Deputy County Attorney, I sat in that seat, and when I became County Attorney, I continued to sit in the seat because it has always been my personal opinion that this is by far the most important of the advisory boards. That is not to say that the other advisory boards have no importance. But in my opinion, this by far the most important of the advisory boards.

COMMISSIONER FRY: You mentioned that over that time, I think you said, 95 percent of the applications for additional density have been approved.

MR. KLATZKOW: Yeah.

COMMISSIONER FRY: So it begs in me the question, I get the impression at times -- I mostly hang on every word you say because you just cut right to the chase, and it's always based on a lot of experience. Are there -- so I assume that means there are a lot of opportunities that this commission has had over the years where perhaps you might have felt we could have said no. I'm just curious if we're missing something in the criteria that --

MR. KLATZKOW: You could always say no to increased density.

COMMISSIONER FRY: I know it's easier said than done, though. I think it's --

MR. KLATZKOW: Well, it's a policy decision. There's nothing wrong with hammer swinging in this county, all right. We know what it's like in this county when the hammer stops swinging. My office had hundreds and hundreds of foreclosures that we dealt with during the -- during the great recession; many of those people who had lost jobs in the construction industry. It was horrible, all right, and it took a couple years to get through that. And there's a lot of good to be said about the development, all right.

But what I'm telling you is that you've got to plan for development. And when you increase the density, which is a policy decision -- and I'm not saying it's bad or good, okay -- you've got to then plan for that extra development by increasing the number of libraries or the parks or the roads or what have you. You just -- you cannot increase density and then do nothing for your Capital Improvement Program, all right. It's got to be hand in hand.

And we try with impact fees to have growth pays for growth. That is imperfect at best. But for every time somebody comes in asking for increased density, well, that's more school kids that have to be educated, and then we -- and we do have Tom here, which is one of the reasons Tom is here, most of the time.

And, you know, there are people who are going to be consuming public services, such as

libraries and museums and parks and the like. And if you don't adequately plan for that, and you are the planning agency, all right, then the quality of life in this county, which is exceptional right now, which is why we have so many people coming into the county, that quality of life will eventually diminish.

COMMISSIONER FRY: The image that you're projecting of this commission, I think the definition is, I take it to mean a more proactive agency than I feel we are. I feel we're very reactive. We have issues that are introduced to us. We rule on them one by one, and there are a few things, the AUIR --

MR. KLATZKOW: You are the keepers of the Comprehensive Plan.

COMMISSIONER FRY: Well, I feel like we need to be more proactive than we are.

MR. KLATZKOW: You are the keepers of the Comprehensive Plan, okay, under both the statute, the 1967 Act, and the ordinance. And you are the agency that's responsible for making recommendations to the Board. How active you wish to be in that role is up to you as a board.

CHAIRMAN FRYER: Commissioner Schmitt.

COMMISSIONER SCHMITT: Yeah. I want to concur with Jeff, him sitting in that chair for 15 years and his statement that this is an important board. It is. In my previous capacity, I used to sit up in that chair as well with Ray. Ray's been there, like -- have you ever left, Ray? No.

MR. KLATZKOW: Ray was born here.

COMMISSIONER SCHMITT: He's been here for a while.

But this, at that time -- and Jeff can probably highlight the dynamics of growth in this county.

I came on board after the incidence in the late '90s, otherwise known as Stadium Naples, when there was a real effort to control growth, and then, of course, the inertia that the Board gets from the industry, because they want growth to happen. And it is a balancing act, but our job is to make sure that it complies with the Land Development Code and the Comprehensive Plan, and that's our job.

We have to rely on staff to advise us, but you also have to trust your instincts. And I sense -- you all have been on the Board for a long time, and your instincts are great. My compliments, because that's our job. And I do believe that it is a -- in the past, and it's -- and, Jeff, again, he's -- I'll ask him to comment, but it is a dynamic. It's like a pendulum. It's -- one year it's, we've got to stop everything, and then there's a lot of pressure to make sure that everything doesn't stop to a point where nobody's working. So it's a balancing act.

MR. KLATZKOW: It's an absolute pendulum. And, Joe, as you'll remember, people lose their jobs in this county over it --

COMMISSIONER SCHMITT: Yep.

MR. KLATZKOW: -- where especially in your old gig where they'll get painted as pro-developers.

COMMISSIONER SCHMITT: Right.

MR. KLATZKOW: And everybody gets fired, and then, you know, time will go on and say, these people aren't doing enough to get development in the county, and they'll be fired.

COMMISSIONER SCHMITT: Right.

MR. KLATZKOW: So it has absolutely been a pendulum, and it swings with every recession.

COMMISSIONER VERNON: I do have a thought I want to get comment from Jeff on.

CHAIRMAN FRYER: Please go ahead.

COMMISSIONER VERNON: And maybe Joe might want to comment on this.

It seems to me that my understanding of big picture is that overall density is scary and can be bad because it clogs the roads, et cetera, et cetera, et cetera, but density within a project is not necessarily a bad thing because of what the old-timy term "urban sprawl," and in terms of getting services to people and managing growth well; is that accurate? Because I don't want to get caught up in we don't like a density of a particular project because we're afraid of overall density. They're really two different things.

COMMISSIONER SCHMITT: Well, the dynamic with density as well is -- are the other competing demands on any project. You have so much you have to put in preserve. Of course, if they're jurisdictional wetlands and they go through the various aspects of Section 404 of the Clean Water Act when they have to go through the permitting process, through the U.S. Army Corps of Engineers, and through the other federal agencies -- and, oh, by the way, some of that, I guess, may be transferred to the State. That's a whole other issue.

But -- and then the requirements for water management. So when you look at a development, there are significant demands on the large piece of property. Let's take a 2,000-acre PUD. When you look at the overall density, it may be 1.4 units an acre, but when you take everything out, all the other requirements that they have to meet for water management, for preserve, most of our projects are -- even our single-family communities are dense, and that's because you'll see the side-yard setbacks in most home developments -- the communities now are seven-and-a-half feet side-yard setbacks. Some even go to five feet because of all the other demands. So in a nutshell, that's the density, even when we look at projects in the future as they come in, even for the eastern properties because of all the other requirements placed on a developer.

Adding that, then, the density has the impact on all the other essential public services, primarily roads, and we went through some pretty dynamic times here with roads, and back at that time we used to call it the checkbook concurrency. But how many moratoria did we have? Probably at least two or three where --

MR. KLATZKOW: Yeah. Those were under the old rules.

COMMISSIONER SCHMITT: Under the old rules where we suspended all development.

MR. KLATZKOW: You can suspend development for up to a year, but you have to have a plan.

COMMISSIONER SCHMITT: You have to have a plan.

MR. KLATZKOW: Okay. So the plan back then was, okay, we're six-laning Immokalee Road. You can't start your -- no -- you can't start actually building homes or issuing certificates of occupancy until the job is completed, but then there was a very limited time frame. So from that standpoint, you can do a moratorium.

And to get back to what Commissioner Schmitt was saying -- and correct me, because my memory sometimes gets hazy -- but I seem to recall once upon a time you closed your shop just to get everything organized because you were getting just flooded by applications, and the development community just went ballistic on you. And it was one day of just, we need a breather here.

COMMISSIONER SCHMITT: Yep.

MR. KLATZKOW: It was stunning.

COMMISSIONER SCHMITT: That's it.

CHAIRMAN FRYER: I think we're ready to continue, Mr. Klatzkow.

COMMISSIONER SCHMITT: Now we're going to talk Sunshine. We all can meet afterwards and talk and -- no.

COMMISSIONER VERNON: Let's have a meeting --

COMMISSIONER SCHMITT: As long as we're outside in the Sunshine. No, that's not it?

MR. KLATZKOW: There's Sunshine indoors.

CHAIRMAN FRYER: No.

MS. GREENE: Good morning. I'm Colleen Greene. Let me see if I can get the slide show started. We're going to start -- it's Page 12, Florida's Government in the Sunshine, because Jeff has given you a really great overview of your role on the Planning Commission. And I'm here to talk about the Sunshine Law and public records. I think we have a number of new advisory board members, which is why we're here to talk about this today.

Some of you have heard our presentation before and are experts in the Sunshine Law. But the Sunshine Law is found in Florida law. The Sunshine Law establishes a right of access to most meetings of boards, commissions, and other governmental agencies or authorities.

When is the Sunshine Law applicable? The Sunshine Law is applicable to any gathering -- this is the official definition -- whether formal or casual, of two or more members of the same board or commission to discuss some matter on which foreseeable action will be taken by the board or the commission. So the key language in there is two or more members of the same board discussing some matter which is foreseeable; is foreseeable that it will be discussed at the Planning Commission in this case.

There are three requirements for the Sunshine Law. The basic requirements, which are staff liaison really helps you to comply with these requirements, but the first is that meetings must be open to the public, reasonable notice of the meetings must be given, and minutes of the meeting must be taken.

So we'll break down each of those three requirements. The meetings must be open to the public. The public must be allowed to attend the meetings. You almost always meet at the county government center, so you know you're meeting in the right place. The place must be accessible and sufficient size for the turnout in a place that does that not discriminate and within Collier County, generally. In addition, before the Board takes action, you must give the public a reasonable opportunity to be heard. This board can establish policies and procedures for your public speakers. Most of the advisory boards follow the county -- the Board of County Commissioners' policies and procedures, so you can maintain decorum and you can establish time limits for your public speakers. Generally three minutes.

Reasonable notice of your meetings must be given, and your staff liaison is responsible for providing the public notice for your meetings. Reasonable notice has been defined as 72 hours; however, the county strives to provide more notice when possible.

And minutes of the meeting --

COMMISSIONER KLUCIK: Can I ask a question?

CHAIRMAN FRYER: Go ahead, Commissioner Klucik. Go ahead.

MS. GREENE: Yes.

COMMISSIONER KLUCIK: Okay. So -- I think I have a good example. So here we are having a workshop, and right now we're discussing the Sunshine Law, and that doesn't seem to be a matter that would foreseeably come before the Board, or am I wrong there? So how the Sunshine Law operates --

MS. GREENE: Yes.

COMMISSIONER KLUCIK: -- doesn't seem like it's a no matter that may foreseeably come before the Board for action.

MS. GREENE: Do you mean -- are you asking whether two or more members of the same board can discuss the Sunshine Law; is that the question?

COMMISSIONER KLUCIK: Correct.

MS. GREENE: Well, you know, I would recommend against it, because we're here today talking about the Sunshine Law so that you all are aware, you know, to not have conversations that may foreseeably come before the Board.

COMMISSIONER KLUCIK: Well, right. No, no, no. My specific question is, what constitutes "coming before the Board"? So if we -- if we have a workshop where we discuss the Sunshine Law so that we can all comply with it, has that matter now -- is it now before the Board because we're talking about it, or does "before the Board" mean that we're exercising our powers as -- you know, as a board?

MS. GREENE: No, I would say that the matter is before the Board and that it is not something that two or more board members should discuss outside of a publicly noticed meeting. We urge caution. We're very conservative in the County Attorney's Office when it comes to the Sunshine Law, and the reason is to keep our advisory board members out of harm's way. It's all about the perception.

COMMISSIONER KLUCIK: Right.

COMMISSIONER SHEA: So if I had breakfast with Karl, we couldn't talk about the Sunshine Law because we're going to talk about it today? I don't think -- we're not acting on it. We're just talking about it.

MS. GREENE: I agree, and, Commissioner Shea, my advice to you is conservative, and I would recommend against discussing something that we are here talking about today at a publicly noticed meeting. So I would say no. I would say, if you are having breakfast with another commissioner, that you keep your topics off government; that you talk about the weather and tourism and things that are not going to be discussed here in front of your board.

CHAIRMAN FRYER: I have asked my fellow planning commissioners to let me know in advance by an email when they're either not going to be able to be here or would like to participate electronically, and that is -- that is something that we're going to have to talk about, because we have to vote on whether we're going to allow that to happen.

MS. GREENE: That's correct. And my presentation will talk about this in more detail. But if you receive an email from another commissioner, it could be perceived as a two-way communication, which is -- has to be done in the Sunshine. So really, strictly speaking, if a member is not going to attend the meeting, the member should contact the staff liaison. The staff liaison will send an email to the Chair advising the Chair that a member will not be in attendance at the meeting.

CHAIRMAN FRYER: Well, I understand. That's not the way Mark did it. And I -- we'll take the current situation. Commissioner Klucik sent me an email stating --

COMMISSIONER VERNON: I wouldn't even get into that. I mean, just a better course -- sorry to interrupt. But I mean --

CHAIRMAN FRYER: Well, I want to -- going forward I want to do it right. I want to be sure that -- because then, to let -- to let Commissioner Klucik know that I had received it --

COMMISSIONER KLUCIK: Right.

CHAIRMAN FRYER: -- I forwarded it --

COMMISSIONER KLUCIK: I appreciate it, because I think it's important. Yeah, and I have nothing to hide. I don't think I did anything wrong, but this is a good time. I sent an email to the commissioner and copied Mr. Bellows and Ms. Jenkins and just said, hey, I am planning -- you know, hoping to attend, you know, virtually at tomorrow's meeting. Please send me a link. Boom. That was it. You know, I'm assuming that that was harmless or not -- you know, not a violation, but, you know, if it is, then this is a good time to know.

MS. GREENE: No. I mean, I agree with you. There's not a violation, but what we're talking about here is to be conservative. Two or more members may not discuss something that may foreseeably come before the Board for discussion, and that would include not only discussion and meeting in person but also written correspondence.

And so my recommendation to you -- these are bookkeeping matters or administrative matters, as you may want to call them, and Commissioner Fryer was appropriate to write back that he confirmed the email. The only concern becomes whether people put more information in an email than they intended to, and you're looking at a two-way communication outside of the Sunshine.

My recommendation to you is to let your staff liaison be the person responsible. This is the person who is, you know, taking attendance and keeping track of attendance, and I would defer all of that type of communication to the staff liaison.

COMMISSIONER KLUCIK: And let me say that I absolutely appreciate that approach, because your approach, we can't get in trouble. You know, I can't violate it unintentionally if I follow your advice, and I very much appreciate that that's what --

MS. GREENE: That's correct. That's the plan. Okay.

CHAIRMAN FRYER: All right. So going forward, our procedure will be that as our liaison, Mr. Bellows will receive that communication direct from the planning commissioner who needs to call in. May Mr. Bellows inform me that we're going to have that kind of a situation, or is that --

MS. GREENE: Yes, Mr. Bellows --

CHAIRMAN FRYER: -- triangulation?

MS. GREENE: No, it's not, and there is another rule against using a staff liaison as a way around the Sunshine. These are bookkeeping matters or administrative matters; housekeeping

matters is a word. And Mr. Bellows will gather all the information, perhaps two or three commissioners will not be here, and once Mr. Bellows has a communication, he will send it to you, the Chairman, just as an FYI, these are the people who are not expected to be here today. It's not something that's going to be discussed at the Board. It's just a matter of housekeeping and keeping attendance.

CHAIRMAN FRYER: Okay. Even though in the case of Commissioner Klucik, who asked for leave to participate electronically, that's something, under the current rules, that we have to take action on.

MS. GREENE: That's correct, and that's why all of these requests should be directed to your staff liaison.

CHAIRMAN FRYER: All right. But then Mr. Bellows may then inform --

MS. GREENE: Yes.

CHAIRMAN FRYER: -- what's been said, and that's not triangulation.

MS. GREENE: It is not, because we're just trying to organize the meeting. It's for planning -- not CCPC planning purposes, but it's for planning purposes for your meeting.

CHAIRMAN FRYER: Okay. All right.

Well, then, going forward, that's how it should be done. Please do not communicate with me on that kind of a thing, but send it to Mr. Bellows. And, Mr. Bellows, I will ask you to let me know sufficiently in advance of the meeting so I can plan to bring it up for the vote that needs to happen.

MR. BELLOWS: Yes, I'll be glad to do that, and I also would like that you copy Anita Jenkins, our director --

CHAIRMAN FRYER: Okay.

MR. BELLOWS: -- in case I'm out. At least we have redundancy in following up.

CHAIRMAN FRYER: Okay. All right.

COMMISSIONER KLUCIK: So I will ask, have you gotten to your slide on written correspondence, or is that the next one?

MS. GREENE: I have not, no.

CHAIRMAN FRYER: We haven't let you yet.

COMMISSIONER KLUCIK: And the only reason I say that is because it seems as though what I did was one-way communication, and it did comply. And I realize those still -- the caution is, don't do it anyways, and I certainly understand that.

MS. GREENE: Okay. Very good. And we'll get to that slide, and let me know if you have a question then.

Minutes of the meeting are required. Again, that is always set up by your staff liaison, and you have a court reporter here. So the CCPC is one of the few advisory boards that does have verbatim minutes. Minutes are public records, including draft minutes.

The Sunshine Law applies to all advisory boards and all of the advisory boards' subcommittees. A lot of advisory boards ask to set up subcommittees, and then they want to add other people from the public in their subcommittees. So a subcommittee can only be made up of members of the whole, and the Sunshine Law does apply. All three requirements of the Sunshine Law applies to any subcommittee when two or more members are meeting to discuss something that may foreseeably come before the Board.

CHAIRMAN FRYER: Let me ask you a question with respect to that, because I was really a stranger to the concept of subcommittee meetings until, well, frankly, when the Board of County Commissioners approved a subcommittee to review applicants for County Manager.

So my question is -- and I've looked online to see if that has been archived on the video or if there are minutes available. If someone wanted to follow what that subcommittee was doing, what resources would they have to do that?

MS. GREENE: Well, the subcommittees -- any subcommittee has to be publicly noticed. So you would look on the county's website to find the public notice, and then you would find out the date and time of the hearing. The subcommittee has to be open to the public so members of the public may attend, and minutes will be taken.

As I said earlier, really the CCPC is the only advisory committee I can think of with verbatim minutes, because the law only requires summary minutes. So the rest of our advisory committees have summary minutes, and so would the subcommittees.

CHAIRMAN FRYER: I understand. But my question is a little bit different.

It's -- from watching BCC meetings, which I do rather regularly, I see that that subcommittee has met once, maybe twice. How would I have access -- well, is it videoed? Are they meeting in a way that Mr. Miller and his staff can record it and it can be seen publicly on Channel 97?

MS. GREENE: To my knowledge, that is not being publicly recorded. There is no requirement in Florida law to record or to publicly broadcast any advisory board meeting, and we have only a handful that we do broadcast, including the Planning Commission and the Coastal Advisory Committee, the Tourist Development Council. So they're not all broadcast, no.

CHAIRMAN FRYER: Okay. So if I want to know more about that, I need to follow the public notices and show up?

MS. GREENE: Yes. Or you can read the minutes. I'm sure they'll be attached to a board meeting agenda.

CHAIRMAN FRYER: Okay. Thank you.

MS. GREENE: Yes. These are some reminders for advisory board members. I've been attending advisory board meetings for 15 years. Not the CCPC, but a lot of others, and these are some of the reminders that I give to my regular advisory board members, and they're all about avoiding the appearance of an impropriety. No pre or post-meeting discussions. When members of the public see a group of commissioners or council members huddled together in the hallway in a corner, they think you're talking about something that's going to come before the advisory board.

CHAIRMAN FRYER: Pardon me, but I'm going to interrupt again for clarification.

MS. GREENE: Of course.

CHAIRMAN FRYER: It has occurred in my presence on more than one occasion that if we have a lunch after we have finally heard something, it's not going to come back, let's say a small-scale GMPA, are you saying that we can't discuss that because it's not -- reasonably, it's not expected to come back to us?

MS. GREENE: Well, the question becomes where are you in the process. And so after this advisory board makes a determination, it goes on to the BCC. Is it possible that the BCC will send it back to you for additional work?

CHAIRMAN FRYER: Okay. I see.

MS. GREENE: And I would say, arguably, that is foreseeable that the Board would have additional questions.

Then after the Board would finally approve it, you also have to look at the nature of the item. Is it something that is final with that approval at the BCC level, or is it something like an RLSA item that will continually come back before both the Board and the Planning Commission. So it really depends, in my opinion, on the nature of the item.

CHAIRMAN FRYER: Okay. Well, this is -- this is timely, because, I mean, we're all well-intentioned, to be sure, but I think we're going to have to, perhaps, change some of what we thought were permissible behaviors in order to comply which, of course, we will.

MS. GREENE: The County Attorney's guidance is really just to be the most conservative that we can be in order to stay out of, you know, trouble or the perception of an impropriety. That's what this is about.

CHAIRMAN FRYER: Okay.

COMMISSIONER FRY: To make sure that I understand, let's say a past agenda item like Rivergrass came to us.

MS. GREENE: Yes.

COMMISSIONER FRY: We pass it on. Between the time it goes to the County Commission, we should not be speaking about it.

MS. GREENE: Correct.

COMMISSIONER FRY: Once they have ruled on it, we still then should not, or are

we -- because we -- I mean, I will just point out there is some value to us in understanding our role and -- I think just educating ourselves on this whole process is a big learning curve for us up here -- to be able to debrief something that has gone through the entire process. My question is, are we able to do that, and if so, at what point? Passing the BCC, is that the line in the sand after which we might -- we could discuss something?

MR. KLATZKOW: It's never an issue until it becomes an issue. I don't know what else to say. Human nature is to have a couple of drinks with somebody and talk shop. We know that, okay. What's foreseeable? It's going to be hindsight. You should have known that Rivergrass was coming back to you because there's a lawsuit or you should know that -- it would be hindsight.

What Colleen Greene and I try to do is we take as much a conservative approach as possible, especially with advisory boards, because you guys aren't paid. And the last thing you guys need on some odgena dealing with somebody claiming improprieties for you. It's not worth it.

Now, what you do after that is up to you. But the practice that we outline, if you follow it, you will never get into trouble.

COMMISSIONER FRY: Err on the side of caution.

MR. KLATZKOW: Err on the side of caution.

COMMISSIONER VERNON: Can I jump in?

CHAIRMAN FRYER: Please.

COMMISSIONER VERNON: I spent probably 15 years on a Sunshine board, and it got really contentious, and I've seen situations. And I just was going to say at some point exactly what Jeff said. It doesn't matter till it matters. Some applicant gets upset, some member of the public gets upset, the press shows up. And I lean over to Joe and say something jokingly or they happen to sit next to us at lunch and we're trying to do our jobs, it can be terrible. And there's a criminal component to it. It doesn't matter till it matters, and it will be on the most contentious issue.

And what I try to do is, I try -- first off, follow their advice. I agree 100 percent with what they're saying. But I think we can get better at our jobs by being -- discussing things -- and you may disagree, so I'd like to hear your comments. Very hypothetically, after something's over, we don't talk about the project, but we can talk about what kinds of things are relevant or not relevant without being -- talking about the project in any way. And I'm not encouraging that. I'm just saying, if you feel like you want to get better at this, just make sure we're not talking about a particular project and be super careful when we're at lunch, super careful -- you know, err on the side of caution. Does that jive?

MS. GREENE: Well, yes -- I would said say yes and no, because you may also discuss policy decisions at the Board that -- you know, here in your public forum that are not specific to a project, and you really are in the best -- you know, you're in the best position to know whether it is something that will be foreseeably discussed at your board.

And, you know, we urge caution, and that's why you're here today, because you want to follow the procedures and the rules as well. And so, you know, I have no doubt that you'll do what's right.

COMMISSIONER VERNON: Yeah. And you're probably right. There's no question, it makes us less effective to follow this -- err on the side of caution. It just makes it harder to do our jobs.

MS. GREENE: You can talk here when, you know, we're here in a publicly noticed meeting and you have the room for the day, and, you know, sometimes the conversations may take longer, but that's the nature of the Sunshine Law is transparency.

CHAIRMAN FRYER: And this -- and this may start happening more for that very reason because, for instance, the concept of smart growth and understanding that and the various permutations and combinations and nuances are things that are very important to me. I have my own point of view, but I want to hear the point of view of my colleagues. We couldn't talk about smart growth in private because, inevitably, things are going to come before us that involve smart growth.

MS. GREENE: Exactly. Yes, Commissioner, you're correct.

COMMISSIONER FRY: So as a policy, I would propose we -- when we're not in a formal meeting we speak only of religion, the weather --

COMMISSIONER VERNON: Politics.

COMMISSIONER FRY: -- and politics.

COMMISSIONER SHEA: Sports.

COMMISSIONER FRY: Sports.

CHAIRMAN FRYER: You can count me out of those meetings.

MS. GREENE: Or just weather.

So these are our reminders. No private conversations on the dais. Somebody mentioned that already; avoiding texting on the dais; you may not use nonmembers as liaisons. And we talked about, you know, using your staff liaison. That's for scheduling purposes only; and avoid the appearance of impropriety; that's the reminder.

So the Sunshine Law does apply to written correspondence. A board member may send documents on matters coming before the Board for official action to other members provided there are no responses and no interaction from the other members. We recommend against this unless it's necessary. If you have a report or information that you want to get to the Board in advance of the meeting -- because I understand your time is limited -- you would send it to your staff liaison, Ray Bellows, and ask Ray to send it out to the rest of the advisory board and to include a reminder, a note at the top, "This is a one-way communication. Please do not respond to this email," because we don't want somebody inadvertently provide an opinion or comment or what have you on the document that will be discussed at the advisory board. You have to save your comments for your publicly noticed meeting.

CHAIRMAN FRYER: So as a practical matter, the first planning commissioner who wants public distribution of material is also going to be the last on that subject. Because if I see something that one of my colleagues has asked Mr. Bellows to circulate, that's going to be the last word on that until the meeting. I can't then ask Mr. Bellows to submit something that casts it in a different light.

MS. GREENE: I think it works that way, yes. You'll have to see, you know, what document is submitted, and you could have two different pieces of information pertaining to the same project, submit them all to your staff liaison. Not only will he maintain them as a public record; they'll get on the agenda. They'll be part of the meeting, part of the minutes, and then everything will be, you know, in compliance with the Sunshine Law and public records.

COMMISSIONER KLUCIK: Could I ask a -- I know it sounds like it's unrelated, but it's tangentially related.

CHAIRMAN FRYER: Go ahead.

COMMISSIONER KLUCIK: So do any of these provisions apply to a planning commissioner's communication with a county commissioner?

MS. GREENE: Oh, I have a slide that will tell you that but, no, it does not, because it applies to two or more members of the same board. So one --

COMMISSIONER KLUCIK: Okay.

MS. GREENE: -- one member of the Planning Commission may meet with one member of the Board of County Commissioners.

COMMISSIONER KLUCIK: And then the only requirement then is the requirement we have for any kind of ex parte discussion of any matter that we handle, we have to disclose it.

MR. KLATZKOW: There's no ex parte component to that.

COMMISSIONER KLUCIK: There wouldn't be?

MR. KLATZKOW: Nope.

COMMISSIONER KLUCIK: Well -- okay.

MS. GREENE: Okay. Does that answer your question, Commissioner?

COMMISSIONER KLUCIK: Well, I don't understand Attorney Klatzkow's -- I mean, I understand what he said. I'm trying to contextualize it. My thought was if I talked to, you know, Janet Jones about what she thinks of setbacks in Collier County in neighborhoods and, you know -- and then, you know, because we're thinking of changing the setbacks, you know, in the

county, you know, or recommending a change to the code somewhere about setbacks, I thought I would have to disclose that.

MR. KLATZKOW: It's --

COMMISSIONER KLUCIK: And then --

MR. KLATZKOW: Ex parte comes when you talk to other parties. So if you --

COMMISSIONER KLUCIK: Okay.

MR. KLATZKOW: Or their representatives. If you think of it from the same context from a courtroom --

COMMISSIONER KLUCIK: Just real quick, based on what you said, then the reason I have to disclose the staff is because the staff is considered a party because it's the county?

MR. KLATZKOW: Yeah, they're part of the proceedings.

COMMISSIONER KLUCIK: Right, okay. And I cut you off. I'm sorry.

MS. GREENE: Oh, no problem. Thank you.

COMMISSIONER KLUCIK: No, I cut off Attorney Klatzkow.

MS. GREENE: Oh, I'm sorry.

We are on to inspection trips, and I think Jeff spoke about inspection trips in his presentation earlier this morning. But if the advisory board decides it needs to do an inspection trip, we do these on a very limited basis because all elements of the Sunshine Law, all of the requirements have to be met. It has to be open to the public, public notice, minutes must be taken. So we recommend against them unless necessary. Your staff liaison would coordinate with the County Attorney's Office if it became necessary to set up an inspection.

MR. KLATZKOW: Yeah, we're not going to do that. I'm just saying, we're not going to do that. I remember once upon a time we took a bus trip out to Goodlette, and we had a court reporter on the bus trip. But you've got to make it accessible to the public. It's just -- it is not worth the odgna.

CHAIRMAN FRYER: And we're not talking about individual inspections?

MR. KLATZKOW: No, we're not.

MS. GREENE: That would be a group. So you see the second bullet. To avoid Sunshine issues, if you wish to conduct an inspection trip, do it outside the company of a fellow board member.

This is a little Sunshine Law humor.

And then we have some frequently asked questions, and the one question has already been asked: Two members of the same advisory board allowed to attend the same social function. Of course, social events are permissible. Lots of advisory board members, you know, engage in multiple civic types of associations. You just have to be cautious and be mindful not to discuss anything that may foreseeably be discussed at your advisory board meeting. And the Sunshine Law does not apply to private organizations such as homeowners associations.

And the Sunshine Law only applies to meetings of two or more members of the same board. So one of you may meet with one commissioner or one TDC member or another advisory board member.

There is an opportunity to correct action that is taken outside of the Sunshine Law. You'd have to work -- staff would work with the County Attorney's Office, but the reason we're here today is so that we don't have to correct action that's taken outside of the Sunshine.

There are consequences. And one of your commissioners mentioned it today. There is actually a criminal penalty. It's a second degree misdemeanor to knowingly violate the Sunshine, and you may be removed from your position.

There are headlines that we don't want, and this is all about the perception of impropriety.

And that leads us into our discussion on public procedures.

CHAIRMAN FRYER: Before we enter that world, we're at two minutes past noon, and I think we ought to assess how much more time we're going to want to have. I personally am encouraging us to go as long as we can as long as we have unanswered questions. This is a very, very important time, and I know the County Attorney is available all afternoon if needs be. But let's talk about whether we want to try to run this to 1:00 or 1:30, and then leave for the day or

whether we want to take a lunch break.

MR. KLATZKOW: I don't think you've got much more after this, and Colleen can be very brief.

MS. GREENE: Yeah. Public records is very quick, and then we can just do a broad overview of the ethics presentation.

CHAIRMAN FRYER: Okay. Do any Planning Commissioners have lots of issues that haven't been touched upon?

COMMISSIONER VERNON: I do not.

CHAIRMAN FRYER: Okay. All right. Well, then that's what we'll do. We'll continue. And please continue.

COMMISSIONER KLUCIK: Mr. Chairman?

CHAIRMAN FRYER: Yes. Go ahead, Commissioner.

COMMISSIONER KLUCIK: I just wanted to assure you that I do not as well.

CHAIRMAN FRYER: Okay. Well, thank you.

COMMISSIONER KLUCIK: I also wanted to give you a startle.

CHAIRMAN FRYER: Okay. Thanks. Commissioner Shea.

COMMISSIONER SHEA: I just wanted to ask, how typical is the Sunshine Law in Florida compared to other states? Does every state have a Sunshine Law? Are we the only state? Is ours more stringent than others? How do we compare?

MS. GREENE: I believe that other states have similar rules. I do think Florida's is one of the more stringent, yes.

CHAIRMAN FRYER: I would agree, having practiced law for over 48 years in other jurisdictions, that this is a -- this is something in its own class. I mean, let's put it that way.

MS. GREENE: So public records, as you may know -- and we've talked a lot about it's overlapping, the Sunshine Law and the public records, so we really don't have a lot of time left.

But a public record is more than a document. A public record encompasses all materials made or received by an agency in connection with official business which is used to perpetuate, communicate, or formalize knowledge, regardless of whether the matter is in final form. And the public records includes all documents. And you'd be surprised, most of us working in the county, almost every document on my desk, even as an attorney, is a public record whether it's -- if it's in draft form, it still may be a public record, because the public records law is that broad.

COMMISSIONER KLUCIK: Could I ask a question there?

CHAIRMAN FRYER: Go ahead, sir.

MS. GREENE: Yes.

COMMISSIONER KLUCIK: All right. So I'm looking at the slide with the magnifying glass on it. So all materials made by an agency.

MS. GREENE: Yes.

COMMISSIONER KLUCIK: All right. So is that --

MS. GREENE: Or received.

COMMISSIONER KLUCIK: -- something that I could do?

MS. GREENE: Yes.

COMMISSIONER KLUCIK: So if I have my own notes and I haven't sent them to anybody and don't intend to, am I making -- is that a public record that has been made by an agency?

MS. GREENE: No, it is -- it is not. But as a public official -- and I will explain my answer. As a public official, the public records law applies to you. There is an exemption for personal notes that you take that are not shared with another person to help you remember. For your own personal use, that is an exemption from the public records. But the minute you share your notes with another person, it becomes a public record.

MR. KLATZKOW: I never take notes, ever, ever, ever. Not here, not in meetings, ever, ever, ever. I have that reputation of never taking notes, so people won't be surprised when I say I never take notes. If I want to send myself a reminder for something during a meeting, I send it by email where it's a clear public record.

Good luck trying to tell people when you're taking notes that it's just for my own personal recollection and I'm not going to be talking about it with anybody else.

It's -- that's how I do it. I just -- I will send myself an email as a reminder if I need something done. As soon as you start writing up on there and people see it, you'll get a public records, I want to see what he had to say. And you've got no desire to be in court with some judge trying to figure out whether or not you should be giving that up or not.

MS. GREENE: And I can affirm, I have never seen Jeff take a handwritten note in 15 years.

COMMISSIONER VERNON: And I'll tell you, I take a lot of notes because I'm trying to come up to speed and make a decision. But this is the first Sunshine board I've been on where I do take notes. I usually follow Jeff's -- it's a great rule.

I don't even take this stuff -- I just -- I think that's a great policy. I just -- to be a judge, so to speak, I need to, especially at this point and being the new kid, but I think that's a great policy, too.

MS. GREENE: And I do recommend that you, when you join an advisory board -- I know everybody is more electronic and more techy than I am, but get a three-ring binder and just keep everything that you collect and gather and documents, any notes, keep them in a three-ring binder, and then you can maintain your records should there ever be a reason that you need to reproduce them in response to a public records request.

You know, keep track of your documents. Using the county's email system is the best way to do it because the county, we have a great network, and we can always call up the document. So if you've emailed yourself a reminder or a note or any kind of document that you use at the CCPC, we can find it on the county's network, and you don't have to be responsible for reproducing it at a later time.

COMMISSIONER SHEA: Quick question.

COMMISSIONER KLUCIK: So that would include --

COMMISSIONER SHEA: I take notes as I go for the same reason Chris is, to kind of help formulate the key points, and at the end of the meeting, I rip them up and throw them away. Am I destroying a public record now?

MS. GREENE: Not if you've never shared them. If your notes are to help you remember --

COMMISSIONER SHEA: But I've shared the ideas. I probably -- just like we all do, if we're going to make a statement on a very serious issue, we'd probably write some notes down of key things we want to say, we say it, and then we throw it away. But we've just shared it with everybody in a public venue, so it's okay, right?

MS. GREENE: Not your document. I mean, if you're not sharing your document, these are -- this is your chicken scratch. This is Commissioner Shea's chicken scratch to help me get through today's discussion. At the end of it, that's your record. You may --

COMMISSIONER SHEA: Okay.

MS. GREENE: -- toss it.

COMMISSIONER SHEA: Thank you.

MS. GREENE: But if you create anything more formal, you need to maintain it.

MR. KLATZKOW: And this is what's going to happen, and Commissioner Vernon said this earlier. It's going to happen on a contentious item. So it's not going to happen on something like the matter you heard today. It's going to happen on a matter like One Naples where you know it's headed for litigation, you've got multiple attorneys involved. They're going to want to try to muck up record as much as they can in some sense, and that's where you're going to get it.

So in one sense on something like happens today, I wouldn't have the same level of concern on these issues as you would for something like One Naples, just as a practical matter.

MS. GREENE: And when you look at the definition of public records with the magnifying glass, it's documents that are to perpetuate, communicate, or formalize knowledge. So if it's just for your reminder during today meeting, you're not attempting to do that. Once you make something more formal and you share your document, it immediately becomes a public

record.

If I create a draft memorandum in my office and I ask a colleague to review it, it becomes a public record, unless another exemption applies, because that's how the statutes work. But, generally speaking, once you share a document, it is a public record.

And we have guidelines for advisory board members regarding public records. So while you are serving on an advisory board, the public records law applies to you. Correspondence and emails to or from anyone on any computer relating to county business is a public record. And it's my understanding that Planning Commission members have county email addresses, and that is a true benefit because, as I said before, the county maintains those records for you.

Public records must be maintained pursuant to state guidelines. And we've talked about this. If you leave your position on an advisory board, please provide a copy of all public records in your possession to the county staff liaison. One-way communication by email should be directed to the staff liaison. As we talked about under the Sunshine Law section, no two-way communications between members except during publicly noticed meetings. And if you choose to communicate with members of the public concerning business via email, be aware that that email becomes a public record and the person emailing you, their email becomes a public record as well, their email address, if they have their signature line, would also become a public record.

There are exemptions to the public records. They're all defined by Florida Statute. Common exemptions are documents prepared for in anticipation of litigation, social security numbers of employees, sealed bids or proposals, and home address of certain county employees, for example, current and former law enforcement officers, including Code Enforcement officers.

The county has a system in place pursuant to Florida Statute for members of the public to make public records requests. If you should receive a public records request directed to you as a member of an advisory board, the first thing you should do is contact your staff liaison. We don't want you to attempt to struggle through it on your own, and your staff liaison will contact the County Attorney's Office. You can always contact the County Attorney's Office directly if you have any questions.

COMMISSIONER SCHMITT: Question on the email.

MS. GREENE: Yes.

COMMISSIONER SCHMITT: Great example: One Naples, probably received almost a thousand emails. It may have been three less than a thousand. I'm not sure. I did not keep those. I kept them in a file for the meeting. I didn't respond to them. But then after the meeting, I simply deleted the file, and it was all in the county email.

MS. GREENE: All at your county email address.

COMMISSIONER SCHMITT: So I didn't keep those, but my assumption was that --

MS. GREENE: They are on the county's network.

COMMISSIONER SCHMITT: They are in the -- they're in the county archives somewhere.

MS. GREENE: Yes, and we have the ability to search emails to find -- if we have a public records request, we can search all emails, you know, pertaining to whatever the public records request asks for. So, yes, you can delete them off your screen, but they're saved for a very long time on the county's computer network.

CHAIRMAN FRYER: I want to follow up on that, if I may, Commissioner Schmitt. As a matter of my personal practice, I rarely reply to emails from the public, although in the back of my head, I always think, this is discourtesy -- discourteous on my part not to acknowledge receipt of an email. But I'd just like to know what other Planning Commissioners are doing. Is anybody replying to any of these things?

COMMISSIONER SHEA: No.

COMMISSIONER HOMIAK: No.

COMMISSIONER VERNON: I never reply.

COMMISSIONER SHEA: But occasionally, though, you'll get one that's addressed specifically to you and are asking you a question, not promoting one side or the other on the -- what we're hearing over, and they ask a question. What I try to do is if it's -- I send it to Ray

and say, you guys answer it.

COMMISSIONER SCHMITT: Correct. That's what I would -- I do as well. If I ever got anything direct, if I had that type -- and I may have once or twice, I just say, thank you very much for your concern. I'm forwarding your question to the staff liaison for this project. But in no way do I attempt to answer those, because typically those emails, we all get them.

CHAIRMAN FRYER: They're cookie cutters, frequently.

COMMISSIONER FRY: Sometimes I receive follow-up emails from somebody in the public after a meeting, you know, Commissioner Fry, blah, blah, blah. I will respond out of a courtesy to those just to let them know. They're a human being. I am, too. So I just respond acknowledging the email. But it's not public records. It's on the county email address.

MS. GREENE: Yes. It will be maintained on the county's email address, I mean, for decades.

COMMISSIONER FRY: But that's okay?

MS. GREENE: Your documents will be there.

COMMISSIONER FRY: I'm comfortable with it being public record, so that's okay.

MS. GREENE: Yes.

CHAIRMAN FRYER: I was mostly wanting to have this conversation because I didn't want to be being more discourteous than anybody else up here, because I really hardly ever acknowledge, so...

MS. GREENE: But if you do receive a request for records, a public records request via email, you do need to get with your staff liaison --

CHAIRMAN FRYER: Oh, absolutely. Understood.

MS. GREENE: -- directly because, pursuant to Florida law, we have to respond in a reasonable amount of time. So we can't delay on a public records request. And then staff knows when to involve the County Attorney's Office or our Customer Communication Relations Office. We have a whole team of people who review responses to public records requests.

COMMISSIONER KLUCIK: Well, I have a question on that, then. I get hundreds of emails. I do not read most of them because so many of them are repetitive, and I'm human, you know, and I'm not going to look at every single email I get, especially when so many are the same thing. I am not reviewing my email for requests for records, and I won't. I just -- I don't care what your response is, I am not going to review my email for requests like that.

So is that -- you know, is that something that I'm obligated to do, to read through hundreds of emails to make sure there's no public records request?

MS. GREENE: You know, I can tell you, Commissioner, in the last 15 years, I can only remember one time that a public records request was directed to a member of an advisory board. So it's very rare, and I do think that the public is aware to go to county staff if they're looking for public records. It's -- you know, it's your discretion with your email, how you respond to your emails. Whether you read them or respond to them, that's your discretion.

COMMISSIONER KLUCIK: It has nothing to do -- like, if I was aware that someone made a request --

MS. GREENE: Of course.

COMMISSIONER KLUCIK: -- obviously I would follow the rules.

MS. GREENE: Yes.

COMMISSIONER KLUCIK: But I'm just saying that there's no way I'm going to review all of the email that I get to, you know, just to see if there's any, you know, request in there. I'm sure that, you know, none of us could meet that standard, you know, based on the amount of email we get.

MS. GREENE: It sounds like you get a lot of emails. I didn't imagine that you did. But staff is on it, and if we receive public records requests, staff will reply.

Public records requests can be made really informally. They can be verbal. They can be a telephone call. And, you know, we have people in the county that are good at handling responses to public records requests.

So social media, really quickly; this will not take long, Commissioners. Tools for social

networking, you guys probably know more of the tools for social networking than I do. But the issue is, if you are using social media, you run a risk of being out of compliance with the Sunshine Law and the public records law. And the County Attorney's Office, Jeff and I, we recommend that our advisory board members not use social media for advisory board business, because regardless of the platform, if you're on Facebook or Twitter or whatever the other platforms are, if the material is material that would foreseeably come before your advisory board or it's regarding your government service, it is a public record, it must be retained, and it must be producible for inspection or copying. And that's a really high burden to accept with using social media to maintain those documents and to be able to reproduce them.

CHAIRMAN FRYER: Are we considered "public officials" as that phrase is used in the statutes?

MS. GREENE: Yes, you are, as an advisory board member.

CHAIRMAN FRYER: Thank you. What about staff?

MS. GREENE: Staff -- the definition changes throughout, but in some places staff is a public official and sometimes they're defined as county managerial employees, but it depends on the section of the statute. Oftentimes yes.

CHAIRMAN FRYER: Thank you.

MS. GREENE: So social media in the Sunshine, you have to -- advisory board members must not engage on social media in an exchange or discussion of any matter that might foreseeably come before the Board. And you know on social media people make comments, and you don't want to make a comment and then have another advisory board member make a comment on the same topic, because the Sunshine Law and the public records law applies. And so the --

COMMISSIONER KLUCIK: But we can do one-way communication, correct?

MR. KLATZKOW: I've got to tell you, Commissioners have a much harder job because it's their business to be involved with their constituents, and so they've got a much more difficult problem with social media than you guys do. Don't use any social media for this job. Just don't.

COMMISSIONER FRY: I agree.

MR. KLATZKOW: There's no need to do it. We give you a county email address for a reason.

COMMISSIONER SCHMITT: For all those who attempt to contact me on social media, they'll find that I'm not on any of them.

MR. KLATZKOW: Nor am I.

COMMISSIONER SCHMITT: This is the only one I'm on.

MR. KLATZKOW: As long as I'm a county attorney, I will not be involved in any social media. It's just --

COMMISSIONER SCHMITT: It goes out into the ether somewhere, because it's not coming to me because I don't have an account.

MS. GREENE: It's just a greater risk.

Very quickly on the ethics laws. There are a number of ethics laws that apply to you now as public officials. There's the Florida Statute, the county's ordinance, and -- the county's ordinance. So those are the two statutes that apply to you specifically.

And as you know, as a member of an advisory board, as a public official, you are prohibited from accepting anything of value that is given to you that you know or reasonably should know is being given to you to influence your vote or other action.

The county has a more stringent public records -- sorry -- ethics law than the state, and we have a zero-dollar gift limit in Collier County. So if anyone who comes before the Board who is looking for direction from you or approval or a vote or action from you, if they're coming before this board, you should not accept anything of value, and anything of value includes food. Meaning it includes anything that you would have to pay for otherwise. This applies to advisory board members, your spouses, and your minor children.

There are so many ethics laws that apply, and I know we're trying to get out of here on time. Misuse of a public position. I don't think any of you on your advisory boards are trying to get an unfair advantage based on your position as a Collier County Planning Commission;

disclosure of certain information; information that you learn here. It's really hard to imagine that you would disclose information improperly because everything is done in the Sunshine Law and under the public records laws, but you have to use your best -- your best judgment. And what -- the point of our ethics law/Sunshine Law, our presentation today, is to make you aware that these rules are out there so that when you're faced with a question, you know you can contact the County Attorney's Office directly or you can work with your staff liaison and contact us through them.

MR. KLATZKOW: Yeah. Just don't take anything from anybody that has anything possible to do with this job.

CHAIRMAN FRYER: Including staff.

COMMISSIONER FRY: What are you referring to, Ned?

COMMISSIONER SCHMITT: Coffee.

CHAIRMAN FRYER: Coffee. Yeah, coffee.

MR. KLATZKOW: No, I'm telling you, I -- just don't take anything from anybody. If you're going to have dinner with somebody, you pay for your own dinner. If you're having drinks with somebody, you pay for your own drinks. It's just -- don't take anything from anybody that has anything to do with this job, and you'll be fine.

MS. GREENE: There are voting conflicts of interest. If an item is coming before you for action and you have -- you may have a special private gain or loss, and that means an economic benefit in the outcome of the vote, you may need to abstain from voting, and you should contact either the County Attorney's Office directly or your staff liaison, and we'll work with you to see whether you actually have a conflict of interest, because there are many exemptions that apply in the Florida Statutes, but we'll work with you to decide.

It's hard to do an overall -- tell you the overall rule because of the number of exemptions that apply, and it's a fact-specific analysis. But we want you to be aware that if something is coming before your board for a vote where you or a member of your family is going to derive an economic gain, you need to contact us in advance so that we can work on any potential conflict.

MR. KLATZKOW: It's for your protection, because anytime you have a remote thought in your head that this might be problematic, send us an email. We will give you a quick-response opinion on it, and after that, you're beyond criticism as long as you adhere to that opinion. So if we say, sure, you have no problem, nobody else can point to you because you said the County Attorney said I could do this.

Now, they could -- they could point to me and say, County Attorney, you don't know what you're talking about, and that's fine. But it protects you. So anytime you have any doubt in your mind whether you should be voting on something, take it to us and think of it as a safe harbor.

MS. GREENE: And if you think that you may not have an economic benefit but you feel like there's some possible gain or there's some perceived conflict, Florida Statute provides this optional absentia provision which, again, we'll have to work with you. Where there may not be an actual conflict but you have some connection to the item coming before you, we'll work with you to determine whether that's something where you should abstain from voting.

Again, the purpose of our presentation is to give you the idea that, if you have a question, we want you to ask. We're here to help.

We have a no gift policy in Collier County. It's a zero-dollar limit. That way it's easy to remember. You don't have to say, wait, was it \$25? Was it 50? No. It's a zero-dollar gift limit. Buy your own lunch, buy your own coffee on the way into the building. There are limited exemptions that apply. When in doubt, ask -- call us and ask us.

COMMISSIONER SHEA: I'm assuming if we have lunch with somebody, we can buy the lunch, right?

CHAIRMAN FRYER: No.

COMMISSIONER SHEA: We can't even buy their lunch?

MS. GREENE: Buy your own lunch. Somebody doing business with the advisory board, it's just better if each person pays for their own lunch. There's no perception of an impropriety.

COMMISSIONER VERNON: Can Paul buy me lunch?

MR. KLATZKOW: Sure, as long as you don't talk about business.

MS. GREENE: I didn't know who asked the question. Yes.

COMMISSIONER VERNON: I was just looking for a free lunch, that's all.

COMMISSIONER SHEA: You owe me one, too.

MS. GREENE: All right. So let us know if you have any questions. I just did that briefly to give you an idea. It's 12:30. I know you're ready to get out of here. You've had a busy day.

CHAIRMAN FRYER: Does anyone have any questions with respect to the subject matter that's been presented by the County Attorney's Office? Questions, comments, observations?

COMMISSIONER VERNON: I had a couple miscellaneous questions.

CHAIRMAN FRYER: Please go ahead, Commissioner.

COMMISSIONER VERNON: I noticed today Yovanovich -- I never noticed it before. But he raised his hand. He's testifying. As a technical matter, could a savvy attorney cross-examine him on the -- opposing his application?

MR. KLATZKOW: This is a personal opinion. I think Mr. Yovanovich may disagree with me on this, okay. But there are times when Mr. Yovanovich goes beyond being an attorney and almost becomes a witness as he's testifying. In that context, yeah, I think he's subject to cross-examination, and if I'm asked that's how I'd -- that's what I'd tell this board. So as long as he's in his role as an attorney and he's just introducing one engineer or expert after another, he's fine. But if he actually starts testifying to matters, yes, he is subject to cross-examination.

COMMISSIONER VERNON: And related to that, when the Chairman says everybody testifying needs to raise their -- I mean, are all the attorneys that show up here representing people required to raise their hand?

CHAIRMAN FRYER: They all do.

MR. KLATZKOW: They're not required to, because -- anybody giving testimony is required to take an oath.

COMMISSIONER VERNON: Right.

MR. KLATZKOW: Okay. Unfortunately, sometimes the line gets blurred as to investigating [sic] testimony.

COMMISSIONER VERNON: And then the only other question --

COMMISSIONER KLUCIK: On that specific issue, Commissioner, do you mind if I ask a specific --

COMMISSIONER VERNON: No, jump in. That's fine.

CHAIRMAN FRYER: Go ahead.

COMMISSIONER KLUCIK: All right. On that particular point, I would think it would be good to have a standard procedure that the attorney declare before he's making his presentation on whether or not, you know, he's giving testimony or not. That way, you know -- I mean, we should know. We should know. I mean, if someone is presenting the whole case and answering detailed questions, then they're apparently -- under, you know, Attorney Klatzkow's interpretation, and he's the one advising us -- that attorney is giving testimony. It should be very clear who's giving testimony to us. What do you think, fellow commissioners?

CHAIRMAN FRYER: Well, I think that they should, as a rule, that agents, whether it be the planners, the lawyers, that these folks should raise their right hand and swear to tell you the truth because it is a blurred line. And I don't remember if it was Mr. Yovanovich or Mr. Arnold today, but someone, one of the two, said, well, we couldn't make this deal happen if you took 16 units away from us. Well, to me, first of all, that opens the door for questions to be asked. But in order to be sure that they have a full understanding that when they make a statement like that, that they are under oath. That's my personal view.

COMMISSIONER KLUCIK: Well, right, and I guess, then, maybe when, you know, at the beginning of each petition -- you know, because we don't know if people are under oath or not. You know, I mean, how does anyone know?

MR. KLATZKOW: They raise their hands here. Pretty much everybody including staff raises their hands.

COMMISSIONER KLUCIK: As long as someone's monitoring that, then, so we know, then that's fine.

CHAIRMAN FRYER: I'm trying to keep track of it, and particularly after the registered speakers, if we ask for -- anybody in the room who hasn't registered wants to speak, my first question would be, have you been sworn in.

COMMISSIONER KLUCIK: Right. Well, I appreciate that. I don't -- I don't know as I even agree, you know, with, you know, Attorney Klatzkow, but I feel like that's the advice we're given, and absent me concluding something different, I'm going to go with that advice and I -- you know, and assume that he's correct on that or at least there's a good argument to be made.

And precisely for this issue, you know, if we're going to be perceiving that information, I think the perception that we should have should be different if it's testimonial versus simply a, you know, ministerial, you know, announcing the next person or presenting these documents, you know, on behalf of my client. Those are two different -- two different levels of gravity as to what we should perceive.

COMMISSIONER SHEA: But isn't it a lot simpler just to do what we do; everybody that's going to come to the mic gets sworn in. You don't have to argue whether it's testimony or not. They've been sworn in.

CHAIRMAN FRYER: That's my view.

COMMISSIONER SHEA: Which is what we do.

CHAIRMAN FRYER: It is, absolutely. And, furthermore, and I made this point when I recused myself from One Naples. There's a provision in some ordinance somewhere to the effect that if a public official, which we know now that we are, if we do not follow the advice of the County Attorney, we put our own right to indemnification in serious jeopardy, and we could find ourselves defending ourselves at our own expense. Did I say that right?

(No verbal response.)

COMMISSIONER VERNON: And I have one other different subject-matter question, Mr. Chairman.

CHAIRMAN FRYER: Go ahead.

COMMISSIONER VERNON: It goes back to what Commissioner Fry was asking about the Bert Harris Act. If we -- well, we're just giving an opinion. But if the Board of County Commissioners -- or we give a recommendation -- deny something, the county can be sued for refusing to allow development.

MR. KLATZKOW: Yes.

COMMISSIONER VERNON: And then the follow-up, is the -- does that become inverse condemnation, eminent domain, or is that the damages, or is there money damages, or could it be either?

MR. KLATZKOW: It could -- the way Bert Harris works is that the developer will say, okay, this is my injury, and they'll give you an appraisal report what it is. So it's always about money. At that point in time, the Board has the option to -- a number of options, including allowing -- allowing the application to move forward.

I will tell you that with the good work that this board does and what staff does, we've had very few of these claims over the years. I mean, I think one, which wasn't much of a claim to begin with.

Other jurisdictions, if they don't listen to their staff or their County Attorney, have gotten into trouble with Bert Harris. But it's not a statute that concerns me, because we're very professional here as to our approach.

COMMISSIONER VERNON: All right. Thanks to both of you for the presentation. It was great. That's all I had.

CHAIRMAN FRYER: Thank you. Anything else from the County Attorney?

MR. KLATZKOW: No.

CHAIRMAN FRYER: Okay. Does the Planning Commission desire to have any further discussion about our role with the Hearing Examiner? The County Attorney suggested that this be placed in the hands of staff after hearing our input to take it, in effect, as a resolution or perhaps

ordinance, among other things. The Hearing Examiner works directly for the Board of County Commissioners. Does anybody have any further observations that they want to --

COMMISSIONER VERNON: I just -- I'll make a comment to staff, and that is, I -- from my perspective, the only thing we want to change is to make -- and make it as objective as possible as to what comes to us and what doesn't come to us and that if it can't be objective simply because it's a subjective decision, then who should make that subjective decision? And what I don't really want -- and this is self-serving, but I don't really want a lot more work pushed to us as a result.

CHAIRMAN FRYER: And not only is it pushed to us, but then it's also pushed to the Board of County Commissioners because they have to hear it on a recommendation that we make, whereas the HEX, his decision is final unless it's appealed.

COMMISSIONER FRY: Who is -- when you say "staff would review and make the decision," who -- define "staff" in that case. Is that a person? Is that a department?

MR. BELLOWS: For the record, Ray Bellows.

During the pre-application meeting for an item, say it's a variance or a boat dock, those are typically petitions that will go to the Hearing Examiner. And in just about every case, those aren't very controversial and pretty straightforward.

Now, we did have a boat dock extension for multiple slips for a multifamily development, and it was controversial, and it ended up going to the Planning Commission and to the Board on appeal. I think it even went to the Board on appeal.

So there is -- boat docks are typically -- are reviewed and approved by the Hearing Examiner, and before the Hearing Examiner, boat docks were reviewed and approved by the Planning Commission. The Planning Commission, prior to HEX, also approved PDI applications. But variances and conditional uses that go to the HEX, those require Board of Zoning Appeals approval, and the Board of County Commissioners sits as the Board of Zoning Appeals.

CHAIRMAN FRYER: Thank you.

MR. BELLOWS: And at the pre-application meeting, we generally have a good idea if it's, you know, intended to be something that qualifies as a HEX item.

CHAIRMAN FRYER: Is it the consensus of this board that we are asking staff to sharpen its pencil and come up with as clear criteria as they possibly can and objective criteria as to what's going to the Hearing Examiner and what comes to the Planning Commission?

MR. BELLOWS: It's my understanding that that request has also come from the Hearing Examiner to clarify that as well.

CHAIRMAN FRYER: Oh, okay.

MR. BELLOWS: And I don't know if Anita wants to speak to that or not. But we are looking at that issue.

CHAIRMAN FRYER: I just want to be sure from --

COMMISSIONER KLUCIK: Yeah. Did we get a response from all the commissioners to the Chairman's question?

CHAIRMAN FRYER: I don't think so. Does anyone disagree with my characterization of that as a consensus request on our part of staff? Does anybody want to except themselves from that?

(No response.)

CHAIRMAN FRYER: All right. Then we'll determine and we will say that by consensus we're asking staff to come back with clear and objective criteria to determine, going forward, whether a matter goes to the HEX or comes to the Planning Commission. And we're not going to tell you when you have to do this, but can you give us an idea when, reasonably, we might expect something to be coming back to us?

MR. BELLOWS: Can we follow up with email on that once we've had a chance to vet it a little bit more?

CHAIRMAN FRYER: Yes. And we will -- we will report as this evolves. If you're talking about an email with me, we will report on regular --

MR. BELLOWS: I certainly know how to do the emails now after the presentation.

CHAIRMAN FRYER: Yeah. Well, good.

COMMISSIONER KLUCIK: Mr. Chairman?

COMMISSIONER SCHMITT: We make recommendations of changes on the HEX. Of course, that involves a change to the ordinance and following changes to the LDC, because that spells out some of the criteria.

MR. BELLOWS: Definitely that would be the case if there is a change. You know, we were going to look at the request from the Hearing Examiner and what you've put on the record today, and we'll come to some kind of planner consensus, and it could be something that goes back before the Board.

CHAIRMAN FRYER: Okay. Anybody else want to weigh in? Commissioner Fry.

COMMISSIONER FRY: Mr. Chairman, I'm comfortable with that approach. This handout, which I do find helpful, giving us a preview of what is coming our way --

MR. BELLOWS: There's a typo in it, though. I'll correct it and send it out.

COMMISSIONER FRY: I think I saw that. Is this something we can continue to expect?

MR. BELLOWS: Yes. That is now part of the tickler. I think Commissioner Fryer indicated that, you know, we can get them out sooner than during the day of the meeting.

CHAIRMAN FRYER: Yes.

COMMISSIONER FRY: Thank you. That's helpful.

CHAIRMAN FRYER: And we all have to keep in mind that this is not a -- this is not etched in granite. There can be changes. This is just staff's present estimation of what's coming in, and we --

MR. BELLOWS: What's currently scheduled in our computer program called CityView. When a date gets entered in there, it's getting prepped for advertising.

CHAIRMAN FRYER: So it's our responsibility not to complain if it turns out that the real agenda differs somewhat, because events are dynamic, and they will change.

COMMISSIONER FRY: Well, on that note, I do notice that I think in March both Bellmar and Longwater show up on the same agenda on the same day. Is that actually --

MR. BELLOWS: That is the way it shows up in CityView right now. So I believe the applicant had requested both of them to be companion items, so to speak.

COMMISSIONER FRY: Oh, heard together?

MR. BELLOWS: Heard together.

CHAIRMAN FRYER: It's actually February 18th.

COMMISSIONER FRY: Correct, yes. Thank you.

CHAIRMAN FRYER: So we're going to have our work cut out for us.

COMMISSIONER KLUCIK: Mr. Chairman?

CHAIRMAN FRYER: Yes, sir.

COMMISSIONER KLUCIK: I have an idea I want to bring up before we adjourn.

CHAIRMAN FRYER: Please. Now would be the time.

COMMISSIONER KLUCIK: Okay. Well -- and I'm putting Mr. Bellows -- I'm not intending to put him on the spot. We have talked about it previously. But I just wanted to bring up, you know, since we're not -- you know, we're not really on a tight timeline, but it shouldn't take too long -- to discuss my -- you know, my desire that the -- that our staff has all of the -- all of the Land Development Code online for people, you know, and I think everyone remembers, you know, my concern and my request. And I didn't know if Mr. Bellows has any more feedback, if, you know, he's made any progress or has an update.

COMMISSIONER HOMIAK: It is online.

MR. KLATZKOW: The Land Development Code is online.

COMMISSIONER KLUCIK: No, the -- no, the more specific elements such as the -- you know, a searchable version of the SRA for Ave Maria, for instance, that you can easily find and you don't have to know exactly where to go.

MR. KLATZKOW: That exists under MUNI Code search engine. I suppose we could --

COMMISSIONER KLUCIK: Really?

MR. KLATZKOW: Yeah. I suppose we could -- yeah, I suppose we could make a

reference in our web page to that.

COMMISSIONER KLUCIK: That would be great. All right. Well, Mr. Bellows, did you have anything to add to that?

MR. BELLOWS: I was just going to say, part of that question that you asked to include PUD documents and ordinances, the Clerk's Office has all of those recorded. We have searchable zoning atlases that you click on a property, they'll pull up all the approved ordinances or resolutions for that particular property. But I think what you were trying to say is can you click on, like, a GIS map and pull up all the approved ordinances, and right now our system isn't designed to accommodate that.

COMMISSIONER KLUCIK: And I think it would benefit me, Mr. Bellows, if -- you know, if someone can, you know, log in with me and show me, you know, how I can -- you know, what exactly the capabilities are of what we have, you know. And my main concern is so that, you know, citizens, you know, homeowners, residents, can easily find these things when we're referencing but also, you know, just for myself.

I figure if it's hard for me to find something -- not that I'm a genius, but, you know, I'm a trained lawyer, and I'm very persistent, you know, and can ferret out information pretty easily. If it's hard for me to find something, then I'm assuming, you know, that that's, you know, going to be the case with a lot of people that ought to not have so much trouble finding stuff.

MR. BELLOWS: Yeah, understood. And we do have a business center that is put together to help the general public with their zoning -- general zoning questions, to help get answers, help them navigate our web page so they can find information themselves in the future. So we do have systems in place, but the intuitiveness of the web page probably needs improvement.

COMMISSIONER KLUCIK: Yeah. And I look forward to talking to you with that, and I really appreciate you've always been very supportive, you know, of responding and helping me understand better and maybe move progress on that issue. So I appreciate that.

MR. BELLOWS: Well, I do think it's a great opportunity. And when you get a chance, maybe we could set up a time. You know, we're trying to do additional training for our new staff on how to find things through our computer, various programs. Maybe we can start working on maybe a one-on-one session to help show how we research things on our county web page that commissioners can use to help with their research projects.

CHAIRMAN FRYER: Good.

Commissioner Shea and then Commissioner Fry.

COMMISSIONER SHEA: So this type of training that we went through today, I really value that. I think it accelerates our learning process. And I had a couple more ideas on topics just based on today from my personal standpoint.

I think Jeff talked about double the population and the other half going to be in the eastern part of the county. I've never seen any presentation on growth projections in the county. I would love to see, not just a number, but where -- you know, a dialogue where you can ask questions like this, and maybe the growth management committee could talk a little bit about growth, where it's going to go, how -- you know, high-level discussion.

CHAIRMAN FRYER: A not absolutely current such presentation but an excellent one exists online, and it was Mark Strain's presentation. I think autumn or early winter of 2019 was the last time he updated it. But for those who have not seen that, it is still very, very informative and well, well produced, and it's out there on the Internet.

COMMISSIONER SHEA: Another topic that we hear a lot that everybody kind of intuitively understands what it means, but smart growth. I mean, we're managing growth, and is most of us -- I don't know -- I know what it means just from the general standpoint, be smart. But there's a lot of specific details that fill in the blank of the definition of smart growth. I think it would be good for us to get a little bit more knowledge on what it means.

The third one is -- I don't know what we can do with it. I still struggle reading in the paper all the time by anybody who's against any kind of growth, that the county is going to pay millions of dollars to build the infrastructure for the developer. And when we had the impact fee

discussion, nobody seemed to really know whether that was true or not. Jeff indicated in his -- I mean, I took his comment as we don't collect anywheres near the cost. Somehow we've got to get our hands around that. That is a common, common public comment that I hear all the time, that we're giving away infrastructure.

MR. KLATZKOW: The Board sets the impact fee policy for the county, and what happens is that we go to an outside consultant, does a study, and says this is what the impact fee needs to be if growth's going to pay for growth.

At that point in time, the Board has the ability to charge the full amount, or they can charge less than that. From time to time the Board has elected to go less than that because the reality is that the impact fees on a single-family house right now, I think they're over \$25,000. It gets to a point where a big part of the cost of purchasing new construction in Collier County is the impact fee.

COMMISSIONER SCHMITT: Right. Because Collier County, I believe, is the highest impact fee in the state of Florida.

COMMISSIONER SHEA: So what we're saying is the public is right, the rest of the citizens of Collier County are paying for the impact fees on development because we're worried the impact fees are too high.

MR. KLATZKOW: Well, okay. But there was a point in time where there were no impact fees, and roads still got built, the schools got built, and everything else.

COMMISSIONER SCHMITT: It falls onto the General Fund.

COMMISSIONER SHEA: Exactly. That's all I'm saying is we need to be more honest about it is that we are all paying for the growth.

COMMISSIONER VERNON: But the flip side is that our impact fees are higher than anybody in the state, so we're doing a better job, arguably, of collecting -- having the developer pay for it.

COMMISSIONER SHEA: Well, our costs are higher.

MR. KLATZKOW: What I'm saying is it's been a --

COMMISSIONER VERNON: True.

MR. KLATZKOW: -- policy decision by the Board to set the impact fees. Whatever they are, it's a policy decision of the Board.

COMMISSIONER VERNON: Right. No, I understand. I'm just saying, it's not like we're not collecting strong impact fees, but Paul's point, well, it's a higher cost of living here, so they should be higher.

CHAIRMAN FRYER: Commissioner Fry.

COMMISSIONER FRY: Jeff, I was curious if there was a slide missing in the presentation. I saw nothing about our role in issuing pardons. And I wonder if you could just cover that for us briefly. I have about 144 I would like to submit.

CHAIRMAN FRYER: Family members.

COMMISSIONER VERNON: Himself.

COMMISSIONER FRY: Mostly. Including myself.

COMMISSIONER SCHMITT: All right. With that...

CHAIRMAN FRYER: Any further new business?

(No response.)

CHAIRMAN FRYER: Hearing none, any further old business?

(No response.)

CHAIRMAN FRYER: Hearing none, 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 12:44 p.m.

COLLIER COUNTY PLANNING COMMISSION

EDWIN FRYER, CHAIRMAN

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

